

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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STEVEN MCGOVERN,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 77-40

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**OFFICIAL**

ORDER

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

ORDER

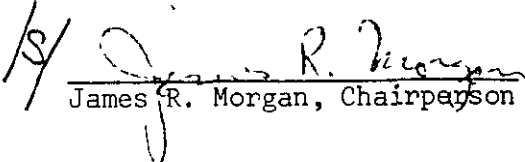
IT IS HEREBY ORDERED that the attached Proposed Opinion and Order is adopted as written with the following paragraph added to the end of the opinion before the order:

"While we reach the above conclusion, we also conclude that there should be a detailed manual which includes a clear description of each procedure followed and the contents of each type of report used. A copy of this written manual should be given to all security officers. Finally, as procedures or forms are modified or changed, the manual should be updated and the revisions distributed to the security officers.

Dated: April 11, 1978

STATE PERSONNEL BOARD

*JS*

  
 James R. Morgan, Chairperson

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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STEVEN MCGOVERN,

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PROPOSED  
OPINION AND ORDER

Before:

OPINION

NATURE OF THE CASE

This is an appeal under Article IV, Section 10 of the agreement between the AFSCME Council 24, WSEU, AFL-CIO and the State of Wisconsin (hereinafter the agreement) from the termination of appellant's employment while he was on probation.

FINDINGS OF FACT

1. Appellant began his employment as a Security Officer at U.W. - LaCrosse on August 19, 1976.

2. While on probation he was terminated effective February 18, 1977, by a letter dated February 14, 1977 and signed by Harold W. Shaw, Director of Security.

The reasons set forth in the letter for his termination were:

- 1) Your failure to write complete reports of incidents on campus.
- 2) Failure to make complete investigations of complaints or complete lack of investigating complaints if already taken care of.
- 3) Lack of initiative to take positive action when confronted with a problem that could affect the university or people (Board's Exhibit #2).

3. The security officers at U.W. - LaCrosse wore a uniform: maroon blazers, gray slacks and black shoes. They did not carry any weapons or have any police powers.

4. There was no prohibition by university rules or policy against security guards wearing moustaches or beards. However, Mr. Shaw's personal preference was for the security officers to be clean shaven. Appellant wore a beard. Appellant did receive serious and kidding comments from Shaw and the security officers about his beard. One other security officer wore a moustache.

5. There was no formal training program for security officers. Some of the security officers who had worked for a number of years had received law enforcement training at university expense and on university time. Appellant and several others did not receive such training.

6. There was always at least one security guard on duty. At times there were as many as four or five.

7. Appellant worked the evening shift, 4:00 p.m. to 2:00 a.m.

8. More reportable incidents occurred during the evening and night shift.

9. A log of all radio transmissions made during a shift was kept.

The security officer was to communicate with the dispatcher, who was a student, everytime he entered or left a building.

10. The reliability of the radio log depended on the dispatcher. There was a period of time when the radio log lacked reliability.

11. The security officers were to patrol the campus grounds and buildings. If they came upon a situation which they determined needed to be reported, one or more of three forms were to be used. The first one was a "report to police" form which was printed. The second type of form was also printed and was used for situations involving ambulances. The third type was called "in the matter of"

reports. These forms required the reporting security officer to relate in narrative form facts of a situation as he found them including the names and identifications of people who were present either as participants or witnesses. This last type of form was developed and used strictly by the campus security office.

12. There were no written standards on what information was to be included in the "in the matter of" reports. The security officers wrote the reports in longhand and a secretary typed them. Mr. Shaw received them and occasionally edited them.

13. Appellant received no criticisms on any type of report other than "in the matter of" reports. The majority of the reports filed by a security officer were of the latter type.

14. Mr. Shaw had only once edited appellant's "in the matter of" reports and only twice requested more information. He requested appellant provide the time of day on one report and on another the names of all the witnesses. In the latter situation there were fifty witnesses plus the participants. The police were at the scene so appellant did not feel it was necessary to get all the witnesses' names.

15. Appellant recognized need for detailed reports in his job as security officer.

16. Mr. Shaw conferred with appellant four or five times on either the content of a report, the completeness of an investigation or the failure to perform some duty.

17. There was a security officer procedural manual developed by Mr. Shaw. It had not been kept up to date since the time of merger of the university and state university systems. The manual was kept in the security office. However,

its existence was not known by all security officers including appellant. And some of those who knew of its existence did not know its location.

18. The procedural manual did not give a specific detailed description of what should be contained in an "in the matter of" report. It did not provide specific description of the manner in which investigations were to be conducted. The security officers had to use their good judgment in determining whether an incident should be investigated or reported.

19. Appellant prepared a relatively high percentage of the "in the matter of" reports submitted by security officers during the time of his employment. (Appellant's Exhibit #1).

20. Appellant received a bachelor of science from U.W. - LaCrosse, majoring in biology, minoring in chemistry. At one time he worked as a psychiatric technician. His studies and the technician work required that he prepare detailed reports.

21. An incident arose on Saturday, January 22, 1977 while the appellant was on duty. Appellant was called to Main Hall at 10:45 p.m. A custodian accompanied him to the mens bathroom where a man had locked himself into one of the stalls. There was vomit on the floor around the stall. The man was not violent. He was ill but not bleeding. Appellant gave the man fifteen minutes to leave the building. Appellant did not see any beer or liquor bottles in the bathroom. The custodian did not mention that any bottles had been seen either in the bathroom or in the hall where a student event had been held. Richard Bray, who was a lead worker and who worked from 10:00 p.m. until 6:00 a.m., did observe evidences of liquor.

22. Appellant did not prepare a report on the Main Hall incident. Mr. Bray did write a report on the incident the next day at the request of Mr. Shaw. (Respondent's Exhibit #4). It was against university rules to have alcohol in Main Hall.

23. An incident involving faculty and students arose in Cartwright Center on December 9, 1976. Appellant was in area but no one asked him to intervene. He did not investigate the incident and he did not file a report on it until January 20, 1977. (Respondent's Exhibit #2).

24. Appellant once failed to check all the doors in one building before the end of his shift because he was investigating an unusual odor in the building.

25. Appellant did not investigate thoroughly nor follow through sufficiently on an incident involving students throwing firecrackers out a dorm window.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction to hear this appeal under Sections 16.05(1)(h) and 111.91(3), Wis. Stats. and Article IV, Section 10 of the argument between AFSCME Council 24, WSEU, AFL-CIO and the State of Wisconsin.

2. The burden of proof is on the appellant. See Request of AFSCME, Council 24, WSEU, AFL-CIO for a Declaratory Ruling, Case No. 75-206 (August 24, 1976).

3. The appellant failed to sustain the above burden. The decision of the respondent was not arbitrary and capricious.

#### OPINION

The standard to be applied in this appeal from the release or nonretention of a probationary employe is whether the action was arbitrary and capricious. Request of AFSCME, Council 24, WSEU, AFL-CIO for a Declaratory Ruling, Case No. 75-206 (August 24, 1976). In Jabs v. State Personnel Board (1967), 54 Wis. 2d 245, the court defined as an arbitrary and capricious action one which is either so unreasonable as to be without a rational basis or the result of an unconsidered, willful or irrational choice of conduct.

McGovern v. U.W.  
Case No.  
Page Six

Based upon this record we cannot conclude that respondent acted arbitrarily and capriciously in terminating appellant's employment while he was still on probation. It is apparent from the record that appellant used poor judgment in a number of instances in the manner in which he investigated or reported incidents.

ORDER

IT IS HEREBY ORDERED that respondent's action is affirmed and this appeal is dismissed.

Dated: \_\_\_\_\_, 1978. STATE PERSONNEL BOARD

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James R. Morgan, Chairperson