LUCY VAN LAANEN. Appellant, v. VERNE KNOLL, Deputy Director, State Bureau of Personnel, and MANUEL CARBALLO, Secretary, Department of Health & Social Services, Respondents. Case No. 74-17 

OFFICIAL

AMENDMENT TO OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, STEININGER, WILSON and DEWITT, Board Members.

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We have reconsidered, on our own motion, the opinion and order entered on March 19, 1976. We believe that it was incorrect to conclude that the correct effective date of Appellant's reclassification for salary and benefit purposes was the date of our first decision, January 2, 1975. Section 16.05(2), Wis. stats., requires that we hold a hearing within 45 days of receipt of an appeal. We have held that this provision is directory, not mandatory. See Weber v. Adamany, Wis. Pers. Bd. No. 75-235, March 22, 1976; Will v. H & SS Department, 44 Wis 2d 507, 517-518 (1969). Nonetheless, this provision should be followed.

This appeal was received on March 19, 1974. The Board heard the case July 22, 1974. An initial decision was rendered January 2, 1975. In our opinion and order entered March 19, 1976, we held that we could, in essence, correct the erroneous decision of January 2, 1975, and require reclassification effective that date for salary and benefit purposes. We now conclude that we can and should correct our failure to hold a hearing within 45 days of the receipt of the appeal, as is required by S. 16.05(2), by requiring that the effective date of the Appellant's reclassification for salary and benefit purposes be 45 days after the date of receipt of Appellant's appeal, or May 3, 1974. This

result is consistent with our March 19, 1976, decision, and the legislative intent expressed in Subchapter II of Chapter 16 of the statutes. legislative requirement that hearings be held within 45 days evinces a legislative intent that appeals be disposed of promptly. An employe wrongfully denied reclassification is not entitled under S. 16.38(4) to salary and benefits retroactive to the date of the denial, but he or she is entitled to a prompt disposition of his or her appeal and the resultant appropriate reclassification. 1

Our opinion and order entered March 19, 1976 is amended by addition of the foregoing language. The action of the Respondent is hereby rejected and this matter is remanded for further proceedings not inconsistent with this opinion.

Dated Wark 28, , 1976. STATE PERSONNEL BOARD

Now that we have enunciated this principle, we note that in future cases it may be appropriate to consider what effect an employe's delay in prosecuting an appeal pending before this Board might have on a determination of the effective date of reclassification for salary and benefit purposes.