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TYRONE G. PALMER,

Appellant,

v.

JOHN C. WEAVER, President,  
University of Wisconsin,

Respondent.

Case No. 75-141

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**OFFICIAL**

OPINION AND ORDER

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

OPINION

I. Facts

Appellant was a probationary employee whose position was classified as Building Maintenance Helper II. By letter dated August 19, 1975 and signed by Patricia D. Prischman, Assistant Director, and Dennis Menzel, Appointing Authority, Appellant was terminated from employment with the University of Wisconsin - Milwaukee, Department of Housing. The effective date of the termination was Friday, August 29, 1975. He was terminated for alleged repeated tardiness.

On August 27, 1975 Appellant filed a grievance under the Agreement between AFSCME Council 24 Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin (hereinafter called the Agreement). This grievance was returned on September 22, 1975 with no action taken because the grievance procedure under the Agreement did not apply to "the retention or release of probationary employees."

Appellant apparently next wrote to the Affirmative Action office on September 29, 1975. In early January, 1976 that office informed him that it could not do anything for him.

On November 5, 1975 Appellant wrote to this Board a letter appealing his termination. He based his appeal on Article IV, Section 10 of the new Agreement which became effective September 14, 1975. The appeal letter and a letter from Dan Pryzbyla, a union representative, supporting Appellant, and further alleging racial discrimination, were received by this Board's office on November 11, 1975.

On January 16, 1976 Respondent filed a motion to dismiss first, because Appellant as a probationary employee had no right to appeal, and second, because the appeal was untimely filed.

## II. Conclusion

### Jurisdiction

Appellant was a member of a collective bargaining unit. Section 111.93(3), Wis. Stats. (1973), states:

If a labor agreement exists between the state and a union representing a certified or recognized bargaining unit, the provisions of such agreement shall supersede such provisions of civil service and other applicable statutes related to wages, hours and conditions of employment whether or not the matters contained in such statutes are set forth in such labor agreement.

Therefore, assuming that one of the Agreements was in effect, it would provide the exclusive remedy for Appellant. On November 5, 1975 Appellant appealed to this Board under Article IV, Section 10 of the new Agreement. This section provides that an employee who is terminated while on probation does, "at the discretion of the Personnel Board, have the right to a hearing before the Personnel Board." The new Agreement however, did not become effective until after Appellant was terminated from employment on August 29, 1975. Article XVI, paragraph 246 of the new Agreement states in pertinent part:

The terms and conditions of this agreement shall remain in full force and effect commencing on September 14, 1975 and terminating on June 30, 1977...

Therefore, we conclude that we do not have jurisdiction under Article IV, Section 10 of the new Agreement to hear this appeal.

The old Agreement, however, was still in effect. Article XVI of that Agreement provided in part:

The terms and conditions of this Agreement shall continue in full force and effect commencing on July 1, 1973, and terminating on June 30, 1975, unless the parties mutually agree to extend any or all of the terms of the Agreement. (Emphasis added.)

The parties to the Agreement did so agree to extend its terms until a new Agreement could be reached. (See attached Appendix.) Therefore, Appellant's remedy, if any, must be found in the old Agreement. Article IV, Section 10 provides that the grievance procedure should be used to appeal any disciplinary action taken against an employee. However, Article IV, Section 11 of that same Agreement states:

Notwithstanding Section 10 above, the retention or release of probationary employees shall not be subject to the grievance procedure.

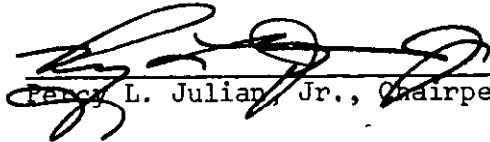
Therefore, since the Personnel Board is not involved in the Agreement grievance procedure<sup>1</sup> and since said procedure becomes the exclusive remedy for grievances under Section 111.93(3), Wis. Stats., we conclude that we have no jurisdiction to hear this appeal.

ORDER

IT IS HEREBY ORDERED that this appeal is dismissed.

Dated May 24, 1976.

STATE PERSONNEL BOARD

  
Percy L. Julian, Jr., Chairperson

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1. See Article IV of either the new or old Agreement.

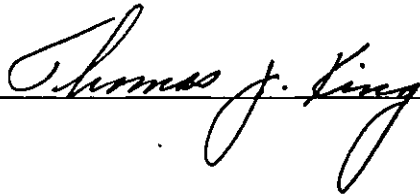
AGREEMENT TO Extend Existing Agreement between Wisconsin State Employees Union and State of Wisconsin and its Agencies.

Pursuant to Article XVI of the Social Services Agreement between the parties, the parties hereby agree to extend the Agreement between the parties effective July 1, 1973 for an indefinite period subject to the following terms and conditions:

1. There will be no increases in pay until a new Agreement is reached.
2. This Agreement may be terminated by either party by giving the other party seven (7) calendar days written notice of termination.

Dated this 30<sup>th</sup> day of ~~July~~ <sup>JUNE</sup>, 1975.

Thomas King, Executive Director  
AFSCME Council 24  
Wisconsin State Employees Union

  
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Peter D. Vallone  
Acting Director  
Bureau of Collective Bargaining  
State of Wisconsin

  
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