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 GREGORY SOWKA,
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 Appellant,
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 v.
 ZEL RICE, Secretary,
 Department of Transportation,
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 Respondent.
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 Case No. 77-80
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INTERIM
 DECISION
 AND
 ORDER

OFFICIAL

Before: DEWITT, Chairperson, WILSON, WARREN, MORGAN and HESSERT, Board Members

DECISION

Appellant whose position was classified as Enforcement Cadet was terminated from state employment effective March 5, 1977 by letter dated March 4, 1977. Appellant appealed his termination under Article IV, Section 10 of the Agreement between AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO and the State of Wisconsin (hereinafter, the Agreement), effective September 14, 1975 through June 30, 1977.

At a prehearing conference Respondent moved to dismiss for lack of subject matter jurisdiction. Further, assuming the Board has jurisdiction, he moved that we not exercise our discretion found under Article IV, Section 10 of the Agreement to hear this particular appeal. Briefs on the motion were filed by the parties.

With regard to Respondent's first motion we conclude that our decision in In re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, Case No. 75-206 (August 24, 1976) is determinative. In that opinion we held that we did have jurisdiction to hear these appeals under Article IV, Section 10. Therefore, Respondent's motion to dismiss for lack of subject matter jurisdiction is denied.

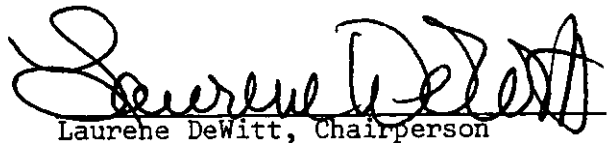
Respondent further moved that we not exercise our discretion to hear this appeal. We have held that we will not hear an appeal from the termination of a probationary employee under the Agreement if it appeared to be frivolous on its face. (Declaratory Ruling, supra, p. 9) Appellant apparently had completed his training at the State Patrol Academy and had been assigned to a patrol district for further training at the time of his termination. He seems to allege in his appeal letter that after an interview with his supervisors on March 2, 1977, he understood that his alleged mistakes in judgment and conduct were diminimus so long as they did not continue and were not repeated. Shortly after the interview, he received the notice of termination. We conclude on the record-to-date that this appeal is not frivolous on its face and that we will hear this appeal under Article IV, Section 10 of the Agreement.

ORDER

IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is denied and that this appeal should be processed in accordance with the above decision.

Dated July 22, 1977

STATE PERSONNEL BOARD


Laurehe DeWitt, Chairperson