

PB 1 to 6

Filed April 23, 1976
3:00 p.m. Gary L. Paulson

STATE OF WISCONSIN

STATE PERSONNEL BOARD

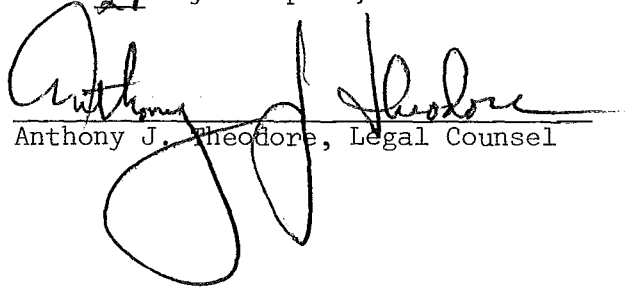
CERTIFICATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony J. Theodore, Legal Counsel of the Wisconsin State Personnel Board, and custodian of the official records of said Board, do hereby certify that the annexed rules relating to Personnel Board procedure were duly approved and adopted by this Board on April 16, 1976.

I further certify that said copy has been compared by me with the original on file with this Board and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the city of Madison, this 21 day of April, 1976.


Anthony J. Theodore, Legal Counsel

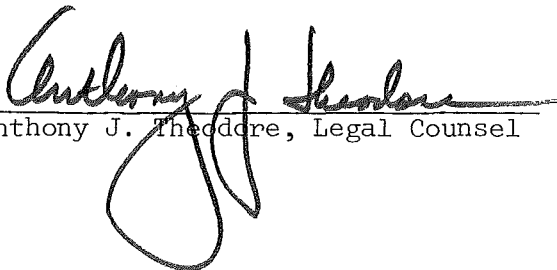
CERTIFICATE

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony J. Theodore, Legal Counsel of the Wisconsin State Personnel Board, and custodian of the official records of said Board, do hereby certify that the annexed order of the State Personnel Board adopting rules was approved by this Board on April 16, 1976.

I further certify that said copy has been compared by me with the original on file with this Board and that same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand in the city of Madison this 21st day of April, 1976.



Anthony J. Theodore, Legal Counsel

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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ORDER OF THE *
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STATE PERSONNEL BOARD *
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ADOPTING RULES *
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Before: JULIAN, Chairperson, SERPE, WILSON and DEWITT, Board Members.

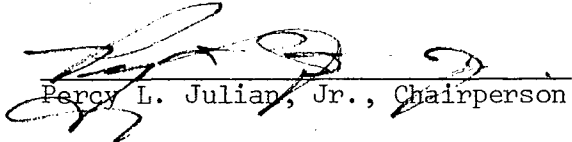
Pursuant to the authority vested in the State Personnel Board by section 16.05(1)(a), Wis. Stats., the State Personnel Board hereby adopts rules as follows:

Sections PB 1-6, a certified copy of which is attached hereto and incorporated by reference as if fully set forth, of the WISCONSIN ADMINISTRATIVE CODE.

The rules contained herein shall take effect on June 1, 1976.

Dated April 16, _____, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson

SECTION PB 1. PLEADINGS AND PREHEARING PRACTICE.

PB 1.01 Appeals.

- (1) FORM. Appeals shall be in writing and need not conform to any technical requirements, but should, where possible, contain the information set forth in PB 1.01(2) below. Wherever possible, forms promulgated by and available from the board, or their substantial equivalents, should be used.
- (2) CONTENT. Regardless of whether or not a printed form is used, appeals should identify the person filing the appeal (the appellant) and the employing unit (if any), as well as state the facts which form the basis of the appeal, the reason or reasons why the appellant feels the act or omission appealed was or is improper, and the relief sought.
- (3) TIME AND MANNER OF FILING. Appeals shall be filed with the State Personnel Board, One West Wilson Street, Madison, Wisconsin 53702. In accordance with S. 16.05(2), Wis. Stats., appeals must be received by the board within 15 days after the effective date of the decision appealed, or within 15 days after the appellant is notified of such decision, whichever is later.
- (4) SERVICE. Board staff will serve copies of the appeal on the agency or agencies apparently involved in the appeal.

