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TIMOTHY A. TEALEY,

Appellant,

v.

EUGENE LEHRMANN, Director,
Board of Vocational, Technical &
Adult Education and VERNE KNOLL,
Deputy Director, State Bureau of
Personnel,

Respondents.

Case No. 75-12

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TIMOTHY A. TEALEY,

Appellant,

v.

EUGENE LEHRMANN, Director,
Board of Vocational, Technical &
Adult Education,

Respondent.

Case No. 75-116

* * * * *

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

NATURE OF THE CASE

A preliminary evidentiary hearing on this matter was held on August 24, 1976, limited by stipulation to the question of the underlying legal authority for the two-day suspension imposed on Appellant raised by Appellant's motion to vacate suspension. The parties further stipulated that the Board would determine this question prior to the second phase of the hearing which presumably will take up the substantive issues surrounding the suspension.

FINDINGS OF FACT

The Appellant is an employe of the Board of Vocational, Technical, and Adult Education with permanent status in class. He was suspended, without pay, for two days effective October 7 and 8, 1975.

OFFICIAL

INTERIM
OPINION AND ORDER

The Appellant was notified of his suspension by a letter dated October 2, 1975, signed by Frederick Hiestand, Appellant's supervisor. Prior to signing the October 2nd letter, Mr. Hiestand had conferred with Mr. Lehrmann, the State Director of the Board of Vocational, Technical, and Adult Education. Mr. Hiestand recommended a suspension of two weeks, but this was reduced to two days by Mr. Lehrmann.

Prior to this suspension, the most recent formal document relating to the delegation of power of appointment of the VTAE Board on file with the Director of the Bureau of Personnel was a letter dated February 26, 1975, which in part contained the following language:

. . . The Wisconsin Board of Vocational, Technical, and Adult Education delegated the power of appointment to the State Director by formal action taken at its meeting of February 15, 1972.

In addition, I have delegated the authority to sign personnel, payroll, and related documents to Messrs. Fred K. Hiestand, Roy V. Ustby and Erik Erickson
. . . . (Respondent's Exhibit #4)

CONCLUSIONS OF LAW

Appellant argues that Mr. Hiestand effectuated his suspension, but that he (Hiestand) lacked the authority to take such action because the appointing authority had not delegated such powers to him.

We conclude that Mr. Lehrmann's involvement in the suspension was sufficient to satisfy the requirement that the appointing authority exercise the power of removal, or in this case, temporary removal. We do not reach the question of whether Mr. Hiestand had been properly delegated the power of appointment.

Mr. Hiestand consulted with Mr. Lehrmann, who clearly had been delegated the power of appointment, prior to the suspension. He recommended to Mr. Lehrmann that the suspension be for two weeks. Mr. Lehrmann caused this to be reduced to two days. There can be no question that a line supervisor may and should be called on to recommend to a higher authority having the power to discipline the nature and degree of discipline the supervisor deems appropriate.

In McManus this Board held that "the power must be exercised by the appointing officer who has the authority" Where the authority is actually exercised after consultation between the supervisor and the appointing authority, and the appointing authority causes a modification of the recommended discipline, it would be an inappropriate elevation of form over function to require that the appointing authority personally sign the suspension letter.

Our conclusion on this point is reinforced, but not dependent on, the Guidelines for Handling Disciplinary Actions promulgated by the Director pursuant to S. 16.28(1)(c), stats. These guidelines at page 9 provide:

When counseling fails to lead to the solution of an employe problem, disciplinary action may have to be taken, More severe actions may be taken with the approval of the appointing authority or his authorized representative.

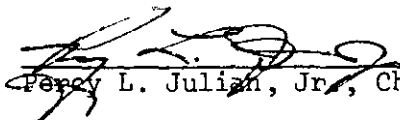
This contemplates the type of scenario that was followed in this case. While it might have been preferrable to have included Lehrmann's name in place of or along with Hiestand's on the suspension letter, we conclude that its omission does not render the suspension defective.

ORDER

IT IS ORDERED that Appellant's motion to vacate suspension filed March 4, 1976, is denied.

Dated October 1, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson