STATE OF WISCONSIN STATE PERSONNEL BOARD

JAMIE LAUB,

Appellant,

v.

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

Respondent.

Case No. 74-64

OFFICIAL

OPINION AND ORDER

Before: JULIAN, Chairperson, STEININGER, and DEWITT, Board Members.

OPINION

NATURE OF THE CASE

This is an appeal of a denial of a grievance at the third level. The issue presented by this appeal is whether the Appellant is entitled to attend classes for a three-credit college course per semester during working hours without loss of pay or being required to make up the hours.

FINDINGS OF FACT

The Appellant was initially hired by DHSS (Department of Health and Social Services) in November 1972 as a Client Services Assistant 3 (CSA). At the initial job interviews she was advised that as a CSA she would be allowed to attend college part time during working hours without being required to make up the time off. This opportunity was part of an ad hoc policy of Respondent's. This opportunity played a major role in her decision to accept the position since she had recently been laid off from other state employment and was contemplating returning to college to pursue a degree in social work on a full time basis.

Beginning in January, 1973, the Appellant, as a state employe, attended

school at the rate of three credit hours per semester. The Appellant was allowed time off from her job and attended classes during regular working hours. This was done with the approval of her supervisors and she was not required to make up the work hours. All tuition costs were paid by the Appellant.

The Appellant continued this pursuit of an undergraduate degree in 1974. In January 1974 the Appellant again registered for a three-credit course. In the middle of the semester she was advised that she could no longer attend school on work time. She was advised that any subsequent time spent in pursuit of her education would have to be made up on the job. This decision was based on a change in Respondent's policy, reflected in a memorandum identified as Respondent's Exhibit #1, which essentially limited the opportunity to attend school on state time to courses necessary for satisfactory performance of CSA duties. She was allowed to complete the particular course she was involved in at the time of the decision without making up the time off.

CONCLUSIONS OF LAW

POTENTIAL EFFECT OF UNION CONTRACT

In his written arguments filed after the hearing the Respondent contends that the Appellant's position is covered by a collective bargaining agreement between the state employes' union and the state and that the provisions of that contract with regard to the conditions of employment here in question are exclusive pursuant to S. 111.93(3), Wis. Stats. We find nothing in the record beyond the representation of counsel that would support a finding that Appellant's position in fact is covered by such a collective bargaining agreement. Therefore, there is no foundation for the conclusion sought by Respondent.

EQUITABLE ESTOPPEL

Appellant's only argument is that the Respondent is estopped from changing his position on her school attendance. She cites Gabriel v. Gabriel, 57 Wis. 2d 424, 429 (1972), which sets forth the following elements of equitable estoppel:

> "Three facts or factors must be present: (1) Action or inaction which induces (2) reliance by another (3) to his detriment."

We conclude that the Respondent acted, by his representation in the initial job interviews that she would be allowed to attend school on state time, to induce her to rely on this representation to her detriment. In Landaal v. State of Wisconsin, No. 138-392 (Dane County Circuit Court 1973), the court defined the latter element as follows:

> "A person suffers a detriment in law where he foregoes an alternative course of action upon the inducement of another..."

However, additional principles come into play in cases involving potential estoppel of the state. An initial question is whether estoppel applies at all in a case such as this where the reliance rests more on what might be characterized as a policy rather than on particularized dealings with an individual on a one-to-one basis. See, for example, Davis, Administrative Law Text, 3d Edition, at 343:

> "...one can readily see why major governmental policies must be kept within the control of Congress and of the principal policy-making officers and why such policies cannot feasibly be subject to significant alteration by judicially enforced estoppel. But one cannot readily see why the government in its business and property dealings should not be subject to the same rules of fairness that the courts apply to others engaging in such dealings."

However, regardless of how this appeal is characterized and this principle applied, there is another reason why equitable estoppel will not lie.

In order to establish estoppel, the acts of the agency involved must amount to "a fraud or a manifest abuse of discretion." See Surety Savings and Loan Assn. v. State of Wisconsin, 54 Wis. 2d 438, 445 (1972);

Pulliam and Rose v. Wettengel, Wisconsin Personnel Board No. 75-51 (November 25, 1975). In the case before us, the agency has not misinformed the Appellant as to the route for appeal. Rather, the agency changed its general policy concerning the educational endeavors of certain of its employes. There is nothing in this record which would provide a basis for a conclusion that this transaction involved a fraud or abuse of discretion.

Since we conclude that there is no basis for a conclusion that equitable estoppel should be applied against the Respondent, and since we further conclude that there could be no other basis for overruling the Respondent, we conclude that his position on this grievance must be sustained.

ORDER

IT IS HEREBY ORDERED that the Respondent's position on Appellant's grievance is sustained and this appeal is dismissed.

Dated May 24, 1976. STATE PERSONNEL BOARD

Percy L. Julian, Jr. Chairperson