

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JAMES RADFORD,

Appellant,

v.

DEPARTMENT OF HEALTH AND
SOCIAL SERVICES,

Respondent.

Case No. 79-133-PC

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DECISION

NATURE OF THE CASE

This is an appeal of a probationary termination before the Commission pursuant to §§230.45(1)(f) and 111.91(3), Wis. Stats. (1977), and Art. IV §10 of the collective bargaining agreement between the State of Wisconsin and AFSCME, Council 24, WSEU, AFL-CIO (blue collar). The Personnel Commission designated Anthony J. Theodore as a hearing examiner to conduct a hearing in this matter, which was held July 23, 1979. The appellant's representative filed post-hearing written arguments on August 3, 1979.

FINDINGS OF FACT

1. The appellant was appointed to a position in the classified service as a building maintenance helper 2 at Southern Wisconsin Center with an initial date of employment of November 5, 1978.

2. This position was at all relevant times subject to the collective bargaining agreement between the State of Wisconsin and AFSCME, Council 24, WSEU, AFL-CIO (blue collar), effective September 11, 1977 - June 30, 1979,

of which the Commission takes official notice.

3. The appellant's probationary employment was terminated effective May 11, 1979.

4. During the period between the commencement of this employment and its termination he was in "absent without pay" status 12 hours and 24 minutes.

5. On a number of occasions during this period the appellant told his supervisor he had done something when he had not, took excessive amounts of time to do jobs, did not do an adequate job of cleaning, and took breaks in excess of about 10 minutes over the prescribed periods.

6. During this period he was informally counseled frequently by his immediate supervisor, Donna Hogamann, and was formally evaluated twice, at the conclusion of approximately two and four months of employment. These evaluations were reviewed contemporaneously with the appellant by management.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §§230.45(1)(f) and 111.91(3), Stats. (1977). See Dziadosz v. DHSS, 78-32-PC (10/9/78); Somors v. DHSS, 79-127-PC (8/31/79).

2. The burden of proof is on the appellant to establish that his termination constituted arbitrary and capricious.

3. The appellant has failed to sustain that burden. The termination was not arbitrary and capricious.

OPINION

Unlike a termination of a permanent employe, in a review of the termination of a probationary employe. the test is limited to whether the agency action was arbitrary and capricious. See Request for Declaratory Ruling, Wis. Pers. Bd. No. 75-206 (8/24/76). §111.91(3), Stats.

There was testimony from other employes to the effect that appellant performed his duties adequately. However, the appellant's immediate supervisor was in the best position to evaluate his work. In addition to problems with the appellant's performance, there were the overstayed breaks and the time in absence without leave status.

Arbitrary and capricious action is action "which is either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful and varational choice of conduct." Jabs v. State Board of Personnel, 34 Wis. 2d 245 (1967). The decision and action terminating appellant's probationary employment cannot be characterized as arbitrary and capricious.

ORDER

The action of the respondent terminating appellant's probationary employment is affirmed and this appeal is dismissed.

Dated: Nov. 8, 1979. STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner