

STATE OF WISCONSIN

STATE PERSONNEL BOARD

* * * * *
 *
 TED KEITH, *
 *
 Appellant, *
 *
 v. *
 *
 Manuel Carballo, Secretary, *
 Dept. of Health and Social Services, *
 *
 Respondent. *
 *
 Case No. 75-65 *
 *
 * * * * *

OPINION AND ORDER
 ON
 MOTION TO DISMISS

OFFICIAL

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

OPINION

I. NATURE OF THE CASE

This is an appeal of a layoff. The Respondent has moved to dismiss on the ground that the appeal is untimely.

II. FINDINGS OF FACT

These findings are made solely for the purpose of deciding this motion. The Appellant prior to his layoff was an employe with the Division of Vocational Rehabilitation with permanent status in his classification in the classified service. By letter dated April 9, 1975, received April 11, 1975, Appellant was notified by the agency that he would be laid off effective April 30, 1975. Appellant appealed this layoff to the Personnel Board by a letter dated May 13, 1975, which was received by the Board on May 15, 1975.

III. CONCLUSIONS OF LAW

This question of timeliness is controlled directly by statute, S. 16.05(2), Wis. Stats.:

"The Board shall not grant an appeal under subchapter (1)(e) or (f) unless a written request therefor is received by the Board

within 15 days after the effective date of the decision, or within 15 days after the Appellant is notified of such decision, whichever is later."

Applying this statute to the instant case, it is apparent that the use of April 30, 1975, as the operative date results in a timely appeal inasmuch as the date of receipt of the appeal letter, May 15, 1975, is within 15 days. On the other hand, an operative date of April 11, 1975, would clearly make the appeal untimely.

Respondent takes the position that the "effective date" is April 9, 1975, the date of decision, that the date of "receipt of notice of the action" is April 11, 1975, and that the latter date is the operative date for calculating the time for appeal. The Appellant contends that the "effective date" and the operative date is April 30, 1975.

In support of his position, the Respondent cites O'Comner v. Schmidt, Wis. Personnel Board No. 576, 7/30/75; Krantz v. Schmidt, Wis. Personnel Board No. 8, 7/3/74; Eisenhut v. Schmidt, Wis. Personnel Board No. 39, 10/10/74, affirmed Dane County Circuit Court, 144-383, 4/9/75. However, these cases did not involve an interpretation of S. 16.05(2), but a question as to which Wisconsin Administrative Code rules applied to a layoff when the rules changed between the time of notification and the time of the layoff. The Board and the Circuit Court held that in those circumstances the effective date with regard to the determination of which set of rules apply is the date of notification. This is not the same "effective date" for purposes of appeal pursuant to SS. 16.05(1)(e) and (2).

The rules in question in these cases governed the manner of determining who would be subject to layoff. It is appropriate to apply the rules that were effective at the time the decision to terminate was made. The considerations surrounding the determination of an effective date for the purpose of deciding which set of rules apply to a layoff do not

apply to an interpretation of timeliness under S. 16.05(2). On the other hand, the Respondent's interpretation of the statute would render superfluous the statutory "whichever is later" language and tend to nullify the statute. If the "effective date" is considered as the date the decision is made, it would never be later than the date of notification. Along the same vein, Respondent's interpretation conflicts with S. Pers. 22.05, Wisconsin Administrative Code:

"Any employe affected by such layoff or reduction in pay or position shall be given written notice of such action, not less than 15 calendar days prior to the effective date thereof and upon written request filed within 15 days of the effective date of the decision or within 15 days after receipt of notice of the action, whichever is later, shall be entitled to an appeal from such action to the Board."

The notice of layoff cannot be given 15 days before the effective date of the layoff if the effective date is the date of decision.

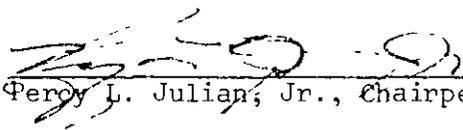
We conclude that the appeal was timely filed and that the motion to dismiss must be denied.

ORDER

Respondent's motion to dismiss is hereby denied.

Dated January 22, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson