



Apparently, Appellant next wrote to Governor Patrick Lucey, appealing his termination. This letter was received by the Governor's Office on April 2, 1976, and eventually by our office on April 13, 1976. A second appeal letter sent directly to our office was received April 20, 1976.

A prehearing conference was held in this matter on September 23, 1976. Respondent raised the following jurisdictional objections:

- 1) Whether the Board has jurisdiction to hear this appeal under Chapter 16, Subchapter 2.
- 2) Whether the Board should exercise its discretion under Article IV, Section 10 of the Agreement between AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin.
  - a) Whether the appeal is frivolous on its face.
  - b) Whether the Board should hear this appeal since appellant has filed an Unemployment Compensation claim on which a hearing has been held. As a result of the hearing, it was determined that there was cause for Appellant's dismissal. Appellant stated that he did not appear at the Unemployment Compensation hearing and that it was an ex parte proceeding.
  - c. Whether the appeal was timely filed (Conference Report dated September 24, 1976).

Briefs were filed by the parties in support of their positions.

## II. Conclusions

In Request of The American Federation of State, County and Municipal Employees (AFSCME), Council 24, Wisconsin State Employees Union, AFL-CIO, for a Declaratory Ruling, Case No. 75-206, August 24, 1976, we determined that a probationary employe has no right of appeal under the civil service law. However, we determined that pursuant to Sections 16.05 (1)(h) and 111.91 (3), Wisconsin Statutes, we do have jurisdiction to hear the appeals from terminations under Article IV, Section 10 of the union agreement provided they are filed in a timely manner.

We find merit in Respondent's objection to the Board's jurisdiction based on timeliness. In the Declaratory Ruling, we held that the applicable time limits for filing appeals under Article IV, Section 10 would be the same as those required under the grievance procedures of the contract. The contract provides that:

All grievances must be presented promptly and no later than thirty (30) calendar days from the date the grievance first became aware of, or should have become aware of with the exercise of reasonable diligence the cause of such grievance.

In his letter to the Governor Appellant stated that he received the letter of termination on February 27, 1976. To be within the 30-day time limit, Appellant would have to have filed his appeal on or before March 29, 1976.<sup>2</sup> However, Appellant did attempt to file an

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<sup>2</sup>The thirtieth day fell on Sunday, March 28, 1976. Since our office is not open on Sundays, the last day for filing is moved to the next working day, that is, Monday, March 29, 1976. See Section 990.001 (4)(c), Wisconsin Statutes.

appeal by sending a letter dated March 15, 1976, to the Respondent's Personnel Director, Mr. Sholts, asking for a hearing before the Board. On March 18, 1976, Mr. Sholts answered Appellant by informing him of the proper procedure to be followed. Appellant claims never to have received that March 18 letter.

We conclude that Appellant failed to file his appeal in a timely manner. Although we have previously taken jurisdiction of appeals which were not timely filed under Section 16.05 (2), by virtue of an equitable estoppel theory, we do not find that theory applicable here. "The elements of such an estoppel are inequitable conduct by the estopped party and irreparable injury to the other parties honestly and in good faith acting in reliance thereon." Pulliam and Rose v. Wettengel, Case No. 75-51, November 25, 1975, at p. 2. Appellant attempted to appeal by his letter of March 15, 1976. That letter was apparently promptly answered by Respondent giving essentially correct information on our office address. Although Appellant claims that he never received the letter, it appears that it was properly addressed. Respondent's acts did not amount to "a fraud or a manifest abuse of discretion." Jefferson v. Eiffler, 16 Wis. 2d 123, 132-133 (1962). Therefore, we conclude that the appeal was not timely filed.

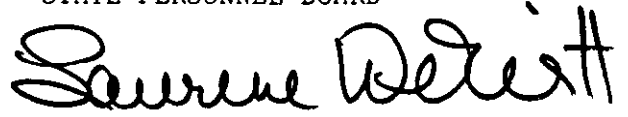
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ORDER

IT IS HEREBY ORDERED that this appeal is dismissed.

DATED: February 23, 1977.

STATE PERSONNEL BOARD

A handwritten signature in cursive script that reads "Laurene DeWitt". The signature is written in black ink and is positioned above a horizontal line.

Laurene DeWitt, Chairperson