

\*\*\*\*\*

KEVIN J. CORCORAN,

Appellant,

v.

JOHN C. WEAVER, President,  
University of Wisconsin,

Respondent.

Case No. 76-174

\*\*\*\*\*

**OFFICIAL**  
INTERIM  
DECISION AND ORDER

Before: Percy L. Julian, Jr., Laurene DeWitt, John Serpe, Susan Steininger

DECISION

Appellant who was on probation appealed from his termination pursuant to Article IV, Section 10 of the Agreement between AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin. At a prehearing conference held on October 22, 1976, Respondent moved to dismiss based on the following grounds:

- 1.) the Board lacks jurisdiction over this appeal under Sections 16.05(1)(e) and 16.28(1)(a), Wis. Stats.; further, the Board has not resolved the conflict between the above sections of the civil service law and the related Administrative Code Sections (see Section Pers. 13.09) which clearly do not give appeal rights to employees who are terminated while on probation and Article 4, Section 10 of the contract which does grant those rights.
- 2.) Appellant has alleged no violation of constitutionally protected rights under the rule of Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701 (1972); and Perry v. Sinderman, 408 U.S. 593, 92 S. Ct. 2494 (1972);
- 3.) the Board lacks jurisdiction under Article 4, Section 10 of the Agreement between AFSCME Council 24 Wisconsin State Employees Union, AFL-CIO and State of Wisconsin because it has failed to establish standards by which it will exercise its discretion (i.e., due process violation and unconstitutionality by vagueness); and further, the standards which should be

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.

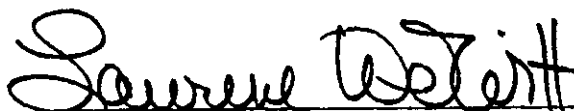
Upon review of the record to date we have decided to exercise our discretion to hear this appeal. The appeal does not appear frivolous on its face. Based upon our decision in Request of the American Federation of State, County and Municipal Employes, Council 24, Wisconsin State Employes Union, AFL-CIO 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