

3. On October 7, 1976, the appellant's employment was terminated because of unsatisfactory work performance. Her supervisor was dissatisfied with both the quality and the pace of her work.

4. The appellant was serving a probationary employment period at the time of the termination.

CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this appeal pursuant to Wis. Stats., s. 16.05(1)(h) and s. 111.91(3) and pursuant to Article IV, s. 10 of the collective bargaining agreement between the State and the American Federation of State, County, and Munciple Employes, Council 24, Wisconsin State Employes Union, AFL-CIO.

In re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a
Declaratory Ruling, 75-206, 8/24/76.
Wixson v. President, University of Wisconsin, 77-90,
2/20/78.

2. The standard of judgment is whether or not the respondent's action of discharging the appellant was arbitrary and capricious.

In re Request of AFSCME, supra. 1.
Wixson, supra. 1

3. The burden of proof is on the appellant to show to a reasonable certainty, by the greater weight of the credible evidence, that the respondent's action was arbitrary and capricious.

In re Request of AFSCME, supra. 1.
Wixson, supra. 1.

4. The appellant has failed to carry this burden. Thus, it must be concluded that the respondent's action was not arbitrary and capricious.

5. The appellant has also failed to provide a factual basis supporting her claims of discrimination on the basis of race and sex.

OPINION

In Wixson v. President, University of Wisconsin, 77-90, 2/20/78, the

Board stated:

The "arbitrary and capricious" standard used in probationary employe termination cases provides a substantially different legal standard than the standard used in the review of disciplinary actions taken against employes with permanent status in class under s. 16.05(1)(e), Stats. In the latter case the employer has the burden of showing there is just cause for the discipline imposed. In the former case the employe has the burden of showing that the employer's action was "arbitrary and capricious." The phrase "arbitrary and capricious action" has been defined by the Wisconsin Supreme Court as: "either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful, and irrational choice of conduct." Jabs v. State Board of Personnel, 34 Wis. 2d 243, 251 (1967).

Applying this standard to the present case, it must be concluded that the appellant has failed to carry her burden. She has failed to establish a factual basis that would support a conclusion stating that the respondent's decision was without a rational basis or was unconsidered, wilful, and irrational. Without such a factual basis, the appellant cannot prevail in her appeal.

During the course of this appeal, the appellant has argued that the termination action was arbitrary because she was not allowed the opportunity to transfer to another position and, therefore, to remain employed by the State. However, the issue here is not whether the respondent chose the best alternative in this situation.

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Rather, the issue is whether any rational basis exists for the alternative that the respondent did choose. Therefore, even if it were to be assumed that a transfer action was available, the appellant still could not show the termination action to be arbitrary and capricious merely by showing the availability of this alternative or by showing that it would have been a better course of action in some way.

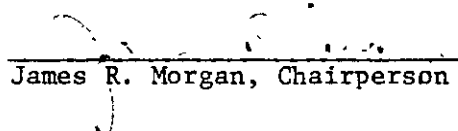
The appellant has also asserted that the policies and procedures of the probationary employment system itself are unfair. This assertion is again somewhat outside of the limited scope of the issue in appeals of this type and is not adequately supported by the facts established on the record.

Finally, the appellant has also challenged both her termination action and the overall employment practices of DHSS on the basis of race and sex discrimination. She has not, however, supported her position with any specific factual information. The Board cannot make a finding in the appellant's favor on this matter merely on the basis of a few generalized statements of opinion by the appellant.

ORDER

IT IS HEREBY ORDERED that the action of the respondent is affirmed and this appeal is dismissed.

Dated: June 16, 1978 STATE PERSONNEL BOARD



James R. Morgan, Chairperson