
PEARL A. SCHUETTPELZ,
Appellant,

v.

JOHN C. WEAVER, President,
University of Wisconsin, and
VERNE KNOLL, Deputy Director,
State Bureau of Personnel.
Respondents.

Case No. 75-71

OFFICIAL

INTERIM

OPINION AND ORDER

Before: JULIAN, Chairperson, STEININGER and DEWITT, Board Members.

OPINION

I. Facts

Appellant had permanent status in class as an Account Examiner 3. In May, 1975 she was working for the Department of Business and Management in the University of Wisconsin Extension Unit as an Account Specialist 1. By letter dated May 5, 1975 Appellant was informed that she would be laid off effective June 21, 1975.

On May 19, 1975 Appellant wrote to the Personnel Board, appealing her layoff. Her letter was received May 21, 1975.

At the prehearing conferences held on September 18, 1976 and September 29, 1976, Appellant raised several issues concerning the legality of the emergency rules under which she was laid off. Respondents objected to this Board's jurisdiction to determine those particular issues. They also raised an objection to the Board's jurisdiction, based on lack of a timely filing of the appeal.

II. Decision

Timeliness

Respondents contend that Appellant did not file her appeal in a timely manner as required under Section 16.05(2), Wis. Stats. This section requires that an appeal filed under Section 16.05(1)(e) be received by the Personnel Board within 15 days of the effective date of the decision or the date the Appellant is notified of the decision, whichever is later.

In Keith v. Carballo, Personnel Board 75-65, January 22, 1976, we held the operative date of the decision for determination of timeliness for layoffs was the actual date of the layoff. As applied to the instant appeal, Appellant received notice of her impending layoff on or after May 5, 1975. However, she was to be laid off effective June 21, 1975. Her letter of appeal was received May 21, 1975 well within the 15 days of the effective date of her layoff. Therefore, we conclude that her appeal was timely filed.

Jurisdiction

Among other issues Appellant contends that the emergency rules under which she was laid off were promulgated in violation of Section 227.027, Wis. Stats. Respondents argue that the Personnel Board has no jurisdiction to hear those particular issues regarding the validity of the emergency layoff rules.

An administrative agency is "a tribunal of purely statutory creation, its power and jurisdiction must be found within the four corners of the statutes creating it" Monroe v. Railroad Commission, 170 Wis. 180, 183, 174 N. W. 450 (1919). The Personnel Board is authorized under Section 16.05(1)(e), Wis. Stats. to hear appeals of employees with permanent status

in class from decisions of appointing authorities relating to layoffs which are alleged to not have been for just cause. In Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 49, the Court held that:

"an appointing authority acts with "just cause" in a layoff situation when it demonstrates that it has followed the personnel statutes and administrative standards set forth in sec. Pers. 22.03 [This section has since been amended.] of the Administrative Code and when the layoff is not the result of arbitrary or capricious action.

The Court went on to state that:

"the only question presented in a layoff review is whether the procedure outlined in sec. 16.28(2), Stats., and Wisconsin Administrative Code chapter Pers. 22 was followed and was the layoff of the employee authorized by applicable law." (At page 51.)

However, the Court in Weaver was not confronted with the issue of whether the Personnel Board could determine whether the rules were properly promulgated when it outlined the above scope of review in a layoff case. Section 16.28(2)(b) authorizes the Director to promulgate rules for layoffs. The procedures for promulgating these rules are found in Chapter 227. In particular the rules under which Appellant was laid off were promulgated under the emergency rule procedure under Section 227.027. Section 16.03(6) provides in part:

The director shall promulgate rules for the effective operation of this subchapter. Such rules, except for emergency rules, shall be subject to approval by the board.

However, it is clear from the language of Section 16.05(1)(c) that the legislature intended that the Board have power of review over the rules of the Director. This section provides that the Personnel Board is authorized to "review and approve proposed rules and amendments to the rules of the director." The scope of the review would necessarily include the procedures for promulgation as well as the substantive matter covered by the rules.

Moreover, we are not precluded from this interpretation by Section 227.05

which provides for the testing of the validity of administrative rules by a court. Section 227.05(2)(e) states that the validity of a rule may be determined by a court under its authority to review decisions and orders of administrative agencies "provided the validity of the rule involved was duly challenged in the proceeding before the agency in which the order or decision sought to be reviewed was made or entered." Necessarily this implies a review of the rule's validity by the administrative agency. Therefore, we conclude that we do have appellate jurisdiction under 16.05(1)(e) to review these rules to determine whether they were promulgated according to the procedures set forth in Section 227.027.

We further conclude that we have appellate jurisdiction under Section 16.05(1)(f) over these issues. This section provides in part that the Board shall "hear appeals of interested parties and of appointing authorities from actions and decisions of the director." Appellant who was laid off under these emergency rules is certainly an "interested party" and the rules themselves were obviously promulgated by action of the Director under Section 16.03(6).

In addition, Appellant argues that under Section 16.05(4) the Personnel Board has the jurisdiction to investigate this issue. Section 16.05(4) states in pertinent part:

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. (Emphasis added.)

The above language is very broad. Appellant who was laid off under the procedures set forth in the emergency rules is certainly an "interested party." Procedures and policies concerning layoffs come within the scope

of the Board's jurisdiction under Section 16.05(4). While investigating any actions taken pursuant to those procedures and policies, the Board will review the relevant rules of the Director. This review can be procedural as well as substantive. If the emergency rules were not promulgated legally under Section 227.027, then the resulting layoffs would not have been legal.

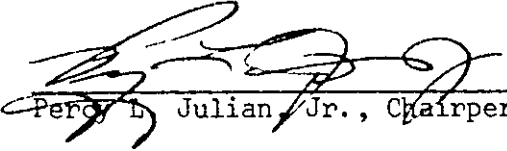
We have repeatedly held that we will not exercise this power unless a broad and important policy question is involved. (See Schwarz v. Schmidt, Personnel Board 74-18, January 17, 1975; Brodbeck v. Warren and Wettengel, Personnel Board 74-114, November 25, 1975; and Bullette v. Rice, Personnel Board 75-133-I, January 27, 1976.) We conclude that Appellant has raised such an issue and that we will exercise the jurisdiction under Section 16.05(4) to determine whether the emergency rules in question were legally promulgated under Section 227.027.

ORDER

IT IS HEREBY ORDERED that this appeal be heard in a manner consistent with the above decision.

Dated October 22, 1976.

STATE PERSONNEL BOARD



Percy L. Julian, Jr., Chairperson