STATE OF WISCONSIN STATE PERSONNEL BOARD

DORIS ANDERSON,

Appellant,

v.

MANUEL CARBALLO, Secretary,
Department of Health & Social Services,

Respondent.

Case No. 74-45

OPINION
AND
ORDER

Before: DEWITT, Chairperson, WARREN and HESSERT, Board Members.
(Board Member Morgan abstained.)

OPINION

I. Findings of Fact

Appellant began working for the Department of Health and Social Services at Central Wisconsin Colony and Training School in the position of Food Service Worker 2 (PR3-02) on December 4, 1972. Appellant's position was covered by the Blue Collar and Non-Building Trades certified bargaining unit. Via an open competitive examination Appellant was certified for and appointed to a Food Service Supervisor (SR1-06) position. She began working in the supervisory position on April 15, 1973.

On September 24, 1973 Appellant submitted a letter to her supervisor, Pearl Thiesson, requesting "a transfer back to a Food Service Worker . . . effective at the end of my shift on October 12, 1973." (Appellant's Exhibit #1.) This request was evidently granted because as of October 14, 1973 Appellant was working as a Food Service Worker 2 (PR3-02).

By letter dated March 8, 1974, Appellant was notified that her supervisor was intending to terminate her employment effective the end of her work shift, Saturday, March 16, 1974. The letter also stated that Appellant could speak with

her supervisor about the impending termination at a specified time on a specified date. (Appellant's Exhibit #2.) Appellant apparently availed herself of the opportunity to meet with her supervisor. Appellant did not appear for work after March 16, 1974 but she was apparently paid through March 20, 1975.

A probationary service report signed by Dr. Scheerenberger, an appointing authority, and by Appellant's supervisors and dated March 28, 1974 effectively recommended that Appellant be terminated from her employment. Appellant stated that she never received a copy of this report.

Appellant grieved her termination on March 29, 1974. She received a response to that grievance on May 11, 1974. She appealed to this Board by letter dated May 17, 1974.

At a prehearing conference held on September 6, 1974, Respondent objected to the Board's jurisdiction to hear this appeal. An evidentiary hearing on the jurisdiction issue was held on February 3, 1976.

II. Conclusions of Law

Appellant Was On Probation At The Time Of Her Termination

An employee who is originally appointed to a position must serve a minimum probationary period of six months (See Section 16.22, Wis. Stats., Sections Pers. 13.02 and 13.04, W.A.C.). Appellant was originally appointed to a position classified as Food Service Worker 2 in December, 1972. Approximately four months later she moved into a position of Food Service Supervisor 1. Although repeatedly characterized in the record as a promotion, this movement in employment was not a promotion but must be treated as an original appointment.

Section Pers. 14.01 defines the word promotion as:

> the movement of an employee with permanent status in class in one class to a different position in a class having a greater pay rate or a greater pay range maximum, or to a higher classification for the same position when competition was determined appropriate. (emphasis added)

Section Pers. 14.02(1) specifically excludes from the definition of promotion the situation of an appointment of an employee to a position in higher classification while the employee is serving a probationary period on an original appointment. Therefore, Appellant's change in employment from Food Service Worker 2 to Food Service Supervisor 1 was not a promotion but must rather be treated as an original appointment.

The same reasoning is used to characterize Appellant's move from Food Service Supervisor 1 to Food Service Worker 2 as an original appointment. Under Section Pers. 17.01, W.A.C., a demotion is defined as "the movement of an employee with permanent status in one class to a position in another class that has a lower single rate or pay range maximum." (emphasis added) In fact, Appellant's particular situation is specifically excluded from the definition in Section Pers. 17.02(1), W.A.C.

Appellant spent approximately four months on probation as a Food Service Worker 2, then apparently just under six months on probation for the Food Service Supervisor 1 position, and finally approximately another five months on probation as a Food Service Worker 2. Appellant served a total of about fifteen months in probationary periods for her various positions. While this result may seem excessive, the civil service statutes and the rules of the Director do not appear to provide any carry-over of probationary period time served under the facts of the instant case. Section Pers. 13.07(1) does provide for such carry-over in certain situations involving lateral movements of employees still serving probationary periods. Lateral movements are defined in the section as "any

movement (in the nature of a transfer) to a permanent or seasonal position with the same pay rate maximum and in the same or closely related class, while the employee is serving a probationary period." The Appellant's changes in positions do not fit this definition. Therefore, we conclude that at the time of her termination, Appellant was serving a six month probationary period on an original appointment to a Food Service Worker 2 position.

Jurisdiction

A probationary employee at the time of the instant case had no right to appeal a termination under either the civil service statutes and rules of the Director or the union contract, if applicable. (See Sections 16.05(1)(e), 16.28(1)(a); Section Pers. 13.09, W.A.C.; and Article IV, Section 11 of the Agreement between AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin effective July 1, 1973 through June 30, 1975.) Therefore, we conclude we do not have jurisdiction to hear this appeal.

However, we do urge that questions such as raised in the instant appeal be minimized or avoided in the future. Plainly such terms as "transfer," "promotion" and "demotion" were used loosely and inaccurately. This can be seen from the various exhibits in the record including the Probationary Service Report dated March 28, 1974, and signed by Dr. Scheerenberger, an appointing authority (Respondent's Exhibit #1). Appellant should have been clearly apprised of her employment status from the beginning of her employment with the department through each movement.

Finally, Appellant received the March 8, 1974 letter which gave notice that her supervisor, Ms. Thiesson, "intend(ed) to terminate (her) employment in CWC, Food Service effective at the end of (her) shift, Saturday, March 16, 1974."

(Appellant's Exhibit #2.) Ms. Thiessen was not an appointing authority and, therefore, not authorized to terminate Appellant's employment. (See Odau v. Personnel Board, 250 Wis. 600 (1947); McManus v. Weaver, Case No. 73-171 (March 29, 1974).) However, the Probationary Service Report which effectively terminated Appellant's employment was signed on March 28, 1974 by Dr. Scheerenberger who was an appointing authority. There was then an eight day period when acting in reliance on Ms. Thiessen's letter, Appellant did not appear for work and was not paid for time which may have otherwise been assigned to her for work. Although we have determined that we do not have jurisdiction to hear this appeal, we urge Respondent to review this eight day period to determine what pay, if any, may be due Appellant.

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed for lack of subject matter jurisdiction.

Dated June 13, 1977. STATE PERSONNEL BOARD

Laurene DeWitt, Chairperson