

STATE OF WISCONSIN

STATE PERSONNEL BOARD

\*\*\*\*\*  
 \*  
 BRIAN POSTER, \*  
 \*  
 Appellant, \*  
 \*  
 v. \*  
 \*  
 VIRGINIA HART, Chairperson, Dept. of \*  
 Industry, Labor & Human Relations, \*  
 \*  
 Respondent. \*  
 \*  
 Case No. 77-4 \*  
 \*  
 \*\*\*\*\*

**OFFICIAL**

OPINION AND ORDER

Before: DeWitt, Morgan, Warren and Hessert, Board Members.

NATURE OF CASE

This is a request that the Board exercise its discretionary authority under sec. 16.05(4), Wis. Stats., to investigate a matter touching the enforcement and effect of the civil service law.

FINDINGS OF FACT

From November 15, 1976, until his termination on January 7, 1977, the appellant was a limited term employe (LTE) with the Trade Readjustment Assistance Section of the Bureau of Benefit Procedures in the Department of Industry Labor and Human Relations. We accept the following facts as the appellant alleges them only for the purpose of evaluating his request for an investigation and hearing.

During December of 1976, the appellant and eight other LTE's became upset with the actions of a permanent co-worker and met as a group while on an afternoon break to discuss what should be done. The outcome of that meeting was a decision to discuss the problem with Mr. Plautz, the group's immediate supervisor, the following morning. Before that meeting could occur, the appellant was summoned by Mr. Plautz and confronted as the "leader" and "spokesman" of the group of LTE's. The appellant presented the group's

21

complaints and was subsequently terminated for his activities.

OPINION

The appellant alleges that his termination because of his activities violated his right to freedom of speech and to petition the government as provided by both the United States and Wisconsin Constitutions. Taken at face value, the allegations constitute a colorable constitutional claim.

The allegations contain sufficient facts to establish the Board's jurisdiction since, under sec. 16.05(4), Wis. Stats., the Board may make investigations and hold hearings at the request of "interested persons" if the subject matter is one "touching the enforcement and effect" of the civil service law.

"The Board may make investigations and hold hearings on its own motion or at the request of interested persons and issue recommendations concerning all matters touching the enforcement and effect of this subchapter and rules prescribed thereunder." sec. 16.05(4), Wis. Stats.

The appellant, as the terminated employe, is an "interested person." The reason for the appellant's termination, if constitutionally impermissible, certainly is a matter "touching the enforcement and effect" of civil service law which attempts to maintain a system based on merit in order to retain the best qualified personnel within the civil service system. See sec. 16.01(2), Stats.

Although this appeal meets the minimum jurisdictional requirements of sec. 16.05(4), Wis. Stats., the exercise of the Board's authority is still within the Board's discretion. However, because of the importance of the constitutional rights involved, the unavailability of LTE appeal rights through which the appellant would have the opportunity to vindicate his constitutional rights, and the pervasive impact on the civil service system

Poster v. Hart  
Case No. 77-4  
Page Three

occasioned by the chilling effect on the large number of LTE's whose constitutional rights are similarly unprotected if we refuse to investigate this complaint, we conclude that we not only have the authority, but should exercise that authority and investigate this complaint.

ORDER

It is ordered that a Personnel Board hearing examiner conduct a hearing or hearings on appellant's allegations and return a report and recommendation to this Board.

Dated: September 15, 1977.

STATE PERSONNEL BOARD

  
Laurene DeWitt, Chairperson