

* * * * *
 *
 BETTY JANE REIS, *
 *
 Appellant, *
 *
 v. *
 *
 JOHN C. WEAVER, President, *
 University of Wisconsin, *
 *
 Respondent. *
 *
 Case No. 74-27 *
 *
 * * * * *

OFFICIAL

OPINION
AND
ORDER

Before AHRENS, Chairman, SERPE, and STEININGER.

On March 8, 1974, the Appellant was sent a demotion letter by Henry L. Ahlgren, the Chancellor of the University of Wisconsin-Extension in Madison, Wisconsin. The letter stated:

"Pursuant to the provisions of Section 16.28(1), Wisconsin Statutes, you are hereby notified that the reason for this action is a violation of UW Work Rule Number 1, 'Disobedience, insubordination, impertinence, negligence, or refusal to carry out assignments or instructions.' The following incidents and actions have occurred:

1. On February 6, 1974, you refused to follow specific orders given to you in writing dated January 21, 1974.
2. On October 18-22, 1972, you were suspended without pay for failure to follow the work priorities as set by your supervisor.
3. On September 12-14, 1972, you were suspended without pay for failure to comply with your supervisor's instructions."

The letter went on to mention previous letters of reprimand, the fact that copies of the work rules had been given Appellant every other year, and information about Appellant's status and pay after the effective date of her demotion and her appeal rights.

Appellant filed a timely appeal, and, at the prehearing conference in the matter, challenged the sufficiency of the disciplinary notice.

While the disciplinary notice is not as explicit as we would prefer, we feel that it meets the requirements set forth in the "Five W's" test, Beauchaine v. Schmidt, Wis. Pers. Bd., Case No. 73-38, October 18, 1973. The Board therefore will hear the case on the specific charge contained in the disciplinary notice, that is, whether, on February 6, 1974, the Appellant refused to follow specific orders given to her in writing dated January 21, 1974.

ORDER

IT IS ORDERED that the Appellant's motion that she be reinstated to her former position on the grounds that the inadequacy of the disciplinary notice denies her Due Process of Law is hereby denied.

Dated Feb 14, 1975

STATE PERSONNEL BOARD

BY

William Ahrens
William Ahrens, Chairman

STATE OF WISCONSIN

PERSONNEL BOARD

BETTY JANE REIS,

Appellant,

v.

JOHN C. WEAVER, President,
University of Wisconsin,

Respondent.

Case No. 74-27

OFFICIAL

DISSENTING

OPINION

Before AHRENS, Chairman, SERPE, STEININGER, and JULIAN.

JULIAN, Board Member (Dissenting).

I respectfully disagree with the conclusions reached by the majority in this case.

Appellant has challenged the sufficiency of the notice given to her in her demotion letter. In Beauchaine v. Schmidt, Wis. Pers. Bd., Case No. 73-38, (October 18, 1973), we held that the sufficiency of a notice of discipline would be determined by the application of the "Five W's" test. In that case, it was held that due process mandates that a notice of discipline must tell an employee five things: (1) What wrongful acts she is alleged to have committed; (2) When she is alleged to have committed the wrongful acts; (3) Where it is alleged the wrongful acts took place; (4) Who said the wrongful act occurred, that is, who accuses the employee, and, (5) Why the particular penalty or discipline is going to be imposed. Beauchaine held

that "at a minimum, notices of discipline must, on their face, ..." cover those five points.

Failure to provide proper notice resulted in reversal of the disciplinary action in Beauchaine, supra. Reinstatement and backpay were ordered in our recent decision of Bohen v. McCartney Wis. Pers. Bd., Case No. 74-1 (October 10, 1974), for the same reason. Bohen was affirmed by the Circuit Court for Dane County under the name of McCartney & County of Dane v. Wisconsin State Personnel Board, No. 144-439 (February 3, 1975).

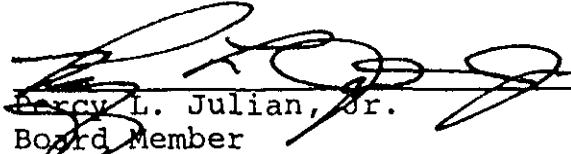
I believe that the affirmance of our decision in McCartney by the Circuit Court of Dane County means that due process requires more specificity than has been given in the notice of discipline in this case.

If I understand correctly the opinion of the majority in this case, the majority has, by its opinion, limited the hearing to be held solely to the issue of whether "on February 6, 1974, the appellant refused to follow specific orders given to her in writing dated January 21, 1974." By the limitation, as I understand it, the Board will not consider items 2 and 3 in the Notice of Discipline. Of course, these items do not relate to the charge or charges against the appellant. However, they may be relevant with respect to whether the punishment the employer intended to impose was just. If the meanings I have just described are the ones which the majority intended in its opinion with respect to items 2 and 3 of the disciplinary notice then I agree with that part of the opinion and dissent from the conclusions of the majority

with respect to the adequacy of the notice under our previous holdings.

Finally, I believe it is important to note that the majority opinion does not signal a backing away from the principles set forth in Beauchaine and consistently reiterated by this Board. In the present case, the majority and I simply disagree over the ultimate conclusion reached by application of the principles and not over the principles themselves.

Dated: February 19, 1975.


Percy L. Julian, Jr.
Board Member