

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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LEONARD F. PFLUGRAD,

Appellant,

V.

EXECUTIVE SECRETARY, Higher Educational
Aids Board,

Respondent.

Case No. 77-198

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OFFICIAL

OPINION AND ORDER

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

NATURE OF THE CASE

This appeal, filed pursuant to Article IV, s. 10 of the contract between WSEU and the State of Wisconsin, concerns the discharge of the appellant from state service while he was on probation.

FINDINGS OF FACTS

1. The appellant began employment as a Management Information Technician 2 with the Higher Educational Aids Board (HEAB) on August 24, 1977.
2. On October 11, 1977, the appellant's employment was terminated because of the respondent's dissatisfaction with the appellant's work performance level and manner of responding to instructions and established procedures. The appellant was serving a probationary employment period at the time of discharge.
3. During his six weeks of employment, the appellant encountered the following difficulties:

- a. He was tardy on at least six occasions.¹ He was from twenty to thirty minutes late for work on three of these occasions.
- b. He occasionally failed to follow instructions and procedures in an adequate manner.
- c. He experienced some difficulty in completing assigned tasks within time parameters which his supervisor deemed acceptable.
- d. He required more frequent followup supervision than his supervisor felt should have been necessary.
- e. He spent more time outside of his work area than was necessary.
- f. He became overly agitated upon receiving a reprimand for tardiness.

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 Municipal Employees, Council 24, Wisconsin State Employees 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.

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1. The appellant did, however, still work a full eight hour day on each of these occasions.

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.

OPINION

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

The "arbitrary and capricious" standard used in probationary employee termination cases provides a substantially different legal standard than the standard used in the review of disciplinary actions taken against employees 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 employee 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 his burden. He has not shown the termination to be without a rational basis or to be an unconsidered, wilful, and irrational choice of action. While his time of employment was short and while his performance difficulties were not overly excessive, the appellant's work record still contained elements that provided a rational basis for a decision to terminate. Certainly, the appellant cannot successfully argue that the facts of the case do

not show any rational basis which would support a termination decision. Consequently, the decision to terminate the appellant's employment was not arbitrary and capricious.

The appellant has challenged the use of a legal standard in probationary employment cases that is different from the legal standard used in cases involving employees with permanent status in class. However, the use of these different standards is well established and is based on the inherent differences in purpose and function that exist between probationary and permanent employment structures.

The appellant has also argued that he was never allowed to perform the duties of the position he was hired for and, thus, that his performance in that position could not be adequately judged. Yet some of the difficulties he encountered are difficulties that transcend the boundaries of job duties (tardiness, for example). Furthermore, the record shows that his work duties were either reflective of his position or suggestive of activities that might be necessary to give a new employee essential background knowledge regarding the programs and procedures of the department.

Finally, the appellant has asserted that the respondent wilfully neglected to provide him with adequate supervision and training. The record does not show a factual basis which would support this assertion.

Thus, the appellant has failed to carry his burden of proving that his termination was so irrational as to be arbitrary and capricious. Therefore, the action of the respondent must be affirmed.

ORDER

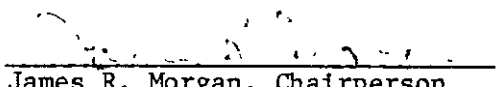
IT IS HEREBY ORDERED that the action of the respondent is affirmed and that

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this appeal is dismissed.

Dated: June 16, 1978

STATE PERSONNEL BOARD



James R. Morgan, Chairperson