

STATE OF WISCONSIN

STATE PERSONNEL BOARD

MICHAEL W. SMITH,

Appellant,

v.

JAMES J. LISON, JR., Adjutant General,
Department of Military Affairs,

Respondent.

Case No. 76-89

OFFICIAL

OPINION AND ORDER

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

OPINION

I. Findings of Fact

Appellant who was apparently not a state employee was certified after taking an examination for a position as security officer at the Department of Military Affairs. There were five positions and eleven people were certified. After he was interviewed, Appellant received a letter on April 21, 1976 that he was not selected.

By letter dated May 7, 1976 Appellant appealed his not being selected for the position. He alleged that he was discriminated against because he was not a member of the Wisconsin Air Guard. The appeal letter was received by the Board's office on May 12, 1976. At a prehearing conference held on August 16, 1976 Respondent moved for a dismissal on the grounds that the Board lacks jurisdiction over this appeal.

II. Conclusions of Law

The Personnel Board is an administrative agency which must look to the pertinent enabling statute for the boundaries of its jurisdiction.

American Brass Co. v. State Board of Health, 245 Wis. 440 (1944). In order for the Board to hear this appeal jurisdiction must be found under Section 16.05(1)(e), (1)(f), (1)(g), (1)(h), (4), or (7). Section 16.05(1)(e) provides that the Board shall take jurisdiction over appeals from demotions, layoffs, suspensions, discharges or reductions in pay. The instant appeal does not involve any of these actions. Therefore, we cannot base jurisdiction under this section.

Section 16.05(1)(f) provides that the Board shall "hear appeals of interested parties from actions and decisions of the director." Appellant was certified for the position of Security Officer. However, he was not selected for the position. The final step in the selection process, that is, the appointment of a person to a particular position is not a decision of the Director, but a decision of the appointing authority. Schallock v. Personnel Board, Circuit Court 149-334 (1976). Therefore, we conclude that we do not have jurisdiction under Section 16.05(1)(f) to hear this appeal.

Sections 16.05(1)(g), (1)(h) and (7) deal with the Board's jurisdiction over appeals authorized under the county merit system rules, from decisions of an impartial hearing officer under Section 111.91(3) and from the third step determination as provided in the unilateral grievance procedure, respectively. None of these subsections are applicable in the instant case. Therefore, we conclude that we do not have jurisdiction over this case as an appeal.

Section 16.05(4) defines a discretionary power of the Board to investigate "all matters touching the enforcement and effect" of the civil service law. This power can be invoked by the Board itself or by "interested parties." Appellant is certainly an "interested party;" and the

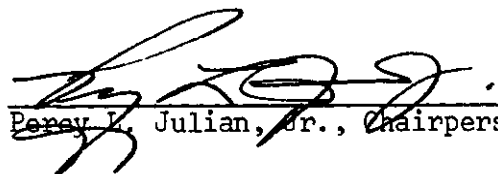
issues raised come within the purview of this subsection. However, we have repeatedly held that we will not exercise our jurisdiction to investigate unless the issues raised involve broad and important policy matters. (See Schwartz v. Schmidt, Case No. 74-18, January 17, 1975; Brodbeck v. Warren and Wettengel, Case No. 74-114, November 25, 1975; Bullette v. Rice, Case No. 75-133-I, January 27, 1976.) From the record to date, Appellant has not raised issues which involve such matters. He alleges that he was discriminated against because he was not a member of the Wisconsin Air Guard. However, even assuming that this allegation is true, it is not a form of discrimination from which a person is protected under Section 16.14, Wis. Stats. Further, Appellant has not made any allegations which we can determine to be of constitutional magnitude. Therefore, we decline to exercise our discretion to hear this case under Section 16.05(4).

ORDER

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

Dated December 21, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson