

STATE OF WISCONSIN

STATE PERSONNEL BOARD

* * * * *
 RANDALL L. STRADE,
 Appellant,
 v.
 MANUEL CARBALLO, Secretary,
 Department of Health & Social Services,
 Respondent.
 Case No. 76-197
 * * * * *

OFFICIAL

OPINION
AND
ORDER

Before: DeWitt, Wilson, Morgan, Warren and Hessert, Board Members.

OPINION

NATURE OF THE CASE

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

FINDINGS OF FACTS¹

At the time of his termination the position held by appellant who was on probation was classified as Officer 1 at Kettle Moraine Correctional Institution. By letter dated August 13, 1976, appellant was advised by Paul D. Prast, Superintendent, that he "was being considered for dismissal from employment..." (Respondent's Exhibit No. 1). Further, he was advised that a meeting was scheduled for Monday, August 16, 1976, at 2:30 p.m., in Mr. Prast's office. Appellant was invited to attend the meeting to explain "personally what has transpired during (his) probationary period which would warrant such a large number of written reprimands." (Respondent's Exhibit No. 1). The record

¹These findings are based upon the written record to date.

does not reflect when the letter of August 13, 1977, was received by appellant.

By letter dated August 17, 1976, appellant was informed that he was being terminated from employment effective the end of his work shift, Saturday, August 21, 1976. This last letter refers to the meeting of August 16, 1976, which appellant apparently attended and replied to the August 13, 1977, letter. (Respondent's Exhibit No. 2).

By letter dated September 20, 1976, appellant wrote to this Board, appealing his termination. His appeal letter was received September 21, 1976.

A prehearing conference was held on February 24, 1977. Respondent moved to dismiss this appeal for lack of timely filing. Further, he requested that appellant file a bill of particulars setting forth facts upon which this Board could exercise its discretion to hear this appeal. Such a bill of particulars was filed July 21, 1977.

CONCLUSIONS OF LAW

In Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Case No. 75-206 (August 24, 1976), this Board determined that we do have a discretionary jurisdiction to hear appeals from termination of probationary employment. We further held that we would hear these appeals unless they appeared frivolous on their face. However, we also determined that we would not hear an appeal if it were not filed in a timely matter. (See Declaratory Ruling, at pg. 8, Ertel v. Rohde, Case No. 76-63, February 23, 1977). The time limit which we held to be applicable is set forth in Article IV, Section 1, paragraph 36 of the Agreement and provides:

All grievances must be presently promptly and no later than thirty (30) calendar days from the date the grievance first became aware of, or should have become aware of with the exercise of reasonable diligence, the cause of such grievance.

Appellant apparently was aware of his pending termination at least by August 16, 1976. In order to have filed in a timely manner, appellant would have

to have filed on or before September 15, 1976. His appeal was received by this Board's office on September 21, 1976. Therefore, we conclude that appellant failed to file his appeal in a timely manner and grant respondent's motion to dismiss.

ORDER

IT IS HEREBY ORDERED that respondent's motion to dismiss is granted.

Dated August 25, 1977.

STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson