

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

Joyce Roberts,

Appellant,

vs.

John C. Weaver, President,
University of Wisconsin,

Respondent.

384

MEMORANDUM DECISION
ON
JURISDICTION

Appellant was employed as a Medical Technologist I at University Hospital. This is a position that under the statutes requires a six months probationary period before an appointee can acquire permanent status as a classified employe.

Before completion of the probationary period, the Respondent terminated the employment of the Appellant.

It is from this action of termination that Appellant has appealed to this Board.

s. 16.24(1) Wis. Stats. states that no permanent employe shall be removed, suspended without pay, discharged, or reduced in pay or position except for just cause. Permanent employes so disciplined have a right of appeal to this Board. Appellant was not a permanent employe at the time of her termination and accordingly has no appeal rights under s. 16.24(1), Wis. Stats.

This Board has certain general supervisory control over the civil service system that it could exercise if it were inclined to the belief that any part of the letter or spirit of the law was being subverted.

Hence, a brief comment on discharge of an employe before the completion of probation is in order.

s. 16.22 Wis. Stats. provides for a probationary period of six months unless the Director of the State Bureau of Personnel has prescribed a longer period. The statute states that dismissal may be at any time during that period.

The probationary period is an extension of the examination process, affording the appointing officer an opportunity to ascertain whether or not a candidate who has passed the formalized examination is in fact able to perform satisfactorily.

The Board in the past and does now take the position that the law permits separation of the employe from the service at the pleasure of the department head and that he need not give any reasons for terminating the probationer's employment. See Kaplan, The Law of Civil Service, page 181, et seq.

This Board is well aware that under new Constitutional Law concepts of "due process of law," the Federal Courts have found that under certain circumstances non-tenure employes have some rights to their jobs which cannot be terminated without some measure of assignment of course, and without some sort of a hearing where the employe can assert his side of the matter.

This Board has never seen a case where these precepts of "due process" have been applied to a public employe serving in a statutory probationary status. If such an extension is to be made, it must be made by a court

of competent jurisdiction in a case arising under Chapter 16, Wis. Stats., and not by this quasi judicial board.

Until this Board is mandated by a court, responsibility for determining whether the probationer has served satisfactorily and is fit for permanent employment will be left to the sole judgment and discretion of the appointing authority.

An order shall be entered dismissing this appeal for lack of jurisdiction.

Dated: April ____, 1971.

STATE PERSONNEL BOARD

BY _____

CHAIRMAN