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LARRY JORSCH,
 Appellant,

v.
 JAMES LISON, Adjutant General,
 Military Affairs,
 Respondent.

Case No. 76-148

* * * * *

INTERIM
 OPINION
 AND
 ORDER

OFFICIAL

Before: WILSON, WARREN, MORGAN and HESSERT, Board Members

OPINION

I. Findings of Fact

Appellant was a probationary employee whose position was classified as Security Officer. This classification is covered by the Security and Public Safety certified bargaining unit. By letter dated July 29, 1976, Appellant was terminated from his employment with the Department of Military Affairs, effective July 30, 1976. Appellant appealed the termination by letter dated August 13, 1976. This letter was received by the Board's office the same date.

Respondent has objected to the Board's jurisdiction to hear this appeal. He argues that Article IV, Section 10 of the Agreement between AFSCME Council 24 Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin (hereinafter called Agreement) does not give the Board jurisdiction to hear appeals from the nonretention of probationary employees. In the alternative, Respondent argues that even assuming the Board has such jurisdiction, it should not exercise its discretion to hear this appeal since it is frivolous on its face.

Appellant has moved for immediate reinstatement on the grounds that the letter of termination "violated the Appellant's right to due process in that it did not, on its face, give adequate notice of the charges." (Motion to Reinstate)

An additional issue was raised concerning whether or not any reasons not listed in the letter of termination may be used by Respondent to show his action to terminate Appellant was not arbitrary and capricious. (Conference Report, Case No. 76-148, October 5, 1976)

I. Conclusions of Law

Jurisdiction

In 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 we did have discretionary authority to hear appeals from the nonretention of probationary employees who are covered by the Agreement. See also Malm v. Weaver, Case No. 75-230 (March 21, 1977). Therefore, the only question remaining regarding jurisdiction is whether or not we will exercise our discretion to hear this appeal. In the Request for a Declaratory Ruling we held that we would not hear appeals which appeared frivolous on their face (Supra, p. 9) The termination letter makes serious accusations against Appellant (See attached Appendix A.) However, Appellant alleges at least in part that he acted with his supervisor's approval. Therefore, we conclude that we will hear this appeal. Appellant has the burden of proving that Respondent's decision to terminate him was arbitrary and capricious.

Motion for Reinstatement

Appellant has moved for immediate reinstatement on the grounds that the notice of termination was insufficient. (See Appendix A.) In Beauchaine v. Schmidt, Case No. 73-38 (October 18, 1973), the Personnel Board set forth certain criteria by which to judge the sufficiency of the letter of termination. These

criteria are not inflexible and do not apply in full measure to a probationary termination where the parties have negotiated an agreement conferring certain limited rights and procedures which are in excess of what is available to an unrepresented probationary employe by statute but less than what is available to a permanent employe. The motion for reinstatement is denied.

Order

Respondent's motion to dismiss and appellant's motion for reinstatement are denied.

Dated July 22, 1977

STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson

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STATE PERSONNEL BOARD

29 July 1976

Mr. Larry Jorsch
PO Box 17, 326 Cypress Circle
Marshall, Wisconsin 53559

Dear Mr. Jorsch:

You are hereby notified that pursuant to authority vested in me, you are herewith discharged from your probationary employment with this department as a Security Officer at Truax Field, effective July 30, 1976.

Pursuant to the provisions of Section 16.22(1)(a) Wis. Stats., you are hereby notified that the reasons for this action are:

1. On July 18, 1976 our investigation reveals that you were at the Truax Field Fire Station and that you did obtain a "stag" movie for showing at the Fire Station.
2. On July 18, 1976 you obtained a statement from the J J Security, Inc., who has responsibility for the Truax Fire Station indicating you only stop in for 10 to 15 minutes on occasion for a break, but a later statement obtained by us indicates you also obtained a film for showing to the individuals at the Fire Station. It appears that this may have been done more than once while you were working your shift as Security Officer.
3. You have had frequent visitors at your work station based on information obtained in our investigation of activities at Truax Field. This interferes with your performance of duties and it detracts from the overall security of the installation. You also had an unauthorized passenger in the Security Police Vehicle.

29 July 1976

Mr. Larry Jorsch

4. On July 18, 1976 you took an excessive amount of time to obtain lunch. The instructions to Security Officers are that they may get a sandwich nearby in a reasonable amount of time. You spent about 45 minutes getting a lunch from the Left Guard because you had to return for an adjustment in what you had received.

This action is taken in accordance with Section 16.22(1)(a) Wis. Stats., and Section Pers 13.09, Wisconsin Administrative Code, Rules of the Director, Bureau of Personnel.

JAMES J. LISON, JR.
Major General, AGC, WIARNG
The Adjutant General

Copy furnished:
State Bureau of Personnel
Commander, Truax Field
Supervisor