STATE OF WISCONSIN   STATE PERSONNEL BOARD

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DALE R. GILLIS,   *
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                          Appellant,   *
                                          *
v.   *
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JOHN C. WEAVER, President,   *
University of Wisconsin, and   *   OPINION AND ORDER
C. K. WETTENGEL, Director,   *
State Bureau of Personnel,   *
                                          *
                          Respondents.   *
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Case No. 74-5   *
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Before: JULIAN, Chairperson, SERPE, and STEININGER, Board Members.

FINDINGS OF FACT

Appellant is a permanent employee in the classified service.

Immediately prior to July 23, 1972, he was a Laborer III, pay range 3-05,

which had at that time a salary minimum of $562 and maximum of $668

per month. On July 23, 1972, after a competitive examination, the

Appellant was appointed to the position of Motor Vehicle Operator 1,

pay range 3-05, salary minimum $562 and maximum $668 per month. He

did not serve a probationary period after the appointment and he did

not receive a step pay increase after the appointment or at the

end of the six month period following the appointment. The announce-

ment for the Motor Vehicle Operator 1 position stated that "this is a

competitive promotional examination . . . ," and:

> Within the limitations of the salary range of the classifi-
> cation to which he is promoted, an employe will start at
> $20.00 above his present salary or at the minimum of the
> new salary range, whichever is higher. Upon the successful

completion of a six month probationary period, the appointee
will receive an additional $20.00 a month increase.

This case has been submitted for decision pursuant to stipulation
by the parties.

CONCLUSIONS OF LAW

The Appellant contends that in accordance with S. Pers. 14.04 he

should have received a step increase after his appointment:

> In pay schedules where appropriate, an employe's present
> pay rate shall be increased to the minimum of the new range
> if his present rate is one step or more below the minimum
> of the new range. If an employe's present rate is less
> than one step below that minimum or is above the minimum
> of the new range, his present rate shall be increased by
> an amount equal to one step.

Respondents contend that the Appellant's appointment did not constitute

a promotion and that the provisions of S. 14.04 do not apply. They

rely on S. 14.01, which defines promotion, S. 15.01, which defines

transfer, and S. 15.05, pay on transfer. The provisions of these

statutes clearly support Respondents' position.

Section 14.01 defines promotion as follows:

> Promotion is the movement of an employe 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.

The Appellant's movement was to a position in a class having the

same pay rate and the same pay range maximum. Thus, while not a

promotion as defined here, the movement was a transfer as defined

by S. 15.01:

> A transfer is the movement of an employe with permanent
> status in class from one position to a vacant position
> allocated to a class having the same pay rate or pay range
> maximum.

At this point, S. 15.05, pay on transfer, would apply:

> In schedules where appropriate, when an employe transfers
> the rate paid may be any rate within the pay range which
> is not greater than the last rate received in his or her
> former position. In any transfer where an employe is required
> to serve a probationary period, completion of such probationary
> period shall not make the employe eligible to receive a
> probationary pay increase as provided in Wis. Adm. Code.
> S. Pers. 5.03 (1), provided, however, that any employe upon
> completion of any probationary period shall be paid not
> less than the permanent status in class minimum.

The only question then is whether the state should be bound

by the language of the job announcement, which stated that the

examination was promotional and that an increase would be granted

the successful applicant. In our opinion the announcement was

misleading. It should have made it clear that a salary increase was

contingent on the applicant meeting the criteria contained in the

Wisconsin Administrative Code cited above.[1]

However, promotions and salary increases must be administered

in accordance with the rules found in the Administrative Code unless

other legal principles supersede. In this case, the only legal

theory that would support Appellant's position that comes to mind

is one of equitable estoppel. Before equitable estoppel will be

invoked, a required element that must be established is that "the

party claiming the benefit thereof has relied on the conduct claimed

to give rise to the estoppel, to his prejudice." Ryder v. State Farm

Mut. Auto. Ins. Co., 51 Wis. 2d 318, 325 (1971). In other words,

"a party is not entitled to invoke the doctrine of estoppel unless he

can show detrimental reliance." Buza v. Wojtalewicz, 48 Wis. 2d 557, 567 (1970).

See also Schmidt v. State Personnel Bd., 145-169 (Dane Co. Cir. Ct., August 1, 1975).

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[1]Although the record is silent on this point, it is a fair assumption
that the announcement was prepared in anticipation that applicants
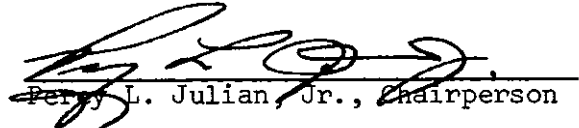would be from a lower salary range and maximum.

In this case the only detriment to Appellant as a result of the
Respondents' action in promulgating the job announcement as written
was to cause him to take an examination he might not otherwise have
taken. He did not allege, for example, that he changed residences
to take the position in question. We do not feel that the fact that
Appellant took a promotional examination is sufficient injury to
constitute "detrimental reliance." Thus the elements of an equitable
estoppel, which would prevent the Respondents from relying on the
Administrative Code provisions and require them to effectuate the terms
of the announcement, are not present.

ORDER

IT IS HEREBY ORDERED that the actions of the Respondents are
affirmed.

Dated _____ 30 , 1975.   STATE PERSONNEL BOARD

Perry L. Julian, Jr., Chairperson