STATE OF WISCONSIN STATE PERSONNEL BOARD

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JOHN R. BREEN,

Appellant,

v. OPINION AND ORDER

MANUEL CARBALLO, Secretary, Dept. of Health & Social Services,

Respondent.

OFFICIAL

Case No. 77-46

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Before: Morgan, Warren and Hessert, Board Members.

NATURE OF THE CASE

This is an appeal from the termination of a probationary employer pursuant to Article 4, Section 10 of the Agreement between AFSCME Council 24, Wisconsin State Employes Union, AFL-CIO and the State of Wisconsin effective September 14, 1975, through June 30, 1977 (hereinafter called the Agreement).

FACTS

Appellant began working on September 20, 1976. He received four progress reports during his employment (Appellant's Exhibits 3-6). He was terminated effective March 10, 1977, by Allyn Sielaff, Administrator, Division of Corrections (Board's Exhibit 2). His position was classified as Social Worker 1 with a working title of probation/parole agent. Appellant's major duty was the supervision of clients, that is, parolees or probationers. The supervision touched nearly all aspects of a client's personal life. The job also included preparation of various reports and the collection of monies from clients for restitution costs. (See Appellant's Exhibit 2.) Although Appellant had the responsibilities for these monies, the office

secretary kept the records and there was no allegation nor evidence that there were any monies missing or mislaid.

Appellant's employment was terminated because of a determination by Robert D. McCormick, Appellant's supervisor, that two nonwork related situations seriously impaired his ability to function effectively as a probation and parole agent. The first of these was the return of several checks by a Madison and a Sparta bank for insufficient funds. Appellant admits that this occurred, but it was not intentional. Appellant evidently has great trouble keeping his checkbook accurate. Upon notification of an overdraft, Appellant tried to promptly correct the problem both with the bank and with the individual or company to whom the check was made out. Appellant now does not keep a checking account but pays all his bills by money order.

The second situation involved a warrant being issued for appellant's arrest. In a paternity suit appellant stipulated to entry of judgment in November, 1974. He was to pay fifty dollars per month. The warrant was issued for an arrearage of about $1,100.00. Appellant claims that he was not aware that he was that far in arrearage nor that he could be arrested therefore. He apparently hadnot received notice of such arrearage before the warrant was issued. He did admit that there was an arrearage which occurred because of college debts and attorneys fees as well as basic living expenses.

When Appellant learned of the warrant and the amount of the arrearage, he went voluntarily into the Monroe County sheriff's office. On October 15, 1976, he reported to the Dane County clerk of courts office to pay the arrearage which was actually only about $700.00 and at the same time he paid support payments through July and part of August, 1977.

An additional incident which occurred early in Appellant's employment involved one of his clients. The first day of his employment, Appellant reviewed all of the case files including this client's. Two of the terms of this individual's probation were that he was not to drink alcohol or frequent taverns. The second day of his employment, Appellant met individually with various clients including this particular one at a scheduled monthly meeting. Appellant discussed with him his not having paid his fine or the court costs.

When appellant first moved to Sparta and began his employment, he played pool at a particular tavern. Appellant would see the above client at the tavern and occasionally they bought each other drinks. Appellant stated that at the time these meetings occurred, he did not recall the terms of this client's probation. Further, he stated that once he learned of the terms of probation, that he went to the client's home and told his wife, upon finding him absent, that if he ever saw him in a tavern again, he would have him arrested.

CONCLUSIONS

In In re: Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Case No. 75-206 (August 24, 1976), we held that we had jurisdiction to hear appeals from the termination of probationary employes pursuant to Article IV, Section 10 of the Agreement. We further determined that an appellant in such case would have the burden of proof and that the standard to be applied would be arbitrary and capricious. (Declaratory Ruling, p. 8.) In Jabs v. State Board of Personnel (1967), 54 Wis. 2d 245, the court defined as arbitrary and capricious a decision as one which is either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful and irrational choice of conduct. (See also Pleasant Prairie v. Johnson (1967), 34 Wis. 2d 8; Olson v. Rothwell (1965), 28 Wis. 2d 233.)

In the instant case we conclude that Respondent's action was not so unreasonable as to be arbitrary and capricious. Appellant failed to maintain his personal records resulting in several checks being returned for insufficient funds in his checking account and a warrant being issued for his arrest because of arrearages in child support payments. For a position such as the one held by Appellant, these factors could seriously damage his ability to effectively function. While we recognize Appellant has taken steps to prevent the recurrence of these circumstances, we do not feel, in light of the facts of this case, that management acted so irrationally as to be arbitrary and capricious.

ORDER

IT IS HEREBY ORDERED that Respondent's action is affirmed.

Dated: 10-12, 1977. STATE PERSONNEL BOARD

James R. Morgan

James Morgan, Chairperson