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 *
 LUCY VAN LAANEN, *
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 Appellant, *
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 v. *
 *
 C.K. WETTENGEL, Director, *
 State Bureau of Personnel, and *
 WILBUR J. SCHMIDT, Secretary, *
 Department of Health & Social *
 Services, *
 *
 Respondents. *
 *
 Case No. 74-17 *
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OFFICIAL

OPINION AND ORDER
ON REMAND

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

OPINION

This case is before us again following a remand from Dane County Circuit Court. The original appeal concerned a denial of a reclassification request. We held a full hearing on the merits. Following the hearing we dismissed the appeal for lack of subject matter jurisdiction, on our own motion, on the basis of untimely filing of the appeal, although we indicated that the denial of reclassification was improper. On review, the circuit court determined that the appeal had been timely. The circuit court judgment contained the following:

IT IS ORDERED, ADJUDGED AND DECLARED:

1. That Petitioner's appeal to the State Personnel Board was timely.
2. That the Order of Dismissal of Respondent, State Personnel Board is reversed.
3. That the Appeal of Lucy Van Laanen is granted, and
4. That the case is remanded to the State Personnel Board for further proceedings consistent with this Judgment.

Considering that in subparagraph one above the court refers to the "appeal to the State Personnel Board," we must interpret the word "appeal" in subparagraph three as also the "appeal to the State Personnel Board." The review proceedings before the circuit court were by way of petition for review in accordance with S. 227.16, Wis. Stats., so the reference should not be interpreted as an "appeal" to circuit court.

Therefore, we conclude that the Appellant's "appeal" to the Personnel Board must be granted in accordance with the judgement of the circuit court. Even in the absence of this mandate from the circuit court we would reach the same result with respect to the reclassification question on remand following the reversal of our original ruling on jurisdiction. This case was originally heard and argued on the merits. The jurisdictional question was raised on our own motion after the hearing. Under such circumstances there is no need to rehash the merits on remand. We have reviewed the record and are satisfied with our original opinion on the merits.

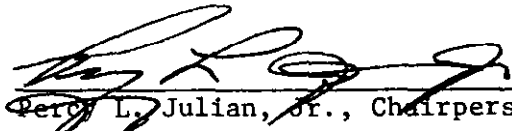
The one question we did not reach in our original opinion was that concerning back pay. The Appellant's appeal letter did not address the back pay issue. There are two reasons why we feel we should request additional argument on the back pay question. First, since the date of the hearing in this case we have decided two cases which involve issues raised here — Alderden v. Wettengel, 73-87, 11/24/75, concerning our interpretation of S. 16.38(4), Wis. Stats., and Pulliam & Rose v. Wettengel, 75-51, 11/25/75, concerning equitable estoppel. Second, in her brief following the original hearing, Appellant refers to the date of denial of the first request for reclassification and the operative date for back pay purposes as September 18, 1973. This varies from the date clearly appearing on the record, September 18, 1972, and leads us to believe it is a typographical error. However, we are reluctant to make a determination in this regard without hearing further from the parties.

ORDER

IT IS HEREBY ORDERED that Appellant serve and file her brief within seven working days of the entry of this order, that Respondents serve and file their briefs within five working days thereafter, and that Appellant serve and file his reply, if any, within five working days thereafter.

Dated December 2, _____, 1975.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson