

OFFICIAL

STATE OF WISCONSIN

PERSONNEL BOARD

GEORGE SCHROEDER,

Appellant,

v.

JOHN C. WEAVER, President,
University of Wisconsin,

Respondent.

Case No. 73-24

OPINION AND ORDER

ON DETERMINATION

OF ISSUES

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

OPINION

On January 15, 1973, the Appellant was discharged by the Respondent. He raised a constitutional question concerning his entitlement to a hearing before he was discharged and that matter was decided by the Board in a written Opinion and Order dated July 22, 1974, after the same question had been resolved by the United States Supreme Court three months earlier.

Since the matter had been pending for some time, the Board on its own motion, scheduled a prehearing conference in the matter. One of the issues in the case was agreed to by Counsel for both parties. Counsel for the Respondent contends that the Board should consider a second issue while Counsel for the Appellant is of a contrary view. Such question is the subject of this Opinion and Order.

The discharge letter contains a charge that the Appellant had an insubordinate attitude and refused to follow instructions. Such charge

stated as follows:

"I am taking this action in light of your insubordinate attitude toward your supervisor and your refusal to follow instructions."

Respondent renews the contention made at the earlier conference that such charge is adequate and might be the basis of introducing evidence of other instances of insubordination, not specifically charged elsewhere in the discharge letter. Appellant objects to this charge being considered on the grounds 1) the conference officer at the March 20, 1973 conference found that this was not sufficiently specific to give the Appellant adequate notice and 2) that the charge does not meet the standards for a disciplinary notice enunciated in Beauchaine v. Schmidt, Case No. 73-38, October 18, 1973. We agree with Appellant on both points.

The transcript of the first conference contains a complete discussion of the general charge of insubordinate attitude and refusal to follow instructions. The charge was proposed as an issue by the attorney who then represented the Respondent. The conference officer noted that the charge "...fails to contain any factual allegation as to when or where the insubordinate attitude occurred..." He noted further that, except for the other specific charge in the letter "...there is no factual basis at all in the letter for any allegation of insubordination. All that would remain is a bald conclusion barren of any times, dates, or other underpinning circumstances." He made the finding that there was no factual underpinning for the general charge of an insubordinate attitude or in other words, such charge was not sufficiently specific under the notice requirements of Due Process. We confirm such finding and conclusion.

The general charge of insubordinate attitude and refusal to follow instructions does not meet the Board's 5W test. Beauchaine, supra. It does not specify in the very least what wrongful acts are alleged, or when and where they were allegedly committed. The 5W test has been held by the Board to be minimum standard of due process.

We conclude that such charge does not constitute a basis for an issue for determination at the hearing.

Dated Oct 5, 1974

STATE PERSONNEL BOARD

BY

William Ahrens

William Ahrens, Chairman