

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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 DORIS M. GRENZOW,
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 Appellant,
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 v.
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 SUPERINTENDENT, Department of Public
 Instruction and DEPUTY DIRECTOR, Bureau
 of Personnel,
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 Respondents.
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 Case No. 77-152
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OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal pursuant to s. 16.05(1)(f), Stats., of a denial of a reclassification request. This matter is before the Board on a motion to dismiss for failure of prosecution. The findings are based on undisputed matter in the file.

FINDINGS OF FACT

1. The appellant filed an appeal with this Board on August 8, 1977.
2. At a prehearing conference held November 14, 1977, a hearing date of January 18, 1978, was established.
3. On January 13, 1978, at the request of the appellant on the grounds of unavailability of witnesses and that she had been unable to make final arrangements on union representation, and in the absence of objection from respondent, the hearing was postponed.

4. By letter dated February 13, 1978, to the appellant, the board requested that appellant inform the board as to the status of the appeal. There was no response to this letter.

5. By letter dated March 23, 1978, to the appellant, the board again requested information on the status of the appeal.

6. By memo dated March 29, 1978, the appellant indicated she had delivered more papers to the union office and requested 30 days for further review by the union. She indicated they would call the board to set up a new date. A copy of this memo was not sent to respondents.

7. Following no further contact, the board by letter dated May 8, 1978, to the appellant, again requested information on the status of the appeal.

8. By memo dated May 11, 1978, the appellant responded that she would be ready, willing and able to proceed on or after July 1, 1978.

CONCLUSIONS OF LAW

1. The appellant is not in default for failure to prosecute.

OPINION

Section 227.07(5), Wis. Stats., provides in part: "unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." (Emphasis supplied.) This board repeatedly over a number of years has exercised its power to dismiss cases for failure of prosecution, relying on this statute as well as its inherent powers to control the conduct of proceedings before it. See 73 C.J.S. Public Administrative Bodies and Procedure §129. Such determinations are committed to the sound discretion of the board. Cf., Zeis v. Fruehauf Corporation, 56 Wis. 2d 486, 202 N.W. 2d 225 (1972).

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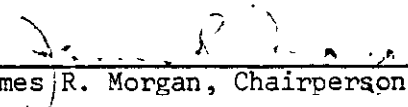
While the board does not condone the amount of time the appellant has taken to prepare this case for hearing, it feels it would be inappropriate to dismiss this case for failure of prosecution.* There was never a deadline established by which the appellant was to be ready for hearing following the postponement of the original hearing date. Furthermore, the board, for the most part, has not been particularly rigid in this area. Although the successor agency (Personnel Commission) may well decide to establish stricter guidelines the board does consider in the exercise of its discretion in this case possible reliance on its past practice in this case.

ORDER

Respondents' motion to dismiss is denied.

Dated: June 16, 1978.

STATE PERSONNEL BOARD



James R. Morgan, Chairperson

* The failure to serve a copy of appellant's memo of March 29, 1978, on respondents is also not condoned but does not amount to a basis for the dismissal of this appeal.