

OFFICIAL

STATE OF WISCONSIN

PERSONNEL BOARD

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LEONTINE M. BERTEAUX,
 Appellant,

v.

C. K. WETTENGEL, Director,
 State Bureau of Personnel,
 Respondent.

Case No. 74-31

OPINION
 AND
 ORDER

* * * * *

LEONTINE M. BERTEAUX,
 Appellant,

v.

DAVID W. ADAMANY, Secretary,
 Department of Revenue,
 Respondent.

Case No. 74-58

Before AHRENS, Chairman, JULIAN, STEININGER and WILSON.

OPINION

Appellant, Leontine M. Berteaux, commenced her employment with the Department of Revenue on October 15, 1973. Normally, Appellant would have completed her probationary period on April 14, 1974, but on March 22, 1974, her probationary period was extended an additional three months, as allowed in certain circumstances by the civil service statute and rules. Appellant decided to challenge the legality of the extension in her case, and, on April 4, 1974, she appealed what she took to be the action of the appointing

authority to Respondent Wettengel. By a letter of April 15, 1974, counsel for Respondent Wettengel informed counsel for Appellant that the extension of Appellant's probationary period was not the action of Respondent Adamany, but that of Respondent Wettengel and that, therefore, an appeal did not lie to the Director under Sec. 16.03(4)(a), Wis. Stats., 1971. On April 22, 1974, Appellant appealed Respondent Wettengel's action to this Board, which is Case No. 74-31.

On June 12, 1974, Respondent Wettengel asked this Board to consider whether Appellant's appeal was timely filed. The facts on which we could make such a determination, however, are not presented by this very slender record, which consists mostly of correspondence. It does appear that the Appellant at first viewed her extension as the action of the appointing authority. This would be understandable if, as seems likely, it were the appointing authority and not the Director who informed her of the extension. Indeed, the Director's letter of March 22, 1973, authorizing the extension points to this when it states: "Please notify the employee immediately of this action..." Since power to extend probationary periods is vested in the Director, that action is appealable to the Board. But from this record we cannot determine what the appointing authority may have told her, or at precisely what point in time Appellant was chargeable with notice that her extension was the action of Respondent Wettengel. We are unable to determine on the record before us precisely when the time for appealing Respondent Wettengel's action specified in Sec. 16.05(2) Wis. Stats., began to run. See Maegli v. Schmidt, Wis. Pers. Bd., Case Nos. 74-6 and 74-13 (Feb. 22, 1974).

Moreover, all of the circumstances surrounding the extension of Appellant's probationary period, which gave rise to this dispute, have not

been developed. Respondent Wettengel, in his letter of March 22, 1974, authorizing the extension stated that it was his understanding that the appointing authority's request was based "primarily on the fact that Ms. Berteaux was transferred from the Equalization Program in our Milwaukee Office to a position in the Sales Analysis Program approximately one month ago." Appellant has raised what we believe is a serious question concerning whether an employee's probation may be extended where there is no record of unsatisfactory performance in the original work assignment. But we are again confronted with the inadequacy of the record before us. The legal issue is, we think, important, and it warrants a more substantial factual record on which to resolve it. See United Farm Agency, Inc. v. Niemuth, 47 Wis. 2d 1, 6-7, (1970); Wozniak v. Local 1111 of UE, 45 Wis. 2d 588, 592, (1970).

Finally, it appears that on May 29, 1974, Appellant was terminated by the Department of Revenue. Appellant has appealed her discharge, Case No. 74-58 alleging that since her probation had been illegally extended, she was a permanent employee by the time of discharge and was, therefore, entitled to a hearing and a determination as to whether her discharge was for just cause. In the alternative, Appellant alleges that, if not entitled to a just cause hearing, that she is entitled to hearing before the Director on whether her discharge is illegal and an abuse of discretion. The Director's decision on such claim may in turn form the basis of an appeal to the Board. We believe that in the interest of economy, we would be well advised to consolidate Appellant's probation extension appeal with her discharge appeal, where as here, the issues appear to be intertwined.

We have decided that since the facts of this case need to be fully heard in order to determine the issues of law involved, the appeals will be consolidated for hearing purposes only and the matters will be set for a prehearing conference and then for hearing.

ORDER

IT IS ORDERED that Appellant's appeal of Respondent Wettengel's extension of her probation be consolidated for hearing purposes only with the appeal from her discharge, and be scheduled for a prehearing conference and then for hearing, upon all issues in the matters.

Dated June 28, 1974

STATE PERSONNEL BOARD

BY

William Ahrens

William Ahrens, Chairman