

OFFICIAL

STATE OF WISCONSIN

PERSONNEL COMMISSION

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PROVIDENCE BRENZ,

Appellant,

v.

Secretary, DEPARTMENT OF HEALTH
AND SOCIAL SERVICES,

Respondent.

Case No. 79-216-PC

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DECISION AND ORDER

NATURE OF THE CASE

This is an appeal of the termination of probationary employment.

FINDINGS OF FACT

1. The appellant commenced employment for respondent in the classified service in a position classified as Food Service Worker-Laborer at Central Wisconsin Center on October 2, 1978.

2. Following examination, the appellant was promoted to Cook I on March 25, 1979, with a six-month promotional probationary period ending September 24, 1979.

3. The appellant commenced performance of Cook I duties and responsibilities on April 9, 1979. These duties and responsibilities included marking pans as to the amount of foodstuffs to be added or blended, stirring cereal, preparing potatoes, and assisting other cooks.

4. Appellant was evaluated by her supervisor, Ms. Reeve, as average as to performance, attitude, and work habits on May 18, 1979.

5. On July 7, 1979, her supervisor evaluated her as unacceptable as to performance and attitude and average as to work habits.

6. On August 20, 1979, her supervisor evaluated her as unsatisfactory as to quality of work, judgement, quantity of work, dependability, and initiative; poor as to rate of learning; and average as to work habits and ability to get along with others; and recommended the termination of her probationary employment.

7. The appellant's employment as a Cook I was terminated effective August 25, 1979, and she then accepted a part-time Food Service Worker 2 position and then a part-time Food Service Worker-Laborer position at CWC.

8. At some time following the commencement by appellant of work in the Cook I position, a male was hired as a Cook I on a probationary basis at CWC, and he was not assigned to mark pans because of a management decision with respect to the operation of their food service function.

9. The appellant's performance of her duties during the period of her employment as a Cook I as set forth above was not satisfactory.

10. The respondent had a rational basis for the termination of appellant's probationary employment and the termination was not an arbitrary and capricious action.

11. At all relevant times the appellant was subject to the coverage of the collective bargaining agreement between the State of Wisconsin and AFSCME-Council 24, Wisconsin State Employees Union, AFL-CIO.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant

to Art. IV, §10, of the collective bargaining agreement, and §§230.45(1) (f) and §111.93(3), Stats., and also pursuant to §230.44(1)(d), Stats.

2. The burden of proof is on the appellant to establish that her probationary termination was arbitrary and capricious.

3. The appellant has not met that burden.

4. The termination of appellant's probationary employment was not arbitrary and capricious.

OPINION

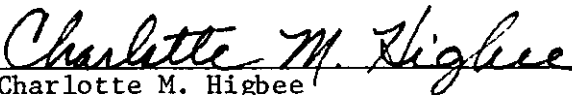
The performance evaluations of appellant (Appellant's Exhibits 1-3) were basically negative. Even the first evaluation (Appellant's Exhibit 3) which contained average marks, mentioned problems with errors in marking pans. The appellant's evidence did not effectively dispute these evaluations.

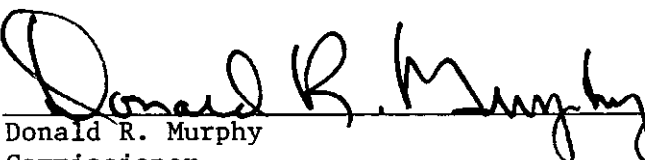
The appellant argues that the marking of pans was not an appropriate assignment for a probationary Cook I, but this argument is not supported by the record. The appellant points out that a male Cook I, who was hired shortly after the appellant began work as a Cook I, was not assigned to work marking pans. However, there was no indication that this assignment was not based on appropriate management considerations.


The appellant also argues that the fact that the institution rehired her as a Food Service Worker indicates that her performance as a Cook I was not that bad. Laying to one side the consideration that the re-employment may have been mandatory, see §Pers. 14.03(1), Wis. Adm. Code, unsatisfactory work at the higher level of Cook I is not inconsistent with satisfactory performance at the Food Service Worker level.

Finally, the appellant argues that the presence of her supervisor in the hearing room was intimidating to her and the witness she called on her behalf. There is very little in the record upon which to base a conclusion to this effect. Furthermore, the supervisor does have a legitimate role to play in the hearing in assisting respondent's attorney with respect to cross-examination.

Dated: April 25, 1980. STATE PERSONNEL COMMISSION


Charlotte M. Higbee
Commissioner


Donald R. Murphy
Commissioner


Gordon H. Brehm
Commissioner

AJT:arl
3/28/80