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 SAM AMACHER, *
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 Appellant, *
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 v. *
 *
 EUGENE LEHRMANN, State Director, *
 Board of Vocational, Technical *
 and Adult Education, *
 *
 Respondent. *
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 Case No. 76-54 *
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OFFICIAL

INTERIM
OPINION AND ORDER

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

OPINION

I. Findings of Facts

Appellant is a permanent employe who took a promotional examination for an Administrative Secretary 1 position at the Wisconsin Board of Vocational, Technical and Adult Education. He was certified among the top three, apparently receiving the highest examination score. After oral interviews were held, one of the two women who were also certified was appointed to the position.

Through a series of letters Appellant sought to find out why he had not been selected and what his composite as well as individual rankings were for the various areas of evaluation used during the interviews. He was apparently informed that no numerical rankings were given.

Appellant appealed directly to the Personnel Board the decision to select someone other than himself for the position. In his appeal letter dated April 5, 1976, he wrote:

Since it is impossible to get this information from Mr. Erickson, I must protest the final results of this position selection. I am asking you to investigate the procedures and out-come of this matter. I realize this is a drastic step for me to take, but what recourse do I have but to assume that some aspect of the final selection was not done according to correct personnel and affirmative action procedures?

A prehearing conference was held in this matter on June 11, 1976. Respondent moved for a dismissal of this appeal for lack of jurisdiction under Section 16.05(1)(f), Wis. Stats.

II. Conclusions of Law
Jurisdiction

Section 16.05(1)(f) states in pertinent part that the Board shall:

Hear appeals of interested parties and of appointing authorities from actions and decisions of the director.

In Schallock v. Voigt and Wettengel, Pers. Bd. 74-22, November 25, 1975, we held that the appointing authority has the exclusive power to appoint persons to a position and that this final appointment process does not involve a decision of the Director as contemplated in Section 16.05(1)(f). We further determined that the proper route of appeal was to appeal to the Director under Section 16.03(4). If the Appellant is not satisfied with the Director's decision, he may then appeal to the Personnel Board under Section 16.05(1)(f).

Clearly Schallock applies to the instant case. Appellant is questioning the final selection process and not the examination or certification process. Therefore, we conclude we have no appellate jurisdiction under Section 16.05(1)(f), Wis. Stats.

However, we will take jurisdiction over this case under Section 16.05(4). This latter section provides in part that:

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.

The power to investigate is clearly discretionary and we have repeatedly held that we will not take jurisdiction over a case unless it raises broad and important policy questions. See Schwartz v. Schmidt, Case No. 74-18, January 17, 1975; Brodbeck v. Warren and

Wettengel, Case No. 74-114, November 25, 1975; and Bullette v. Rice, Case No. 75-133 I, January 27, 1976.

We conclude that Appellant is raising just such a question. He claims that he was discriminated against because he was a man seeking a position traditionally held by women. Section 16.14 prohibits the exercise of discrimination based on sex in the hiring process. Therefore, we conclude that we will take jurisdiction under Section 16.05(4) over this case.

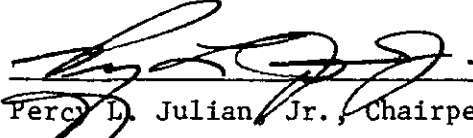
We should emphasize that although we decide to assume jurisdiction, this is strictly a threshold determination and at this juncture we do not make any determination as to the nature of any investigatory activity that may or may not be decided on in this case. We direct the Respondent to serve and file a written substantive response to Appellant's complaint within 10 working days of the date of mailing of this Opinion and Order. Appellant will then have 5 working days to file a written reply. We will then determine what further proceedings, if any, would be appropriate.

ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss for lack of jurisdiction is denied.

Dated December 21, 1976.

STATE PERSONNEL BOARD



Percy D. Julian, Jr., Chairperson