

exercise its jurisdiction where a hearing in this matter would be limited to the question of whether jurisdiction exists in the first instance. On the other hand, it is not required to hold such an evidentiary hearing at the request of an Appellant when there are no allegations advanced which, if true, would invoke this Board's subject-matter jurisdiction. This conclusion is reinforced by a new provision of the administrative procedure act, S. 227.075.(1)(d), stats., which requires that there be a dispute of material fact before there is a right to a hearing in situations where there is no other specific statutory entitlement to a hearing.

In the instant case, the briefs of counsel allude to various factual disputes which lead the Board to calendar this matter for evidentiary hearing. However, if one resolves all the material disputes favorably to the Appellant and is still unable to ascertain a basis for subject-matter jurisdiction, an evidentiary hearing on jurisdiction would be unnecessary.

In this case, the Appellant makes a number of arguments why this Board should accept jurisdiction in her attorney's letter brief dated July 2, 1976. She argues that she was not on permissive probation status at the time of her termination, since she had previously attained permanent status as a Clerk 3 at the Department of Transportation and had laterally transferred to the University, and the University never took the appropriate action to denominate her status probationary. Alternatively, Appellant argues that if her status were that of permissive probation she is still entitled to a hearing pursuant to the Board's decision in Ferguson v. Schmidt, Wis. Pers. Bd. 73-161 (July 3, 1974).

Assuming either alternative, Appellant's appeal rights would have been pursuant to S. 16.05(1)(e), stats., and confined by the time limits set

forth in S. 16.05(2): "The Board shall not grant an appeal . . . unless a written request therefor is received by the Board within 15 days" (Emphasis supplied). We repeatedly have held that this requirement is jurisdictional. See, e.g., Maegli v. Schmidt, Wis. Pers. Bd. 74-6 (1/20/75); Van Laanen v. Wettengel and Schmidt, Wis. Pers. Bd. 74-17 (1/2/75); reversed on other grounds by Dane County Circuit Court, 145-395 (8/26/75). We take official notice of the fact that we never received any communication regarding this case prior to March 16, 1976, when we obtained a copy of an appeal letter dated February 24, 1976, from the Bureau of Personnel. Attached to this letter was an envelope addressed to "C. K. Wettengel, Director, State Bureau of Personnel, 1 W. Wilson, Madison, Wis. 53703," and post-marked February 25, 1976 (P.M.).

There is no dispute that the effective date of termination was February 10, 1976, and actual notice to Appellant was no later than that date, while Appellant argues that her termination was not finalized until she had exhausted her remedies under the grievance procedure, which occurred April 5, 1976, and which was timely appealed, this argument is not persuasive. Since an appeal was not received by the Board until, at the earliest, March 16, 1976, it was not timely under S. 16.05(2), stats.

Appellant also argues that the Board has jurisdiction over this appeal as a grievance pursuant to S. 16.05(7), stats. However, the unilateral grievance procedure specifically excepts from jurisdiction "the retention or release of employes on probation or trial," see Administrative Practices Manual, Non-Contractual Employee Grievance Procedures, Bulletin No. 1, effective August 24, 1966, revised October 1, 1974, section I. C. 2. d. Furthermore, Appellant indicated (See Appellant's Exhibit 10b) that she received notice of termination on January 27, 1976. It is undisputed

that her grievance was filed at the first step on February 17, 1976.

The Madison Campus grievance procedure provides: "The grievance must be filed within 14 days from the date the employe first becomes aware of the action or condition giving use to the complaint." Therefore, the grievance was not filed in a timely manner in any event.

Appellant also asserts Personnel Board jurisdiction pursuant to S. 16.05(1)(f), stats., as an appeal from an action or decision of the Director. She states that while the Director has not yet taken action on the matters she has brought to his attention, she will appeal any action taken which is adverse to her. See p. 2, letter brief dated July 2, 1976:

The Director has yet to take action, to our knowledge, as of this date. If and when he takes action which is adverse to the Appellant, a timely appeal will be perfected.

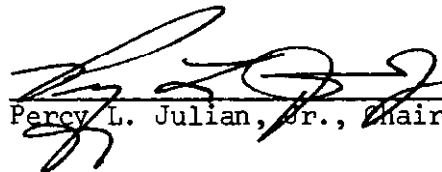
In this posture there is no basis for subject-matter jurisdiction under S. 16.05(1)(f), stats.

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed for lack of subject-matter jurisdiction.

Dated December 21, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson