

STATE OF WISCONSIN

STATE PERSONNEL BOARD

MAY WIXSON,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 77-90

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 probationary employe pursuant to Article IV, § 10 of the contract between the WSEU and the State of Wisconsin and § 16.05(1)(h), Wisconsin Statutes.

FINDINGS OF FACT

1. Appellant was employed at U.W. - Oshkosh as a Library Assistant commencing October 19, 1976, and continuing until the termination of her probationary employment effective April 8, 1977.

2. Appellants duties and responsibilities included work at the circulation desk and the invoicing of periodicals and books.

3. From on or about February 21, 1977, appellant worked under the direct and sole supervision of Ross Stephen, Associate Director for Technical Services at the Polk Library.

4. Mr. Stephens's background before assuming the aforesaid position included the attainment of a Doctorate in Library Administration and a Masters in Library Science, and 6 years experience as Acquisitions Librarian at another college, a position that involved periodical acquisitions.

Wixson v. U.W.
Case No. 77-90
Page Two

5. Mr. Stephen assumed his position at U.W. - Oshkosh on February 21, 1977.

6. Shortly after this, Mr. Stephen had a number of discussions with Ms. Reisler, who had been acting head of Technical Services, about personnel matters during which she expressed concern about appellant's work performance.

7. At Mr. Stephen's direction, Ms. Reisler met with the appellant on February 23, 1977.

8. At this meeting, Ms. Reisler voiced some concerns about appellant's work relative to invoicing, but did not indicate to appellant that her employment was in jeopardy.

9. This conference constituted the sole critique or consultation with the appellant by her supervisors regarding appellant's work performance prior to her termination.

10. Mr. Stephen effectuated appellant's termination because he was dissatisfied with her performance primarily in the following areas:

- a. She was taking too much time in connection with the invoicing of periodicals and books.
- b. Her rate of learning was low.
- c. She went to the wrong people in attempting to resolve problems that arose in her work.

11. Mr. Stephen's assessment of appellant's performance as set forth in the preceding paragraph was supported by a preponderance of the evidence.

12. The appellant's work performance at the circulation desk was good.

13. The appellant's termination was effectuated by Mr. Stephens with the concurrence and approval of an appointing authority at U.W. - Oshkosh.

CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction over this appeal pursuant to §§ 16.05(1)(h), and 111.91(3), Wisconsin Statutes, and Article IV, § 10 of the collective bargaining agreement between the State and the American Federation of State, County, and Municipal Employees, Council 24, Wisconsin State Employees Union, AFL-CIO.

2. The review by the Personnel Board of respondent's action terminating appellant's probationary employment is limited to the question of whether the respondent's action was "arbitrary and capricious." See In re Request of the American Federation of State, County, and Municipal Employees (AFSCME), Council 24, WSEU, AFL-CIO, for a declaratory ruling, Wis. Pers. Bd. No. 75-206 (8/24/76).

3. Based on this record and the foregoing findings, it is concluded that the respondent's action was not "arbitrary and capricious."

OPINION

The "arbitrary and capricious" standard used in probationary employee termination cases provides a substantially different legal standard than the standard used in the review of disciplinary actions taken against employees with permanent status in class under § 16.05(1)(e), stats. In the latter case the employer has the burden of showing there is just cause for the discipline imposed. In the former case the employee has the burden of showing that the employer's action was "arbitrary and capricious." The phrase "arbitrary and capricious action" has been defined by the Wisconsin Supreme Court 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 Wis. 2d 245, 251(1967). Utilizing this standard,

Wixson v. U.W.
Case No. 77-90
Page Four

the respondent's actions here cannot be said to be arbitrary and capricious, despite the fact that the appellant did perform well in certain aspects of her job.

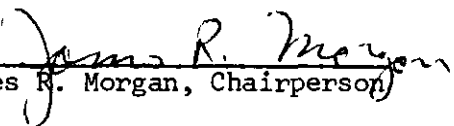
While the absence of additional counseling and work review does not render the termination arbitrary and capricious, the Board notes that the appellant had little notice of her supervisors' dissatisfaction with her work and no warning that her continued employment was in jeopardy prior to her termination. The Board recommends that the University System review its probationary employe counseling program. The Board also recommends, in light of this employe's good work performance record at the circulation desk, that the respondent analyze whether it might be in a position to make some type of offer of reinstatement, perhaps pursuant to § 16.22(3), Wis. stats.

ORDER

The respondent's action is affirmed and this appeal is dismissed.

Dated: 2-20, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson