

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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DANIEL F. GROSSKOPF,

Appellant,

v.

MANUEL CARBALLO, Secretary,
Dept. of Health & Social Services,

Respondent.

Case No. 77-53

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OFFICIAL

OPINION
AND
ORDER

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

NATURE OF THE CASE

This is an appeal of the termination of a probationary employe pursuant to Article IV, Section 10, of the contract between the WSEU, Council 24, and the State of Wisconsin, and Section 16.05(1)(h), Wisconsin Statutes.

FINDINGS OF FACT

The appellant began employment as a probationary correctional officer at the Wisconsin State Prison - Waupun on September 7, 1976. This employment was terminated effective February 9, 1977. At all relevant times the appellant was covered by the terms of a contract between the WSEU, Council 24, and the State of Wisconsin, and the provisions of Article IV, Section 10, providing a limited right of appeal to the Personnel Board of probationary terminations.

Following the commencement of his employment, the appellant's training, in company with approximately 10-15 other new officers, consisted primarily of assignments to different areas of the prison for familiarization with various facets of prison routine and the duties and responsibilities of the correctional officer. This familiarization period lasted about 10 working days, and the trainees were stationed in close proximity to and under the direct supervision of more experienced officers. Also during this initial 10 day period the appellant was

exposed to approximately 3 hours of class-type instruction on various aspects of supervision of prisoners.

Following this period the appellant and the other trainees in his group were put in uniforms and assigned regular duties in the prison. During each month of the appellant's probationary period after the first month the sergeants, lieutenants, and captains who had contact with the appellant prepared evaluations of his performance. These were filed with the then institution training officer, Lt. McLaughlin, who prepared memos each month summarizing these evaluations (Respondent's Exhibits 2, 3, and 4), and discussed them with the appellant each month in meetings in Lt. McLaughlin's office. This procedure was in keeping with the normal procedure followed with respect to other probationary officers by Lt. McLaughlin during this period.

The memo for October, 1976, (Respondent's Exhibit 2), reflects that 16 staff members filed evaluations of the appellant of whom 6 declined comment on the basis of lack of information. Those who did evaluate appellant gave him 37 "Borderline" and 14 "Negative" marks. The problems noted in his performance and incorporated in these findings covered a wide range of appellant's functions, including statements that his work needed frequent checking, that he displayed indifference to his work by spending too much time talking, that he neglected to correct and fraternized with inmates, that he displayed a "know-it'all" or overconfident attitude, that he had a sloppy appearance and that he referred to inmates in derogatory terms.

The November memo (Respondent's Exhibit 3), indicated that the evaluations showed little or no improvement. The December memo (Respondent's Exhibit 4) again indicates no improvement in his performance evaluations. Lt. McLaughlin then recommended in a memo dated January 6, 1977 (Respondent's Exhibit 6) to associate warden for security Winans that appellant be terminated. The monthly memos referred to above had been sent on a continuing basis by to warden Winans along with the individual evaluations. These were reviewed by the two supervisors

in a meeting held after the January 6th memo.

By letter dated February 8, 1977, from Acting Associate Warden-Security Young (Board's Exhibit 2), appellant was advised that his progress had been unsatisfactory, with general areas of inadequacy listed, and that the institution was considering termination of his employment. The letter further stated:

"You have a right to respond to the reasons upon which the decision to terminate is being made. You also may have representation in making the response. The response need not be in writing nor it is essential that the interview be recorded. Please report to my office at 8:30 a.m. on Wednesday, February 9, 1977. If at that time you desire representation, you may have your representative called from my office.

The appellant appeared at the February 9, 1977, meeting accompanied by a union official. Warden Young asked the appellant if he had any questions or comments regarding the February 8th letter, and appellant had none. The appellant was given a copy of his probationary service report either on that day, February 9th, or the following day.

CONCLUSIONS OF LAW

The standard of review on this termination of a probationary employe is limited to whether the termination decision was "arbitrary and capricious," see Section 111.91(3), stats., Request of AFL-CIO, WSEU, Council 24, for a declaratory ruling, Wisconsin Personnel Board 75-206 (8/24/76). The Wisconsin Supreme Court has defined arbitrary and capricious action as "either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful, and irrational choice of conduct." Jabs v. State Board of Personnel, 34 WI 2nd 245, 251 (1967). As was pointed out in McCane v. Lison, Wisconsin Personnel Board 76-149 (7/22/77), this is an entirely different standard than the just cause standard applied to employes with permanent status in class. Furthermore, the burden of proof is reversed in such cases, as the appointing authority has the burden of proof in a just cause appeal while here the appellant has the burden of proving arbitrary and capricious action.

It is concluded that the procedures followed by respondent in the review

of appellant's performance and in reaching and effectuating the decision to terminate his probation were sufficient to provide for an orderly and rational process and that the termination decision was not arbitrary and capricious. It is further concluded that the respondent's decision should be sustained and this appeal dismissed.

ORDER

The respondent is sustained and this appeal is dismissed.

Dated September 15, 1977.

STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson