

STATE OF WISCONSIN

PERSONNEL COMMISSION

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KATHLEEN ALAGNA,
 Appellant,
v.
UNIVERSITY OF WISCONSIN,
 Respondent.
Case No. 78-96-PC

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OPINION
AND
ORDER

NATURE OF THE CASE

This is an appeal of an alleged discharge of a probationary employe. The respondent objected to subject matter jurisdiction at the prehearing conference on the ground that there was no discharge but rather a resignation, referring to a letter of resignation dated June 5, 1978, and a letter of acceptance of resignation dated June 8, 1978. The appellant's representative indicated the appellant did not disagree with the facts in those letters as far as they went, but argued that the resignation was coerced, and in effect a discharge. The matter has been submitted for decision on the basis of these letters and the written arguments of the parties, and the findings which follow are based solely on the aforesaid letters.

FINDINGS OF FACT

1. On June 2, 1978, appellant's supervisor at UW - Eau Claire asked her either to resign her position as bookstore stenographer, Clerical Bargaining Unit, WSEU contract, Art. IV, §10, or to be fired.
2. By letter of June 5, 1978, to the UW - Eau Claire Personnel Director the appellant resigned.
3. In that letter she stated that although the reason given for

requesting her resignation was deficiency in typing, she believed that there was no basis in fact for this but that the real reason was that she maintained good rapport with her co-workers and students.

4. In that letter the appellant also stated:

"The fact that I am a probationary employe prohibits me from appealing this action to either the State Board or the Affirmative Action Office. The purpose of this letter is to present my view-point and corresponding personality conflict to the Personnel Department as it appears I have no further recourse in the matter."

5. The appellant's resignation was accepted by the respondent effective June 9, 1978.

CONCLUSIONS OF LAW

1. The respondent is estopped from arguing that there is no jurisdiction over the subject matter of this appeal on the grounds that the transaction in question was a resignation.

OPINION

In the opinion of the Commission the respondent on this record is equitably estopped from arguing that the Commission lacks jurisdiction over this transaction because of the appellant's letter of resignation. Equitable estoppel is a common law doctrine whose elements are inequitable conduct by the estopped party and irreparable injury to the other parties honestly and in good faith acting in reliance thereon. See Jefferson v. Eiffler, 16 Wis. 2d 123, 132-133 (1962). In order to establish an equitable estoppel against a state agency, its conduct must amount to a "fraud or a manifest abuse of discretion," see Surety Savings & Loan Assn. v. State, 54 Wis. 2d 438, 445 (1972). See also Harte v. Eagle River, 45 Wis. 2d 513 (1970); Pulliam & Rose v. Wettengel, Wis. Pers. Bd. No.

75-51 (11/25/75).

In this case, it was clear from her letter of June 5, 1978, that she was submitting her resignation only because she was under the impression that she had no recourse whatsoever by way of an appeal of discharge. The respondent may not have had any obligation at the time it informed her she could either quit or be fired that she had certain appeal rights as a probationary employe under Art. IV, §10 of the contract. However, when presented with this letter of resignation, clearly premised on a misconception of her employe appeal rights, the respondent had a duty to come forward and explain these appeal rights before accepting and effectuating the resignation. The appellant relied on respondent's inaction to her detriment as she made no attempt to rescind the resignation or to ask that it be handled as a discharge so that it could be appealed.

The Commission does wish to point out that it disagrees with the appellant's argument that on these facts the resignation was coerced. Giving an employe a choice between resignation and discharge is not coercion. See Biesel v. Commer. of Securities, Wis. Pers. Bd. No. 77-115 (9/15/77).

ORDER

The respondent's objection to subject matter jurisdiction is overruled.

Dated: _____

Dec 20, 1978.

STATE PERSONNEL COMMISSION

Joseph W. Wiley
Joseph W. Wiley, Chairperson

Edward D. Durkin
Edward D. Durkin, Commissioner

Charlotte M. Higbee
Charlotte M. Higbee, Commissioner