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STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

LUCY VAN LAANEN,

Petitioner,

Case No. 153-348

vs.

STATE PERSONNEL BOARD,

MEMORANDUM DECISION

Respondent.

BEFORE: HON. GEORGE R. CURRIE, Reserve Circuit Judge

This is a proceeding under ch. 227, Stats., by the petitioner teacher to review a decision and order of the respondent Board dated March 19, 1976, as amended March 23, 1976.

STATEMENT OF FACTS

This matter was before the Court once before in Case No. 145-395 in which the Court reversed an earlier order of the Board and remanded the matter for further proceedings. The Board's order of March 19, 1976, was the result of such remand. The background facts are well stated in Judge Torphy's memorandum decision in Case No. 145-395 and the following facts are a verbatim statement of such facts as so stated by Judge Torphy.

In January, 1972, the petitioner was hired as a Teacher 2 by the Department of Health and Social Services to work at the Mendota State Hospital. At that time, she held a B.A. degree from the University of Wisconsin-Madison, and had obtained 10 post-graduate credits in education courses. She was also certified to teach by the Department of Public Instruction. The classification and Compensation Plan of the State Bureau of Personnel which was then in effect provided that in order to qualify for Teacher 3 status, an academic teacher must be eligible for certification from the Department of Public Instruction and have a "Bachelor's degree plus 12 credits." By September, 1972, the petitioner had obtained

an additional 2 credits, making a total of 12, and applied for Teacher 3 status. Her application was denied in a letter from Gilbert Szymanski, Special Education Consultant for the Department of Health and Social Services. The stated ground for the denial was that 8 of the petitioner's 12 post-graduate credits had been used for certification purposes and could thus not, under the Department's administrative practice, count toward the 12 post-graduate credits required for Teacher 3 status. This denial was not appealed.

On February 18, 1974, the petitioner again requested reclassification. Her request led to a memo from Dennis Dokken, Personnel Manager at Mendota State Hospital, dated and received by the petitioner on February 28, 1974, which read:

"Attached is the copy of the transcript which was sent to me along with a request that you be reclassified to Teacher 111. 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."

On March 5, 1974, the petitioner wrote to Mr. Szymanski and on March 8, 1974, received a letter from him, dated March 7, 1974, which read in part:

"* * *

"To meet the requirements for Teacher 111, 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 Board found that the petitioner was notified on February 28, 1974, of the decision denying her reclassification and that it received her letter of appeal on March 19, 1974. It held that since more than 15 days elapsed between these two dates, the appeal was not timely under sec. 16.05(2), Wis. Stats., and accordingly dismissed.

Judge Torphy held that the Board erred as a matter of law in holding petitioner's appeal not to have been timely. On the remand the Board determined that petitioner's request for reclassification made on February 18, 1974, had been wrongly denied by a delegatee of the Director of the Bureau of Personnel and the effect of the Board's March 19, 1974, decision was to require the Director of the Bureau and the Department of Health and Social Services to reclassify the petitioner as a Teacher 3 as of January 2, 1975, the date the Board entered its decision denying jurisdiction. The Board's March 23, 1976, decision and order amended the March 19, 1976, decision and order to require reclassification benefits (back pay) to begin May 3, 1974, which was 45 days after petitioner's appeal, the May 3, 1974, date being the last date for holding a hearing under sec. 16.05(2), Stats., even though the Board was of the opinion that such 45 day limit is directory and not mandatory.

THE ISSUE

*The sole issue on this review is whether the Board has statutory authority to award back pay benefits to remedy petitioner's wrongful classification beyond the limited period for which such benefits were granted by the Board. Petitioner's brief does not state the date back to which such benefits should extend if it should be determined that the Board erred in not awarding such further benefits. It would seem under the facts of this case that such date would be February 18, 1974, but the Court finds it unnecessary to decide that issue.

THE COURT'S DECISION

It is petitioner's position that sec. 16.05 (1) (e) and (f), Stats., confers broad, remedial powers on the Board which would include the power to grant the retroactive compensation necessary to make the

These cases emphasize that the Supreme^{me} Court has not countenanced remedial actions by the Board based on implied powers but has confined the Board to only doing that which the statutes expressly empower it to do.

The narrow issue here is whether the words of sec. 16.05(1)(e), Stats., "shall reinstate the employee fully", and the sentence in sec. 16.05(1)(f), "After such hearing, the board shall either affirm or reject the action of the director and, in the event of rejection, may issue an enforceable order to remand the matter to the director for action in accordance with the board's decisions.," empowered the Board to order retroactive pay benefits to make petitioner whole because of the failure of the Director, or his delegatee, to reclassify her as a Teacher 3 when she requested such reclassification after obtaining the additional 2 credits to give her the necessary 12 credits beyond her Bachelor's degree.

