STATE OF WISCONSIN

STATE PERSONNEL BOARD

* *

ROGER N. MAEGLI, *

Appellant, *

v. *

WILBUR J. SCHMIDT, Secretary
Department of Health & Social Services, *

Respondent. *

Case No. 74-6

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ROGER N. MAEGLI, *

Appellant, *

v. *

WILBUR J. SCHMIDT, Secretary
Department of Health & Social Services, *

Respondent. *

Case No. 74-13

* *

OFFICIAL

OPINION

AND

ORDER

Before: AHRENS, Chairman, JULIAN and STEININGER

OPINION

On January 17, 1974, the Appellant wrote a letter to the Board, wherein he stated that he wished to appeal his "forced resignation" from a position in the Department of Health and Social Services.

The matter was noticed for a prehearing conference to be held on February 13, 1974. At such time the Appellant appeared by co-counsel, and counsel for the Respondent appeared specially to challenge the Board's jurisdiction on the grounds 1) that the subject matter of the appeal is a resignation which is not the kind of personnel action which can be appealed to the Board, and 2) that the appeal is untimely. The Appellant disputes these contentions and at the conference, requested a hearing for the purpose of making an oral offer of proof and oral argument concerning jurisdiction to the Board. Subsequent to the conference, the Respondent filed a Motion to Dismiss on the two grounds previously stated herein.

The first issue raised by the Respondent's special appearance is whether the jurisdictional challenges raised by the Respondent can be determined as questions of law without any hearing.

The Board has previously held that where the parties agree that the only question presented for decision was a question of law and there were no facts with regard to that question of law at issue, no evidentiary hearing is necessary. Beauchaine v. Schmidt, Wis. Pers. Bd. Case No. 73-38, 10-73. The Opinion in that case quotes approvingly other cases holding that an evidentiary hearing is unnecessary where the question of law involves neither a dispute as to the material facts nor a need to ventilate the underlying facts to aid in a policy determination. While that was true in the Beauchaine Case, just the opposite is true in the instant case.

The facts material to the nature of the Appellant's termination and the facts relative to the computation of any time limits on the filing of the appeal are in contention. At the same time, a factual record for resolving these legal questions is almost non-existant. The Appellant's appeal letter refers to his "forced resignation". Counsel for the Respondent in his Motion simply says that the Appellant resigned. No other facts are before the Board upon which it can resolve the legal questions it is being asked to decide.

The Board is unable on the record before it to determine when the alleged forced resignation took place and, therefore, is unable to compute the period during which the time limits specified in Section 16.05(2), Wis. Stats., 1971, would run. The Board will postpone the determination of jurisdiction until a determination of the merits of the case.

We do not consider the question of whether the Board has jurisdiction to hear an employe's claim that he or she was forced to resign to be a closed legal question. Respondent has called to the Board's attention The Appeal of Lindow, Wis. Pers. Bd., Case No. 134, 11-68, which held that the Board lacked

jurisdiction over such matter. There the Board, referring to the provision of Chapter 16 providing that dismissal must be for just cause, said:

> Obviously the statute does not contemplate a situation where the appeal is from the Appellant's own action (i.e., resignation) even though this action may be involuntary. . .

The Board relied heavily on Piercey v. CSC of Salt Lake City, 208 P. 2d 1123 (1949) holding that the Utah Statute did not give the Commission the power to determine if the employe resigned in response to duress, coercion or fear brought to bear by a Department head. Under the Lindow Case, the Board's interpretation of Chapter 16 provides an employe a hearing and determination before the Board, if an appointing authority discharges him; but no rights before the Board or presumably elsewhere, if the appointing authority coerces him into resigning.

The Board itself seems to have abandoned this rule in a later case. In Lee v. Estkowski, Wis. Pers. Bd. Case No. 341, 5-70, the Board entertained and decided the question whether the employe had resigned, since, if he didn't, the Board said, "he is entitled to be reinstated because he was not terminated for cause as is required by Section 16.24, Wis. Stats., 1969, to effectuate a discharge."

We have decided that since the facts are in dispute and need to be fully heard in order to resolve the issues of law, the matter will be forthwith scheduled for hearing.

ORDER

Upon the basis of the Appeal Letter and the Respondent's Motion to Dismiss,

IT IS ORDERED that the Respondent's Motion to Dismiss is denied.

IT IS FURTHER ORDERED that the proceeding entitled Schmidt v. Maegli, Wis. Pers. Bd., Case No. 74-13, now pending before the Board, which appears to arise out of the same controversy, be consolidated for all purposes with this proceeding.

IT IS FURTHER ORDERED that the issues to be determined upon hearing are:

1. Whether the Board has jurisdiction of the subject matter of the appeal?
2. Whether the appeal is timely?
3. What were the circumstances attendant to thecessation of Appellant's employment?
4. If the Board has jurisdiction, is Appellant entitled to a remedy? If so, what remedy?

IT IS FURTHER ORDERED that ten days prior to hearing Counsel for the parties exchange copies of all exhibits then in their possession that they will offer in evidence at the hearing and a list of the witnesses they intend to call to testify for their cause.

Dated Feb 22, 1974

STATE PERSONNEL BOARD

BY

WILLIAM AHRENS, CHAIRMAN