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ROY KOCH,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 76-255

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OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This is an appeal of a discharge of a probationary employe pursuant to Article IV, Section 10, of the contract between the WSEU and the State of Wisconsin, and §16.05(1)(h), stats.

FINDINGS OF FACT

The Appellant commenced employment with the State as a Building Maintenance Helper 2 on August 15, 1976, with a 6 months probationary period. This position was covered by the collective bargaining agreement between the WSEU and the State of Wisconsin. He was discharged December 3, 1976.

During the course of his employment he was late reporting for work 0.9 hours on September 2, 1976, and 0.2 hours on both September 9, 1976, and November 23, 1976. He failed to come to work at all on August 25, 1976, November 18, 1976, and November 24, 1976. With respect to the August 25th and November 24th absences he failed to call in at all. With respect to the November 18th absence Appellant's landlady called his place of employment about 3 hours after the start of the shift, at about 12.47 a.m. The Appellant had

not called in earlier because his telephone was on the first floor of his house, his room was on the second floor, he had a physical problem with his knee, and he was concerned about getting down the stairs. He had been unable to get his landlady's attention before then to request that she call in. However, when she did call in, his supervisor asked to speak to Appellant and he was able to come to the phone.

The Appellant was counseled a number of times during the course of his employment about tardiness, absenteeism, and the need to notify his supervisor in a timely manner in case of absenteeism, and was warned that he might be subject to discharge.

CONCLUSIONS OF LAW

This Board determined in a declaratory ruling, case no. 75-206, August 24, 1976, that in appeals of probationary discharges the legal standard of review is provided by statute, §111.91(3), which sets forth the test of "arbitrary and capricious action." This standard clearly imposes a much less rigorous standard of review on the agency action than is the case in a discharge of an employe with permanent status in class where the test is whether or not there is "just cause" for the discharge. Furthermore, the probationary employe has the burden of showing that the discharge was arbitrary and capricious, whereas in the case of the permanent employe the agency has the burden of showing the just cause for the discharge. In this case it must be concluded that the Appellant has not discharged his burden. The findings support a conclusion that the respondent agency did not act arbitrarily and capriciously in discharging the Appellant.

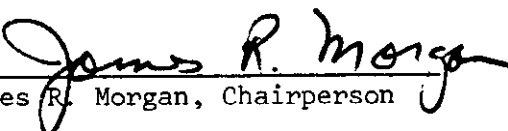
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ORDER

The action of the respondent is sustained and this appeal is
dismissed.

Dated: 12-12, 1977

STATE PERSONNEL BOARD


James R. Morgan, Chairperson