At page 12 of petitioner's brief it is asserted that the Board agrees petitioner was always a Teacher 3. The record returned to this Court does not establish that this is so. At page 3 of the Board's decision dated March 19, 1976, the Board stated:

"While we may and do disagree with the wisdom and fairness of limiting the recovery of back pay to persons who have been reclassified improperly and excluding persons who have been denied reclassification improperly, our ideas of what is wise or fair do not provide a basis for remedying the legislative omission." (Emphasis added).

In the context in which this sentence appears it is clear that the underlined portion of the above quoted sentence refers to petitioner's situation.

Judge Torphy in his memorandum decision dated August 26, 1975, which is part of the record returned by the Board, states that when petitioner was hired as a Teacher 2 by the Department of Health and Social Services in January, 1972, she then possessed 10 post-graduate credits and that by September, 1972, she had obtained the additional 2 post-graduate credits necessary to qualify as a Teacher 3.

There was no original improper classification, but a denial of a request for reclassification after the additional 2 post-graduate credits had been attained.

The Board maintains that the provisions of sec. 16.38(4), Stats., make clear that the legislature by the broad language employed in sec. 16.05(1)(e) and (f), Stats., did not intend to empower the Board to order back pay to an employee who has been improperly denied reclassification to the position to which found entitled. Section 16.38(4), Stats., provides:

"(4) RIGHTS OF EMPLOYEE. Any employee who has been removed, demoted or reclassified, from or in any position or employment in contravention or violation of this subchapter, and who has been reinstated to such position or employment by order of the board or any court upon review, shall be entitled to compensation therefor from the date of such unlawful removal, demotion or reclassification at the rate to which he would have been entitled by law but for such unlawful removal, demotion or reclassification, and such employee shall be entitled to an order of mandamus to enforce the payment or other provisions of such order."

Sec. 16.28(1)(a), Stats., provides:

"An employe with permanent status in class may be removed, suspended without pay, discharged, or reduced in pay or position only for just cause. . . ."

The provisions of secs. 16.28(1)(a) and 16.38(4), Stats., were formerly contained in substantially equivalent language in secs. 16.24(1)(a) and 16.24(3), Stats. (1969). Section 16.24(3), Stats., was renumbered sec. 16.38(4), Stats., by Ch. 270, Laws of 1971.

Former sec. 16.24(3), the forerunner of present sec. 16.38(4), Stats., was created by Ch. 541, Laws of 1943. It was created to enable the Board to grant, and the employee the right to compel, compliance with an order or judgment for back pay for three situations referred to: "unlawful removal, demotion or reclassification." It should be noted that present sec. 16.28(1)(a), Stats., refers to "removed, suspended without pay, discharged or reduced in pay or position," but does

not refer to denial of reclassification. The Board hears cases arising under 16.28(1)(a), Stats., by reason of appeal under sec. 16.05(1)(e), Stats., which does not refer to "reclassification." Any Board order after a hearing on a reclassification or denial of reclassification cannot, therefore, rely on the language of secs. 16.05(1)(e) and (f), Stats., as a basis for awarding back pay benefits.

The brief amicus curiae cites sec. 16.05(4), Stats., as authority for awarding back pay in a case of denial of reclassification which grants the Board the authority "to remand the action to the director or appointing authority for appropriate action within the law." That statute only has reference to action taken as a result of an investigation made either upon the Board's own motion or at the request of an interested party. That statute has no application to the instant situation.

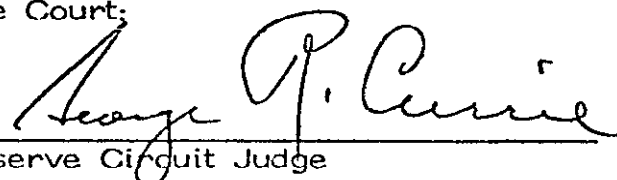
The amicus curiae brief also cites sec. 16.36, Stats. That statute has to do with invalid appointments to the classified service. This case has nothing to do with an invalid appointment.

For the reasons stated herein the Court determines that Board correctly concluded it lacked the statutory power to order back pay benefits beyond those granted by its order of March 19, 1976, as amended March 23, 1976.

Let judgment be entered affirming the Board's decision and order dated August 27, 1976, which is the subject of this review.

Dated this 31st day of May, 1977.

By the Court:


Reserve Circuit Judge