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 JO ANN VARESI,
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 Appellant,
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 v.
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 JOHN C. WEAVER, President,
 University of Wisconsin,
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 Respondent.
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 Case No. 74-11
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OFFICIAL

OPINION AND ORDER

Before: JULIAN, Chairperson, SERPE, STEININGER, and WILSON, Board Members.

OPINION

I. Nature of the Case

Appellant, who was a probationary employe working for the University of Wisconsin, was terminated just before the end of her probation. She appealed such termination to this Board.

II. Facts

Appellant worked as a Student Employee on the Patient Tray Line at the University of Wisconsin Hospital, Food Service Department (hereinafter referred to as the Department) from August 18, 1969 to May 4, 1972. She was employed as a Limited Term Employee on the Patient Tray line from August 19, 1972 through April 27, 1973. On July 23, 1973 Appellant became a permanent employee working for the Department in the Ingredients Room of the Kitchen. Her position was classified as a Food Service Worker 2. On October 28, 1973 she was transferred to the Patient Tray Line. Her position retained the same classification.

Appellant's six month probation was to end on about January 19, 1974. Appellant was informed by letter dated January 18, 1974 that she was being terminated. The termination became effective the end of her shift on January 19, 1974.

By letter of January 29, 1974 Appellant appealed the decision to terminate her. This letter was received by this Board's office February 11, 1974.

The last paragraph of the appeal letter stated:

I feel the manner in which I was dismissed and the reasons given are unreasonable. I would like someone from your department to investigate the way I was treated and also how many others like myself are written up and terminated unjustly.

Appellant was a member of the Blue Collar and Non-Building Trades Bargaining Unit. She was covered by a collective bargaining agreement.

The Personnel Board Will
Exercise Its Section 16.05 (4)
Jurisdiction Only Where
The Facts Of The Case Show
A Need To Do So.

The Personnel Board cannot take jurisdiction over this appeal under Section 16.05 (1) (e) or (f), Wis. Stats., since the appeal letter was clearly not received within the fifteen day limit defined under Section 16.05 (2), Wis. Stats.. However, Appellant in her January 29, 1974 appeal letter requested the Board investigate the facts surrounding her dismissal.

We held in Schwartz v. Schmidt, Case No. 74-18, January 17, 1975, which involved very similar facts and issues that although we could exercise our discretionary power to investigate, we chose not to do so because the appellant had an alternative route of appeal, that is, an appeal to the Director, which we held to be more appropriate. We feel compelled to adopt the Schwartz opinion and apply it to the instant case.

We stated in Schwartz, supra, pp. 2-4:

The Appellant urges the Board exercise the broad authority contained in Sec. 16.05 (4), Wis. Stats., 1971. Such subsection provides:

"(4) 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. If the results of an investigation disclose that the director, appointing authority or any other person acted illegally or to circumvent the intent and spirit of the law the board may issue an enforceable order to remand the action to the director or appointing authority for appropriate action within the law. Any action brought against the director or appointing authority for failure to comply with the order of the board shall be brought and served within 60 days after the date of the board's findings."

The statutory language provides the Board may make investigations and hold hearings on its own motion or at the request of interested persons. The scope of such inquiry extends to all

matters touching the enforcement and effect of the civil service subchapter and rules. One of the objects of the inquiry is to make recommendations. In the course of such inquiry, if illegal conduct or conduct violative of the intent and spirit of the law is disclosed, the Board may issue an order "for appropriate action within the law." The use of the word "may" indicates that interested persons do not have a legal right to compel the Board to make an investigation and do not have a legal right to compel the Board to make an order even if it finds illegal conduct or ~~conduct~~ violative of "the intent and spirit of the law." The law does not specify to whom the recommendations or order are to be made, but presumedly they would be to the Director, where he has authority to implement them, or, if he doesn't, to the appropriate appointing authority, or the Legislature. The purpose of the section seems to be directed to broad policy matters related to the "enforcement and effect" of the civil service law. The Appellant argues that probationary employes are subject to "tremendous disadvantages," including the abuse of being discharged by persons "masquerading" as appointing authorities, who do not have the legal authority to discharge. She argues that this practice is widespread and that a case in point was McManus v. Weaver, Case No. 73-171, March 29, 1974. Appellant argues further that the Board should exercise its power in the manner requested in her Complaint and Request for Investigation to stop such abuses.

The Board does have the authority to investigate and hold a hearing concerning the allegation that probationary employees are being discharged by persons who are not appointing authorities. A discharged probationary employee is an "interested person." The subject matter is one "touching the enforcement and effect" of the civil service law. If the Board finds conduct which it concludes is illegal, it can issue an enforceable order for "appropriate" action. Therefore, we conclude, that given the broad language of the subsection granting the Board power to investigate "all matters" involving the civil service, the Appellant's Complaint and Request for Investigation states sufficient facts to invoke the power of the Board to proceed in the matter, if it chooses to exercise such power.

The Board will exercise its jurisdiction in instances where the facts of a particular case reflect a need to do so. In the instant case, the Appellant would appear to have had a right of appeal to the Director, provided that such had been filed within 15 days of the effective date of the discharge. A similar 15-day time limitation applies to discharge appeals by permanent employees. Assuming for the moment that a right of appeal to the Director exists, Board exercise of

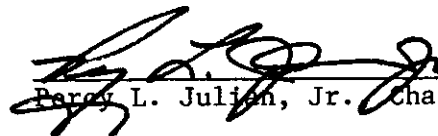
its jurisdiction would be to grant an appeal to an employee who did not file a timely appeal with the Director. Such exercise of jurisdiction would emasculate the statutory requirement that appeals must be filed promptly, and that if they are not they are barred totally, even when meritorious. This is not to say that the Board would not in other instances exercise its jurisdiction, even though the subject matter might have been the basis of a timely civil service appeal, where the record raises important questions the Board deems appropriate to resolve.

ORDER

IT IS HEREBY ORDERED that the Request for Investigation be denied.

Dated November 24, 1975.

STATE PERSONNEL BOARD


Percy L. Julian, Jr. Chairperson