



during his probationary period.

2. Appellant's supervisor during the first two months of his probation, Mr. Wilford E. Rushford, Institution Aid 4, with 14 years of experience at the Southern Wisconsin Center, completed an evaluation of appellant's work in which specific factors in appellant's work were evaluated as "average," "below average" and "unsatisfactory." (Respondent's Exhibit 1). The evaluation was discussed with appellant.

3. In addition to the written evaluation of appellant's work, Mr. Rushford also informally discussed the work with appellant during the time appellant was under his supervision.

4. Appellant's supervisor during the third and fourth months of his probation, Ms. Mary McKinnon, an Institution Aid 4, completed a 4-month evaluation report of appellant's work, in which specific factors of appellant's work were evaluated as "below average" and "unsatisfactory." (Respondent's Exhibit 2). The evaluation was discussed with appellant.

5. In October, 1979, Ms. McKinnon also prepared a probationary service report in which the factors of appellant's work were evaluated as "poor" and "unsatisfactory." (Respondent's Exhibit 5). The report recommended appellant's termination.

6. In each evaluation of appellant's work, his initiative was rated "unsatisfactory," his quality of work as "poor" or "below average." The content of the evaluations did not differ significantly between the two supervisors, particularly with respect to the general remarks and recommendations which were added to clarify the evaluations and to recommend areas of improvement. Appellant's failure to take initiative

in his work and his tendency to let co-workers do his work for him were unanimously singled out. (Respondent's Exhibit 1, 2, 5).

7. Appellant participated in a training and orientation period prior to beginning his duties with Center residents. During this period, he received copies of work rules, and was given an explanation of the probationary period of employment, was told of the employer's expectations and was told he could be terminated during his probationary period.

8. Appellant was notified of the employer's intention to terminate his employment for failure to meet probationary standards, and was also notified he was afforded a hearing to respond to the reasons for termination and was entitled to have a representative present at the hearing. (Respondent's Exhibit 3). He did attend the hearing with a representative of Local 892.

9. At the time of the prehearing conference in this case, Mr. Wingreen was represented by Mr. Jim Poulson, Local 892, AFSCME, Council 24, WSEU.

10. Mr. Poulson resigned as an official of the union sometime between the time of the prehearing and the time of the hearing on the merits, but did not notify Mr. Wingreen of this fact; Mr. Wingreen unseccussfully tried to contact Local 892 on several occasions prior to hearing. He contacted Mr. Muelver on or about February 15, 1980, at the recommendation of the union representative who had appeared with Mr. Wingreen at his pretermination hearing.

#### CONCLUSIONS OF LAW

1. The failure of appellant to submit to respondent prior to the

hearing the names of witnesses, including his own, was an excusable failure, and constitutes good cause for not excluding the testimony of appellant from the record.

2. The Commission has jurisdiction over this appeal pursuant to §111.91(3), and §230.45(1)(f), Wis. Stats.

3. The appellant has the burden to show by the greater weight of credible evidence that the termination of his probationary employment was arbitrary and capricious.

4. The appellant failed to carry his burden of persuasion.

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

#### OPINION

A probationary discharge is arbitrary and capricious when it is "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). In this case, the employer followed a systematic and rational course of conduct from the commencement of appellant's probationary period up to and including his termination.

Appellant's uncontradicted testimony shows that he participated in a two week training and orientation program at the beginning of his employment. Included in that program was information about the probationary period and the termination procedures applicable during that period, the employer's expectations from the employees, copies of work rules were handed out, instruction was given in care of the residents. Appellant testified that he got along well with his fellow

employees with the exception of one, who was not involved with his termination in any way. No problems with supervisors were mentioned, other than appellant's opinion that his work was not below average. Appellant admitted that he read his evaluation reports and discussed them with the appropriate supervisors and signed them as indicated in the exhibits. He considered his discussions with supervisors as corrections of his work rather than warnings concerning possible termination, but does not argue that he was misled in any way. The testimony of appellant and the testimony of his supervisors and of the personnel manager of the Southern Wisconsin Center does not suggest that appellant was misled in any way about the meaning of the evaluations or of any discussions he had concerning his performance.

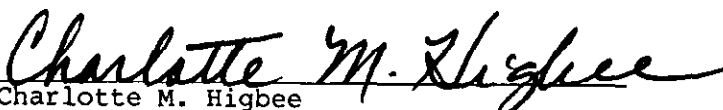
On the basis of the record as a whole, and appellant's own testimony in particular, there is no evidence that his termination was arbitrary and capricious.

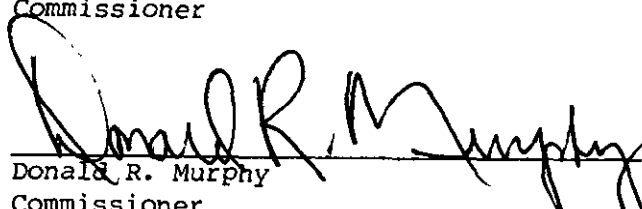
ORDER

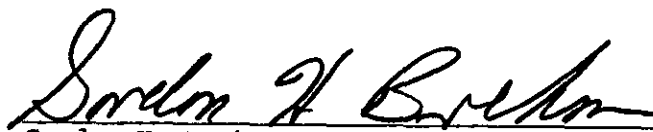
The respondent's motion to dismiss is granted and this appeal is hereby dismissed.

Dated: June 27, 1980.

STATE PERSONNEL COMMISSION

  
Charlotte M. Higbee  
Commissioner

  
Donald R. Murphy  
Commissioner

  
Gordon H. Brehm  
Commissioner

AR:jmg