PB 1.02 Answers.

- (1) ANSWERS OPTIONAL. Agencies may and are encouraged to serve and file written answers if they desire. Answers are particularly encouraged where an agency has not already taken an explicit position on the subject matter of an appeal prior to its filing.
- (2) FORM AND CONTENT. No particular form is required. Answers should set forth in non-technical language the position of the agency on the appeal including, where appropriate, a statement of its version of the underlying facts.

PB 1.03 Motions.

- (1) HOW MADE. An application to the board for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Copies of the motion and supporting papers shall be served on all parties to the appeal by the party making the motion. A notice of motion is not required, notice being satisfied by service of the copy of the motion.
- (2) SUPPORTING PAPERS. The brief and other papers in support of a motion, including affidavits and documentary evidence, shall be served and filed with the motion.
- (3) MOTION TO DISMISS FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER. Any party may move at any time to dismiss an appeal on the ground the board does not have jurisdiction of the subject matter of the appeal. Since the appeal will normally be dismissed if the motion is granted, such motion should be made as soon as the basis for it is apparent.

PB 1.04 Captions.

All pleadings and motions shall, insofar as possible, contain a caption setting forth the names of the parties and the case number of the appeal.

PB 1.05 Prehearing Conferences.

- (1) PURPOSE. Prehearing conferences are intended to provide an opportunity to formulate a statement of the issue or issues presented by a proceeding, to identify and exchange lists of witnesses, to attempt to reconcile differences among the parties and promote the settlement of appeals, and to perform any other functions in aid of the board's performance of its duties.
- (2) PERSON PRESIDING. A board member or other person designated by the board shall preside.
- (3) CONFERENCE TELEPHONE CALLS. In order to avoid extensive travel, the conduct of prehearing conferences by conference telephone calls is permitted and encouraged where feasible.

PB 1.06 Representation.

A party is entitled to appear in person or by or with counsel or other person authorized by the Wisconsin supreme court to practice law in that context at a hearing on a contested case before the board.

PB 1.07 Filing of papers.

All papers to be submitted to the board shall be filed with the State Personnel Board, One West Wilson Street, Madison, Wisconsin 53702.

PB 1.08 Service of papers.

With the exception of the initial appeal which will be served by board staff pursuant to section PB 1.01(4), Wis. Adm. Code, all subsequent papers filed by a party with the board shall be served by that party on all parties appearing in a proceeding. Service means providing copies of papers filed with the board to the other parties or their attorneys. If a party is represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the board. Service upon the attorney or upon a party shall be made by delivering a copy to him or her or by mailing it to him or her at his or her last known address, or, if no address is known, by leaving it with the secretary of the board. Delivery of a copy within this section means: handing it to the attorney or to the party; or leaving it at his or her office with his or her clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. That is, for purposes of service, the effective date is the date of mailing, not receipt. The filing of any paper required to be served constitutes a certification by the party or attorney effecting the filing that a copy of such paper has been timely served on all parties required to be served, except as the person effecting the filing may otherwise state in writing, and no affi-

davit, certificate, or admission of service need be filed with the board.

PB 1.09 Time.

Whenever possible, orders of the board setting forth time periods shall be expressed in terms of working days, which includes every day except Saturdays, Sundays, and statewide legal holidays provided in section 16.30(4), Wis. Stats. The day the order is made or entered shall not count as one of the prescribed days. Any questions about time computations for procedural matters before the board shall be resolved by reference to section 801.15(1), Wis. Stats.

PB 1.10 Subpoenas; requests to appear.

Subpoenas may be issued by the board at the request of a party, or may be issued as provided by law for judicial proceedings. At the request of a party, the board may issue requests to attend and testify to state employes and officers pursuant to section 16.05(3), Wis. Stats.

SECTION PB 2. DISCOVERY.

PB 2.01 Mandatory disclosure.

