

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

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DOROTHY WAGGONER and  
ETHEL DENNISTON,

Petitioners,

v.

Case No. 134-442

STATE OF WISCONSIN  
(PERSONNEL BOARD),

Respondent.

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JUDGMENT

This action having come on for hearing and the issues having been duly heard, and a decision having been duly rendered by the Court on July 21, 1972,

NOW THEREFORE IT IS ORDERED AND ADJUDGED that the Memorandum Decision of the Respondent State of Wisconsin Personnel Board, dated October 8, 1971, be and the same is hereby reversed;

IT IS FURTHER ORDERED AND ADJUDGED that said Respondent Personnel Board enter an order directing Wilbur J. Schmidt, Secretary of the Department of Health and Social Services, to prepare and file a fair and accurate evaluation report for the petitioners, Ethel Denniston and Dorothy Waggoner, for the period of April 1, 1969, through March 31, 1970, and, upon receipt of said fair and accurate evaluation reports, that said Secretary of the Department of Health and Social Services then consider and determine the eligibility of said petitioners for merit salary increases retroactive to July 1, 1970.

Dated at Madison, Wisconsin this 11 day of August, 1972.

W.C. Sachtjen  
WILLIAM C. SACHTJEN  
Circuit Judge



and Social Services. Their grievance was directed at the department's failure in their case to adhere to the merit salary determination policy. That policy is set forth under the Civil Service statutes, sec. 16.105(2)(c), Stats. That subsection directs the Personnel Board to establish rules for assuring that state departments follow procedures which promote the legislative intent that merit increases be granted on the basis of meritorious service, "including therein the use of performance standards, evaluation reports, and such other measurements as they may require." This statute imposes the duty upon the department to fairly and accurately evaluate the work of its employees in considering their eligibility for merit salary increases. Its refusal to grant merit increases to these petitioners on the basis of the unavailability of an accurate evaluation of their work was, we feel, an abdication of their statutory responsibility to investigate and prepare an accurate report.

This violation of sec. 16.105(2)(c) brings the matter within the jurisdiction of the Personnel Board by virtue of sec. 16.05(3), Stats., which provides that the Personnel Board has the authority to:

"(3) Make investigations concerning all matters touching the enforcement and effect of ss. 16.01 to 16.32 and the rules proscribed thereunder concerning the action of any employe of the department of administration and any person in the public service, in respect to the execution of said sections."

Though, as the respondent points out, an administrative agency cannot create power in itself by the adoption of rules which are not grounded in statutory authority, it is the opinion of the court that sec. 16.05, Stats., provides sufficient statutory basis to allow the Personnel Board to function as an appeal board in grievances alleging a violation or incorrect interpretation or unfair application of a Personnel Board rule or statute.

This action is properly before this court since we have determined that the appeal to the Personnel Board was proper, and under sec. 227.15, Stats., judicial review was not available to the petitioners until the Personnel Board completed the administrative decision-making process, which occurred when the Board declined jurisdiction.

For the reasons herein stated, we deem it appropriate relief to remand this case to the Personnel Board with instructions that

they take the necessary action to insure that the petitioners receive fair and accurate performance valuations for the period in question.

Counsel for the petitioners may prepare an appropriate judgment for the court's signature.

Dated: July 21, 1972

BY THE COURT:

/s/ William C. Sachtjen  
William C. Sachtjen, Judge

cc Attys. Lerner, Vergeront

File

STATE OF WISCONSIN  
BEFORE THE BOARD OF PERSONNEL

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Dorothy Waggoner and Ethel Denniston, )  
 )  
 Petitioners, )  
 vs. )  
 ) ORDER  
 Wilbur J. Schmidt, Secretary )  
 Department of Health and )  
 Social Services, )  
 Respondent. )

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This matter having initially been heard by the Board and it determined that the Board did not have jurisdiction to hear the matter, and an appeal from this decision having been duly made to the Dane County Circuit Court, and a judgment having been made, dated August 11, 1972, wherein such determination has now been reversed, and the matter remanded to this Board for an appropriate order;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED That Wilbur J. Schmidt, Respondent Secretary of the Department of Health and Social Services, is ordered to prepare and sign an appropriate performance evaluation report for each of the Appellants herein for a merit determination for an award or denial of a merit salary increase to become effective July 1, 1970, and upon such determination, to pay such award, if any, as so determined, to the Appellants herein.

Dated at Madison, Wisconsin this 15<sup>th</sup> day of September, 1972.

STATE BOARD OF PERSONNEL

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CHAIRMAN