



required entry and retrieval work with the CRT (Cathode Ray Tube), (typewriter-like board and screen connected with the University computer at Madison) 65% of the time. Twenty percent of appellant's time involved preparation of annual and interim statistical reports; the remaining 15 percent, key punch, typing, and filing duties.

4. At the time he interviewed her, appellant's supervisor, James Lydon, the accountant in the Facilities Department, was aware that appellant had no experience with the CRT and that she had been doing typing and filing only in her previous employment as a Typist II. During the interview he demonstrated the CRT to her and told her about the job and what accounting does for the Facilities department. Mr. Lydon also told her she should ask questions, either of himself or of her co-workers, whenever she did not understand what she was supposed to do or how to do it.

5. Appellant received three days of full time instruction on the CRT by a co-worker, Dave Elderkin, who had worked with appellant's supervisor in developing the CRT system used in the Facilities Department. Appellant knew she could go to Elderkin and another employe trained on CRT, Marie Narlock, for assistance.

6. During her training, appellant was not given instructions regarding terminology, filing systems, and distribution of copies. She asked co-workers for help and explanations, which they provided, so that she was able to complete her work or correct errors.

7. Appellant's supervisor gave her both verbal and written instructions daily, including written instructions on basic programs and sequential procedures she should follow in operating the CRT for the input and

retrieval of data.

8. The process of entering work on the CRT terminal and retrieving information is basically repetitive although different programs are involved.

9. Other employes without previous training had mastered the CRT within a two-month period; one student who came in part time was quite proficient after the first week.

10. At the time of her termination, appellant could not satisfactorily perform the work with the CRT.

11. Appellant repeated questions to her supervisor two or three times, sometimes asking what she should do, other times whether she was doing it properly.

12. There was a heavy workload in the Facilities Department at the time of appellant's employment because it coincided with the end of the fiscal year.

13. About a month after she was hired, appellant's supervisor discussed his evaluation of her performance with her, telling her each area of work which needed improvement, specifically her typing, mistakes in accounting procedures, and her problems with the CRT. Whether or not the supervisor told the appellant "I get the ax from the Chancellor's office and my supervisors if I make one mistake on a report, and I plan to evaluate you the same way" remains in dispute.

14. Appellant expressed dissatisfaction with her evaluation in a letter, thereby precipitating a meeting on July 26, 1978, between the appellant, Lydon, and Lydon's supervisor, Sid Jamieson. At that time Lydon went into more detail as to what he expected of the appellant and how she

could improve herself. Lydon attempted to explain the whole monthly accounting cycle so appellant would understand what she was doing.

15. Appellant did not improve during the second month. Her accuracy, both typing and CRT entries, was rated poor; her machine ability on the CRT, poor/fair; and following directions, poor/fair.

16. Appellant's supervisor recommended her termination after two months of her probationary employment because she did not understand the basic things she was supposed to do, because she made more mistakes than he normally expected of a probationary Typist III, and because she repeated her mistakes.

17. Respondent continues to believe appellant's "typing is sufficient to handle a regular Typist III without the added requirements demanded for CRT entry and accounting," as stated in the termination letter.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction to hear this appeal pursuant to §§230.45(1)(f) and 111.91(3) Stats. and pursuant to 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. In re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declaratory Ruling, 75-206-P.B., 8/24/76. Dziadosz, Davies, Ocon, and Kluga v. DHSS, 78-32-PC, 78-89-PC, 78-108-PC, and 78-37-PC, Interim Decision, 10/9/78.

2. The burden of proof is on the appellant to show to a reasonable certainty, by the greater weight of credible evidence, that the respondent's action was arbitrary and capricious. In re Request of AFSCME, supra.

3. The appellant has failed to carry this burden, hence it must be

concluded that the respondent's action was not arbitrary and capricious.

OPINION

In Jabs v. State Board of Personnel, 34 Wis. 2d 243, 251 (1967), the Wisconsin Supreme Court defined the phrase "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."

Applying this standard to the present case, it must be concluded that the appellant has failed to carry her burden. She has not shown the termination to be without a rational basis or to be an unconsidered, wilful and irrational choice of action.

In her appeal, appellant has argued that her termination was arbitrary and capricious because she was inadequately trained and supervised; because she never was able to get sufficient information from her supervisor in response to questions; because when she did ask questions, it was held against her in her first monthly evaluation; and because her supervisor's criteria for evaluation were unreasonable in that during her first evaluation he stated that "I get the ax from the Chancellor's office and my supervisors if I make one mistake on a report, and I plan to evaluate you the same way."

On this latter point, the appellant has the burden of showing that the unreasonable act specified in her appeal actually occurred. The appellant did not meet this burden.

Appellant's other arguments are also unpersuasive. Appellant concedes that when she did not understand her supervisor's directions, she went to other employes for assistance, that they provided it, and

that she was then able to complete her assignment or correct her error. Appellant's tendency to ask repetitious questions may be attributed in part to her being over-anxious as well as not understanding the work and/or the explanations given her. She testified that half the time she asked questions to make sure that she had done the work correctly and the rest of the time because she did not understand what she was doing or how to go about completing the assigned tasks. Given her repeated mistakes, despite assistance from her co-workers, it was not so unreasonable as to be without a rational basis for appellant's supervisor to recommend her termination because she was unable to perform at a level reasonably expected of a probationary Typist III after two months on the job. It may be that appellant's supervisor did not always successfully communicate his instructions to her; but the greater weight of credible evidence will not support a finding that, under all the circumstances, respondent's termination of the appellant was arbitrary and capricious. Consequently this appeal must be dismissed and the action of the respondent must be affirmed.

Appellant's representative objected to the tardy submission of Respondent's Exhibit 8, which was introduced at the hearing and was used by respondent's witness largely to refresh his memory relative to the appellant's evaluation following her first month of probationary employment. The hearing examiner reserved a ruling on this exhibit and now rules that Respondent's Exhibit 8 will not be received in evidence.

ORDER

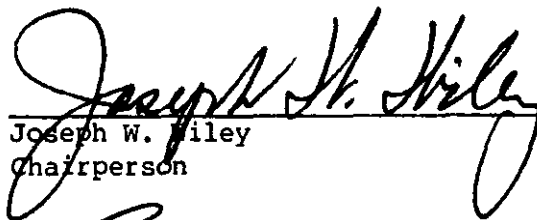
IT IS HEREBY ORDERED that the action of the respondent is affirmed  
and this appeal is dismissed.

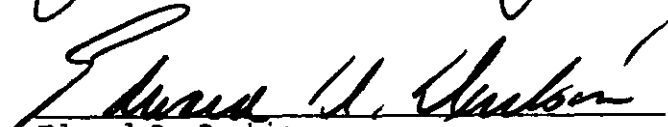
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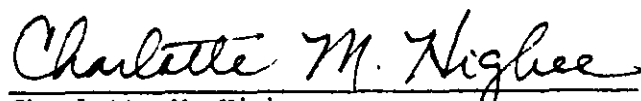
May 4

, 1979.

STATE PERSONNEL COMMISSION

  
\_\_\_\_\_  
Joseph W. Wiley  
Chairperson

  
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Edward D. Durkin  
Commissioner

  
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Charlotte M. Higbee  
Commissioner

CMH:jmg

4/5/79