

adopted are those found in Perry and Roth (supra) and, as stated above, there has been no allegation of a violation of constitutional rights;

- 4.) even if the Board exercises its discretion and grants a hearing to Appellant, there are no remedies provided and no provision giving the Board authority to fashion a remedy.
- 5.) even if the Board has jurisdiction under Article 4, Section 10 of the Agreement, it should not exercise its discretion and hear the appeal because Appellant has failed to make any meritorious argument which would warrant the Board's taking jurisdiction. He has not raised any issue which is unique so that the Board should hear his appeal.

In the Interim Opinion and Order in Malm v. Weaver, Case No. 75-230, August 24, 1976, we decided these same issues which are raised by Respondent in the instant case. The only question which remains is whether we will exercise our discretion to hear the appeal.


Upon review of the record to date, we have decided to exercise our discretion to hear this appeal. The appeal does not appear frivolous on its face. Appellant alleges that the reasons given for his termination, that is, "declining attitude" and poor work performance, are untrue. Furthermore, he claims that he received a degree of harassment for allegedly not accepting more responsibility than his position required.

Based on our decision in Request of the American Federation of State, County and Municipal Employees, Council 24, Wisconsin State Employees Union, AFL-CIO for a Declaratory Ruling, Case No. 75-206, August 24, 1976, Appellant has the burden of proving that Respondent's decision to terminate was arbitrary and capricious.

ORDER

IT IS HEREBY ORDERED that Respondent's motion to dismiss is denied.

Dated December 21, 1976. STATE PERSONNEL BOARD



Laurene DeWitt, Vice Chairperson