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"The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustments of any disputes arising from the application and interpretation of this contract."

However, Article IV, Section 10 specifically provides that "the retention or release of probationary employees shall not be subject to the grievance procedure except that those employees who are released . . . do, at the discretion of the personnel board, have the right to a hearing before the personnel board" (emphasis supplied). Therefore, any dispute over the retention or release of a probationary employe would not be subject to the grievance procedure, but rather to the limited hearing rights before this board.

While it is concluded that the motion to dismiss for failure of jurisdiction should be denied, it is further concluded that there is no need in this case for a hearing, which is discretionary with the board. This is because since the affected employe does not wish to challenge the termination itself, any decision would at the most be advisory. Furthermore, there are no facts in dispute since this controversy is limited to the language in the termination letter quoted above. However, it is observed by way of dictum that it is inappropriate to advise a terminated probationary employe, as was done here, that "due to your probationary status, there is no appeal right for this action." Respondent has argued that this statement is not false since probationary employes do not have the same appeal "right" as do permanent employes, since the board's authority to hold a hearing under this section is discretionary. While it is of course technically correct that probationary and permanent employes do not stand on the same footing under the contract with regard to appeal rights on termination, probationary employes do have a limited opportunity for potential review of their terminations by this board, and the statement contained in the termination letter might well be interpreted by an employe to mean that there was no potential recourse available whatsoever.

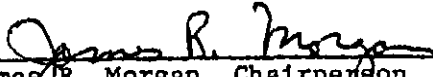
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ORDER

This appeal is dismissed.

Dated: 11-15, 1977.

STATE PERSONNEL BOARD



James R. Morgan, Chairperson