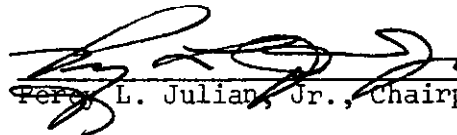


The Respondent's decision denying Appellant a discretionary performance award in July, 1975, is hereby overruled. The Respondent is ordered to re-evaluate the performance of the Appellant and redetermine her discretionary performance award, effective July 6, 1975, in a manner consistent with the requirements of the statutes and rules then in effect, as outlined in the report of investigation conducted by Mark Braunhut, Investigating Officer, Bureau of Personnel, acting on behalf of the Director, Bureau of Personnel, dated July 16, 1976, a copy of which is attached hereto. In the event that the Respondent does not make this determination within twenty working days of the date of entry of this order, he is further ordered to take action to effectuate the retroactive award of the maximum DPA to Appellant that would have been available in July, 1975.

Dated August 23, 1976.

STATE PERSONNEL BOARD


Perry L. Julian, Jr., Chairperson

STATE OF



WISCONSIN

Patrick J. Lucey
Governor

DEPARTMENT OF ADMINISTRATION
One West Wilson Street • Madison, Wisconsin 53702

Robert H. Dunn
Secretary

July 19, 1976

Percy L. Julian, Jr., Chairperson
State Personnel Board
Room 1120A, State Office Building
One West Wilson Street
Madison, WI 53702

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STATE PERSONNEL BOARD

Dear Mr. Julian:

In the matter of Lorraine Marvin, State Personnel Board Case #75-127, which was remanded to me for investigation and report pursuant to ss. 16.03(4), Wis. Stats., I have made the following determination.

Based on an investigation conducted by Mark Braunhut, a Staff Investigative Officer, I have concluded that the denial of Ms. Marvin's DPA in July, 1975 was not in conformance with the Wisconsin Administrative Code, Rules of the Director, Pers 5.03(6).

A copy of the report of the investigation is enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Verne H. Knoll".

VERNE H. KNOLL
DEPUTY DIRECTOR
STATE BUREAU OF PERSONNEL

VHK:MB:nsk

cc. Lorraine Marvin
Douglas LaFollette
Edward Main
Kenneth DePrey

Enclosure

Date: July 16, 1976

File Ref:

To: Verne H. Knoll, Deputy Director
State Bureau of Personnel

From: Mark Brauhn^{mb}, Investigating Officer

Subject: Marvin vs. LaFollette (Case #75-127)

Findings of Investigation

The appellant contends that she was denied a performance award based upon criteria other than her performance. She further contends that no criteria were established by the appointing authority for the distribution or denial of a discretionary performance award (DPA), and that this action was part of an attempt to remove her from her position in the office.

The respondent contends that the DPA is to be awarded in accordance with his judgement as to performance. Additionally, the respondent contends that the appellant was responsible for setting up a performance evaluation system and should not benefit from her failure to perform this duty.

Background Data

The appellant was classified as an Administrative Assistant 3 - Confidential (PR1-03) as of July 1, 1975 with permanent status in class and therefore eligible to receive a DPA. In July, 1975 Ms. Marvin was informed that she was denied a DPA. On October 16, 1975 Ms. Marvin filed a grievance requesting the reasons for her denial. While the grievance was filed outside the time limit prescribed in the grievance procedure for nonrepresented employes, the Personnel Board has assumed jurisdiction. On October 28, 1975 Mr. LaFollette responded to Ms. Marvin's grievance and stated that he was not required to give anyone a DPA and that this was up to his judgement as to which employes would receive a DPA. Additionally, Mr. LaFollette stated that Ms. Marvin's performance was poor and that if she had been performing in a similar manner while on probation, he would have terminated her. When Mr. LaFollette was asked for his performance award plan and Ms. Marvin's evaluation, he stated that neither existed.

Conclusion

As a result of the investigation, it is my opinion that Ms. Marvin was improperly denied a DPA. This decision was reached after a review of the facts and is consistent with the Personnel Board decision in Prey vs. Adamany Case #73-148.

At the time of Mr. LaFollette's denial of Ms. Marvin's DPA, Merit Awards were authorized under ss. 16.086(3), Wis. Stats., which were enacted in July, 1975. The Wis. Adm. Code, Rules of the Director in effect at that time were Pers 5.03(6) which reads:

(a) Policy. The state's policy on merit increases is to establish a system of evaluation through performance standards consistent with good personnel management practices so that merit increases may be granted solely in recognition of and to encourage meritorious service, and provide justification to the employe for either the award or denial or merit increases.

(b) Application. Each department shall adopt a plan for the distribution of merit increase to accomplish the legislative interest and the policy expressed in this rule.

The Secretary of State's office did not have a merit plan or even set up any criteria for the evaluation of employes. Ms. Marvin was never informed of her evaluation and never allowed the opportunity to disagree with Mr. LaFollette. Although the office is very small and therefore there is little need for a complex system for merit distribution, we find that having no formal merit plan to be in violation of Pers 5.03(6) (as in effect at time of the action).

It is therefore my findings that the denial of Ms. Marvin's DPA in July, 1975 was not in conformance with the Pers rules or the directives of the Director. Therefore, it is my recommendation that the board order the Secretary of State to adopt a formal performance evaluation plan for his agency and reevaluate the performance of Ms. Marvin in accordance with this plan. If her performance is found to warrant a DPA, such award should be effective 7-6-75.

MB:nsk