At the prehearing conference, the parties shall file and exchange lists of their witnesses, and the originals or copies of the documentary and other physical evidence which they intend to utilize at the hearing. If the prehearing conference is conducted by conference telephone call, filing and exchange of these materials will be by mail. Following the prehearing conference, or if no prehearing conference is held, the parties are under a continuing obligation to file and exchange lists of further witnesses and further evidentiary matter which they intend to utilize at the hearing. With the exception of rebuttal matter, witnesses or evidence not so submitted prior to three working days before the hearing will not be permitted to testify or be received at the hearing, unless good cause for the failure of submission is shown.

PB 2.02 Other means of disclosure.

Parties shall have available substantially all the means of discovery that are available to parties to judicial proceedings as set forth in chapter 804, Wis. Stats., to the extent that the same are not inconsistent with or prohibited by these rules or the Wisconsin Statutes or the Wisconsin Administrative Code. Wherever chapter 804 refers to resort to a court, as, for example, for an order compelling discovery, resort shall be had to the board rather than to a court.

SECTION PB 3. HEARINGS.

PB 3.01 Hearing officer; disqualification; unavailability.

- (1) Any matter to be heard by the board may be assigned to one or more members of the board, or to such other persons as may be permitted by statute, for hearing, and shall be reported to the full board for determination. Hearing officers shall have all powers necessary for the efficacious conduct of board proceedings. No hearing officer shall decide any motion which would require the final disposition of an appeal or any part of an appeal. Such motions shall be reserved for decision by the board.
- (2) If a hearing officer deems him or herself disqualified to preside, he or she shall withdraw and notify the board and the parties.
- (3) If a party deems the hearing officer to be disqualified it may move for substitution of a different hearing officer. The motion shall be accompanied by an affidavit setting forth the alleged ground for disqualification. If the hearing officer does not grant the motion it shall be referred to the board which shall determine the sufficiency of the grounds alleged.
- (4) If a hearing officer shall become unavailable during the course of a hearing, the board shall designate a substitute hearing officer to finish the hearing.

PB 3.02 Continuances.

Requests for continuances of hearing dates are not favored and will only be granted on a showing of cause and for pressing reasons.

PB 3.03 Conduct of hearing.

- (1) Generally. The board is not bound by the rules of procedure and customary practices of courts of law or by common law or statutory rules of evidence.
- (2) Open to the public; exceptions. Hearings shall be open to the public except that the board may hold a closed hearing at the request of the appellant, if the request therefor is received no later than the request for the hearing.

- (3) Opening statements. Opening statements are optional and in any event shall be confined to a brief summary of the nature of the case, the evidence intended to be offered, and the controlling legal authorities.
- (4) Order of proceeding. The appellant normally shall proceed first with his or her evidence unless the case falls into a category in which the board, the judiciary, or the legislature through statutory enactment has determined that the burden of proof shall be on the respondent, in which case the respondent normally shall proceed first. The order of proceeding may be varied by the board or the hearing officer in the interest of obtaining the most cogent presentation of the case.
- (5) Evidence. In accordance with section 227.10(1), Wis. Stats., the board is not bound by common law or statutory rules of evidence. Irrelevant, immaterial, or unduly repetitious evidence will be excluded. In matters heard by less than a quorum of the board there shall be a presumption in favor of admitting evidence subject to objection inasmuch as normally the full board will scrutinize the entire record.
- (6) Witnesses.
 - (a) A witness shall be examined first on direct examination by the party calling him or her unless the witness is an adverse witness in which case he or she shall be first cross-examined by the party calling him or her.
 - (b) Witnesses may testify either by answers to questions or in narrative form.
 - (c) Cross-examination shall not be limited to matters to which the witness testified on direct.
 - (d) A person examining or cross-examining a witness shall not approach the witness stand except to show the witness an exhibit.
 - (e) Examination and cross-examination should be confined to questioning the witness and should not be interspersed with argument or commentary on the testimony. A party not represented by counsel should not make evidentiary

statements while examining or cross-examining a witness. Such evidentiary statements should be restricted to the part of the case where the party is testifying on his or her own behalf.

