

At this meeting there was a discussion of the techniques used in the examination process. The appellant voiced concern over what he felt was an inadequate evaluation of his training and experience. Mr. Kiefert stated that the examination process was appealable by the appellant to the personnel board, as an action of the director of the bureau of personnel, but that he (Kiefert) was not sure of the time frame for appeal. It was agreed that Ms. George would obtain this information and convey it to the appellant.

The following day, April 20, 1977, Ms. George phoned the appellant and advised him that the time for appeal to the board was 15 days, but that she was unable to provide him with exact information concerning from what date the 15 days would commence to run. She suggested that he could obtain such information from the personnel board office.

The appellant did not take this advice but instead appealed to respondent Bechtel, by letter dated April 25, 1977 (Appellant's Exhibit 1). Respondent Bechtel responded by letter dated April 29, 1977 (Appellant's Exhibit 2) in part as follows:

"In response to your April 25 letter, I have reviewed the examination process for the Urban Specialist position and am satisfied it was a valid examination. Therefore, I intend to proceed with an appointment."

Appellant appealed that decision to the personnel board in a letter dated May 12, 1977, which was received by the board May 13, 1977.

Conclusions of Law

The law is quite clear that in order for the board to have jurisdiction over an appeal brought under Section 16.05(1)(f), stats., it must receive the appeal within 15 days of the action appealed from or within 15 days after the appellant received notice of the action, whichever is later. See Section 16.05(2), stats. In this case there is no dispute concerning the sequence of events. The

question is what is the operative date for appeal purposes and the 15 day limit thereon.

The respondent contends that the operative date was when appellant received notice of the examination results, which was no later than April 4, 1977, or alternatively, when he got no satisfaction from the personnel managers involved and was advised of his appeal rights to the personnel board on April 19th and 20th. The appeal is clearly untimely when any of these dates are used as the operative date.

The appellant contends that the operative date was the date he obtained notice from Respondent Bechtel by receipt of the letter of April 29th. Under this theory, his appeal to the board would be timely.

This case is controlled by the precedent established by the Dane County Circuit Court in Van Laanen v. State Personnel Board, No. 145-395 (8/26/75). There the appellant had been denied reclassification by the agency personnel manager who stated:

"With regard to this request I have contacted Mr. Szymanski of the Division office, who has indicated to me that his position of October 1972, remains unchanged with regard to allowing your eight credits of student teaching to be considered in this reclassification action."

Following the receipt of a memo containing this language the appellant wrote to Mr. Szymanski and received a response which included the following:

"To meet the requirements for Teacher III, you must acquire 12 credits or more beyond the credentials used for initial employment. According to the information you have furnished us, you do not, as yet, have the additional credits."

The court held that the second letter was the operative decision with respect to the appeal time provision set forth in Section 16.05(2), stats.

In the instant case the examination process had been delegated by the director pursuant to Section 16.03(2), stats., to the department head, respondent Bechtel. Although the administration of the examination process was carried out by a

subdelegation by the agency head to the agency personnel manager, with the assistance of a personnel analyst supplied by the bureau of personnel, the agency head retained statutory responsibility for the process and had the authority to have overruled Ms. George had he seen fit. However, as indicated in his letter of April 29, 1977, he reviewed the examination process on its merits and confirmed the actions of his subordinate, Ms. George. The appeal provision of Section 16.03(2), stats., is clear: "any delegatory action taken hereunder by any department head may be appealed to the personnel board under s. 16.05." When, as here, the department head subdelegates his authority to the personnel manager, her action as expressed in the notice of examination grade and rank or in the conference held April 19, 1977, may be appealed directly to the board as constructively the action of the department head and in turn of the director. However, where, as here the appellant elects to fully exhaust his remedies within the department and seeks and obtains a final review by the department head, it is concluded that this final decision is the last operative date for the purposes of the time limit for appeal set forth in Section 16.05(2), stats., and that therefore this appeal is timely.

Order

Respondents' objection to subject matter jurisdiction based on alleged untimely filing of the appeal is overruled.

Dated July 22, 1977 STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson