

* * * * *
 JOHN D. KELEHER, *
 Appellant, *
 v. *
 VIRGINIA HART, Chairperson, *
 Department of Industry, Labor *
 and Human Relations, *
 Respondent. *
 Case No. 75-15 *
 * * * * *

OFFICIAL

OPINION AND ORDER
ON JURISDICTION

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

OPINION

I. Facts

An Account Examiner II position was announced in a Department of Industry, Labor and Human Relations Promotional Opportunities Bulletin dated December 18, 1974. Appellant, who was not an employe of the State of Wisconsin, applied for the position. He was interviewed on February 15, 1975 and informed that he was not selected for the position by letter dated February 18, 1975.

Appellant appealed by letter which was received by the Board's office on February 27, 1975 the decision not to hire him. Appellant alleges that he was discriminated against because of his sex. He claims that he was better qualified than the woman who was chosen. In a second letter dated September 9, 1975 Appellant further alleged that the woman who was chosen did not take the civil service exam required for the position and that she was selected even before Appellant was interviewed.

A prehearing conference on the instant appeal was held on May 23, 1975. The following jurisdictional issue was raised by Respondent at the conference.

Does the Personnel Board have the authority to take jurisdiction of a case which involves a charge of sex discrimination on the part of an employing authority in making a selection of an individual for a position? (Conference Report, Case No. 75-15, dated June 9, 1975, p. 1.)

II. Conclusions

The Personnel Board Will Take Jurisdiction Of This Appeal Under Its Power To Investigate

Respondent first contends that Appellant has not sustained his burden, of showing that the Board has jurisdiction over the appeal. We do not entirely agree with this contention.

It is true that Appellant has the burden of proof regarding the existence of jurisdiction. As we said in Van Laanen v. Wettengel and Schmidt, Case No. 74-17, decided January 2, 1975, reversed on other grounds, Case No. 145-395 (Dane County Circuit Court, August 26, 1975):

It should be noted, moreover, that subject-matter jurisdiction must affirmatively appear from the record; it is not to be exercised where there is reasonable doubt as to its existence. See Estate of Tomczak, 50 Wis. 2d 315; Edgerton, supra; Rosenthal, supra. And the party seeking relief bears the burden of demonstrating that jurisdiction is present. Estate of Daniels, 53 Wis. 2d 611. (Case No. 74-17, at p. 5.)

However, Appellant is not an attorney nor is he represented by one. The Board has not held an unrepresented non-attorney Appellant to the same degree of knowledge and expertise in presenting his case as one who is represented by counsel or who is an attorney himself. Appellant apprised the Board of the basis of his appeal which, if proven true, may establish a violation of Section 16.14, Wis. stats.. This is sufficient basis under the circumstances for the Personnel Board to determine whether jurisdiction exists.

Respondent next contends that the Board does not have jurisdiction over this case as an appeal. We find merit in this contention. Although Appellant alleges a violation of the civil service law, the facts of this case do not otherwise fit the statutory requirements which must be met before this Board can take jurisdiction if it as an appeal. The case does not involve a disciplinary action or a lay-off (see Section 16.05 (1) (e)), or a decision of the Director (see Section 16.05 (1) (f)). Moreover, it does not arise under the county merit system, the union

contract, Article X, or the unilateral grievance procedure. (See Sections 16.05 (1) (g), (h), or (7) respectively.) Therefore, we conclude that we do not have jurisdiction over this case as an appeal.

Finally, Respondent contends that this Board should not exercise its jurisdiction under Section 16.05 (4), that is, its power to investigate. We do not agree.

This power to investigate is discretionary and will generally only be exercised when the case involves broad and important policy issues. See Schwartz v. Schmidt, Case No. 74-18, decided January 17, 1975; Maegli v. Schmidt, Case Nos. 74-6, 74-13, decided January 20, 1975.

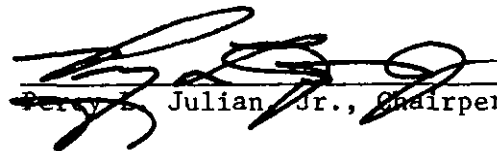
Appellant has no appeal route to the Personnel Board except through Section 16.05 (4). The appeal letter makes serious allegations about important policy questions. In Jarvis et al v. Lerman, et al, Case No. 74-92, decided November 24, 1975, we decided to exercise our power to investigate into a case which involved alleged sex discrimination in the hiring process. The instant case makes a similar allegation. Therefore, we conclude that we will take jurisdiction under Section 16.05 (4).

ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss is denied.

Dated December 22, 1975.

STATE PERSONNEL BOARD


Julian, Jr., Chairperson