- (7) Exhibits. All exhibits shall be marked and made available for inspection by the opposing party before being shown to the witness, unless the exhibit shall have been marked and a copy made available to the opposing party prior to the hearing.
- (8) Transcripts.
 - (a) Hearings of appeals and such other hearings as the board may designate shall be transcribed. The typed transcript will be available in the board office for the use of the parties.
 - (b) Any party may serve and file with its first post-hearing brief, or, in the event that none is filed, within the period designated for filing of its first brief, a notice in writing of any claimed error in the transcript. Any other party may serve and file exceptions to the notice of claimed error with its brief in opposition or reply brief, or within the time allowed for such brief.
- (9) Post-hearing briefs. If the parties elect to file post-hearing briefs it shall be pursuant to the following schedule unless the hearing officer, the board, or any member thereof, orders otherwise. The party or parties having the burden of proof shall serve and file its brief within 15 working days after the date of mailing of notice that the transcript of the hearing is available. Parties opposed shall serve and file their brief within 10 working days after the due date of the first brief. Reply briefs shall be filed within 5 working days of the due date of the second briefs.

PB 3.04 Requests for rehearings.

Requests for rehearings must be made within 15 working days after the date of mailing of the board's original decision to the parties.

SECTION PB 4. INVESTIGATIONS.

PB 4.01 Scope of investigatory power.

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 subchapter II of chapter 16, Wis. Stats., and rules promulgated 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.

PB 4.02 Requests for investigations.

Requests for investigations shall be in writing and shall identify the agency or person sought to be investigated, the matter sought to be investigated, and the reason for the request. Requests shall be filed at the board office, One West Wilson Street, Madison, Wisconsin 53702.

PB 4.03 Conduct of investigations.

The board may utilize any formal or informal means of investigation, including such means as interviews, requests for data or other information, and hearings. Prior to initiating an investigation, the board may request that the appropriate agency or person respond in writing or otherwise to a request for an investigation.

SECTION PB 5. PERSONNEL BOARD MEETINGS AND AGENDA.

PB 5.01 Scheduling.

The personnel board shall meet in regular session on the third Friday of each month at the State Office Building, One West Wilson Street, Madison, Wisconsin 53702, unless different dates or places shall be determined by the board.

PB 5.02 Quorum.

If a quorum of the Board is not available for a regular meeting the chairperson may designate one or more members of the board to hear any matters to be heard and to report back to the board for any necessary action, in accordance with section 16.05(3), Wis. Stats.

PB 5.03 Agenda.

For items to appear on the agenda of a board meeting, they must be submitted to the board office no later than seven working days before a board meeting. Other items may be considered by the board only under unusual circumstances and on special request.

SECTION PB 6. PUBLIC EXAMINATION OF BOARD RECORDS.

PB 6.01 Examination and copying of board records.

- (1) Except as specifically excluded hereafter, all records and files of the Personnel Board shall be open to inspection, copying, or duplicating, with proper care, during office hours, and subject to such logistical or administrative provisions as may be prescribed. The following material may be exempt from disclosure under the provisions of this rule if the legal custodian, who shall be the board legal counsel, determines the public interest in non-disclosure outweighs the benefits of open access:
 - (a) Matter ordered sealed in the public interest or as otherwise required or permitted by law by the board or a hearing officer.
 - (b) Matter containing the advice of counsel rendered to the board or board members that falls within the lawyer-client privilege defined by section 905.03, Wis. Stats.
 - (c) Matter containing the mental impressions of the board or board members with regard to the consideration of cases before the board in its quasi-judicial capacity, such as draft opinions and memoranda and internal board correspondence.
- (2) In the event the legal custodian determines to deny access to any record or records, he or she shall give written notice to the person who made the request for access to the record of the determination and reasons therefore within 15 working days of receipt of the request for access.
- (3) The decision of the legal custodian may be appealed to the board by filing a written request for review at the board office.

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