STATE OF WISCONSIN DONALD ADRIANSEN, ..... \* \* Appellant, \* \* v. . SECRETARY, Department of Industry, ..... Labor and Human Relations, 2 \* Respondent. × \* Case No. 76-79 ÷. \*

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OFFICIAL

STATE PERSONNEL BOARD

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

### NATURE OF THE CASE

This case began as an appeal of a selection process. It was dismissed by the Board on June 30, 1976, at the request of the appellant. The appellant subsequently requested that the appeal be reopened on the ground that he had requested its dismissal because he had been promised a position as Equal Rights Officer III but that the promise had not been kept. In an order entered August 1, 1977, the Board declined to reopen the appeal but did order an evidentiary hearing on the question of whether the appellant had been promised but denied a promotion to Equal Rights Officer III.

#### FINDINGS OF FACT

 At all relevant times the appellant was employed as an Equal Rights Officer II, Milwaukee Region Field Investigation Bureau, Equal Rights Division, Department of Industry, Labor and Human Relations.

2. On April 21 and 24, 1976, appellant wrote letters to this Board requesting, respectively, an appeal and an investigation regarding a selection process for an Equal Rights Officer IV position.

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3. On April 30, 1976, the appellant accompained by his wife, met with Donald Huppertz, his supervisor and the Regional Director.

4. At this meeting Mr. Huppertz told the appellant that he would remove a formal reprimand and poor performance evaluation from his file if his record was good for 6 months.

5. At this meeting Mr. Huppertz did not promise appellant a promotion to Equal Rights Officer III, in exchange for withdrawing this appeal or on any other basis.

6. At the time of this conversation, Mr. Huppertz's opinion of the appellant's work performance was that he was the worst of the approximately 12 investigators assigned to him and that he (appellant) had more complaints against him than all of the other investigators combined.

7. As of the date of the conversation, Mr. Huppertz believed that it would have been impracticable to promote appellant to Equal Rights Officer III because of his perception of the appellant's work record.

8. As of the date of the conversation, Mr. Huppertz did not believe that he would have the option of making the promotion which appellant alleges he promised him, due to technical requirements relative to this transaction.

9. On May 21, 1976, the Board declined to conduct an investigation.

10. By letter of June 14, 1976, appellant requested that it be processed as an appeal.

11. By letter of June 17, 1976, appellant stated that he had changed his mind and wished to drop his appeal.

12. The Board dismissed this appeal on June 30, 1976.

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## CONCLUSION OF LAW

Since the respondent department did not induce the withdrawal of this appeal through any promise or inducement, there is no basis for reopening this appeal and the request therefore should be denied.

### OPINION

There was conflicting testimony regarding what was said at the April 30, 1976, meeting between Mr. Huppertz, the appellant, and his wife. Findings were made as to Mr. Huppertz's opinions concerning the appellant's work record and his (Huppertz's) ability to make the promotion allegedly promised because these points bear on whether it would have been reasonable for him to have made such a promise. These surrounding circumstances contribute to the determination that the appellant did not meet his burden of proof as to the content of the conversation, and the ultimate finding that was made on this point. Another circumstance contributing to this finding is that appellant indicated to the Board as late as June 14, 1976, three days before the withdrawal, that he wished to have this matter processed as an appeal. Regardless of how the appellant interpreted this conversation, the department did not make any promise or inducement to withdraw this appeal, and if the withdrawal of the appeal was not attributable to any promise or inducement of the department there is no basis for reopening this appeal. Furthermore, the testimony of appellant and his wife with regard to the conversation in question would at the most establish that the quid pro quo or consideration for the alleged promise of promotion was that appellant refrain from filing 2 union grievances and generally refrain from "making trouble;" there was no specific mention of an agreement by appellant to dismiss this appeal.

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# ORDER

The appellant's request to reopen this appeal is denied.

Dated: \_\_\_\_\_, 1978

STATE PERSONNEL BOARD

12-301 2 James R. Morgan, Chairperson