

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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ACHARYA REQUEST FOR INVESTIGATION,

Case No. 77-14-I

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OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This is an investigation into the termination of a limited term employe (LTE).

FINDINGS OF FACT

1. Petitioner is an Asian Indian who has lived in the United States for 10 years. She is not a United States citizen.
2. Ms. Acharya is married and has two children ages 9 and 10 years old.
3. In 1974 she worked for the Department of Revenue for four months in an LTE position. In March and early April, 1976, petitioner worked for the Department of Health and Social Services in another LTE position.
4. On April 19, 1976 Ms. Acharya began employment in an LTE position at the Welfare Enumeration Project, Department of Health and Social Services. She was interviewed by Donna Biddle and Sharon Schaefer Ms. Schaefer was petitioner's immediate supervisor and project coordinator. Ms. Biddle was Schaefer's supervisor.
5. Ms. Acharya's duties and responsibilities included checking the welfare enumeration card, writing transmittals, counting all cards from Dane County and coding all the welfare numbers.
6. Ms. Acharya was the first LTE hired on the project. Subsequently four more LTEs (one man and three women) were hired. The maximum number of LTEs working on the project at one time was four. There was an additional woman who was hired

in October, 1976 and who worked part-time for Ms. Schaefer and part-time for another project supervisor who was a man. Except for Ms. Acharya and the woman who was retained when she was terminated, the LTEs worked only for two to six months.

7. Shortly after petitioner was hired, the one man who worked on the project and who worked in her same office was hired. He left in about October of 1976 for another job in a different building.

8. Petitioner spoke several times with her supervisor about problems she was having with the other employes especially the man with whom she worked. These problems arose out of difficulties in verbal communication and the differences in ethnic backgrounds.

9. Ms. Acharya had several conversations about these problems with Ms. Schaefer. As a result of these conversations Ms. Schaefer called a meeting of all the employes in October, 1976. Ms. Acharya's complaints about the conversations, comments and actions of some of the other employes were discussed. Petitioner interpreted the comments and actions to reflect personally on her, her family and her relationship with her husband. Ms. Schaefer agreed that at least in one instance when one of the female employes made several derogatory comments about Ms. Acharya's coat, the remarks were unjustifiable and excessive.

10. In November, 1976 a second meeting was called by Ms. Biddle who had received complaints from Ms. Acharya about the treatment she was receiving from the other employes. Ms. Acharya claimed that one of the male employes was putting drugs in her bottle of nondairy coffee creamer. However, petitioner did not take any steps to have the white powder analyzed or otherwise voice her complaint to either the police or other officials. She had continued to use the jar until it was empty.

11. In December, 1976 or early January, 1977 Ms. Schaefer informed petitioner that there had been a sufficient decrease in the workload so that one of the clerks would be terminated. Ms. Schaefer advised her that because of lower productivity and a lesser ability to understand directions and perform tasks, she would be terminated at the end of January. Ms. Schaefer also admitted that a factor in her decision to terminate was Ms. Acharya's disruptive conduct during the course of her employment.

12. By letter of January 24, 1977 petitioner was terminated effective January 31, 1977.

13. The topic of conversation in the office in which petitioner worked often had to do with a variety of sexual matters. Ms. Acharya did participate in these discussions occasionally but not actively. However, Ms. Acharya frequently took offense at the topics discussed although she did not always voice her objections. It appears that when she did object, the conversations stopped.

14. Petitioner worked over eight months on the welfare enumeration project.

15. The workload of the project had decreased to the point where one of the two remaining LTE clerks should be released from employment.

16. The male employe whom petitioner feared is no longer employed by the State.

17. Ms. Acharya received obscene telephone calls from a man whom she believed to be the man with whom she had worked.

18. Ms. Acharya did not receive criticisms from Ms. Schaefer regarding the quality of her performance.

19. The welfare enumeration project lasted until at least June, 1977.

CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction to investigate the allegations of this request under Section 16.05(4), Wis. Stats.
2. The release of petitioner from her employment as an LTE clerk with the Welfare Enumeration Project was not an abuse of discretion or a violation of the civil service laws or rules promulgated thereunder.
3. The Personnel Board will not investigate this matter further.

OPINION

Petitioner alleges that while she worked for the Welfare Enumeration Project she was harrassed by her fellow workers especially one man. The alleged harrassment took the form of verbal comments about her ethnic and cultural background, her personal habits, her sex life, her relationship with her husband, and her husband's ability to earn a living and provide for their children and her. Ultimately Ms. Acharya alleges that she was released because of her reaction to the harrassment.

There was no dispute in the record that by January 1, 1977 the workload of the project had decreased and one of the remaining LTEs would have to be released. Ms. Schaefer evaluated the two women who were still working on the project and selected the one other than Ms. Acharya. The primary reasons for her selection were that petitioner had a lower production rate and a lesser ability to understand directions and perform tasks. It is clear, however, Ms. Schaefer was not dissatisfied with Ms. Achayra's performance. The reason for her termination was not a necessarily negative evaluation. It was simply that Ms. Schaefer determined within her discretionary authority that the other employe was the one who should be retained.

A limited term employe generally has no right to appeal his or her termination from employment. Schwarz v. Schmidt, Case No. 74-18 (1/17/75). However, we have taken jurisdiction in cases where we feel the allegations raise important and/or broad policy issues. Ms. Acharya raised such issues in her allegations that she was harrassed and ultimately terminated because of her cultural and national background and because of her sex.

We cannot conclude that her termination was the result of this alleged harrassment and discrimination. It is clear that there were language barriers and cultural differences which caused misunderstandings as well as some harrassment by at least some of the LTE clerks especially the one man with whom she worked. Ms. Acharya claimed that even after he left the project she would receive telephone calls at home from him. The exact nature of these calls is not clear but they certainly upset her family and her.

Ms. Acharya did complain to Ms. Schaefer, her supervisor, about the comments made to her by her co-workers told to her personally, the ones she overheard and the telephone calls. She also complained to Ms. Schaefer's supervisor, Ms. Biddle, and other personnel in the department. As a result of these complaints two meetings were held at which there was an attempt to air the complaints. There was at least some improvement in the situation.

While management was not as responsive as it perhaps could have been, it certainly made an effort to correct the situation as it was perceived by Ms. Acharya. Some of Ms. Acharya's allegations are of a very serious nature which may involve criminal or civil liability on the part of some of the people involved. However, we concluded that Ms. Acharya's termination was based upon comparison of her work with another employe by Ms. Schaefer within her discretion as a supervisor.

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ORDER

IT IS HEREBY ORDERED that no further investigation be conducted and that
this request is dismissed.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson