

DAN R. HARSHMAN,
Appellant,
v.
President, UNIVERSITY OF
WISCONSIN,
Respondent.
Case No. 91-0019-PC

DECISION
AND
ORDER

This matter is before the Commission on the respondent's motion to dismiss. The parties were provided an opportunity to file briefs.

On February 13, 1991, the appellant filed a letter of appeal with the Commission in which he sought to appeal the decision to terminate his employment at UW-Stout while on permissive probation. Attached to the letter of appeal was a copy of the termination letter to the appellant from UW-Stout's personnel director. The letter stated, in part:

This letter serves as notification of your termination from the Building Maintenance Helper 2 position you hold in the UW-Stout Student Center prior to completion of your six-month permissive probation. The effective date of your release is January 11, 1991, upon completion of your shift at 5:00 p.m.

This action has been taken upon recommendation of your supervisor and Auxiliary Services management based upon deteriorating performance during the probation period, poor attitude and your apparent reluctance to adapt your work habits to the department's standards. Because you hold permanent status as a Building Maintenance Helper 2 you have the right under contract (7/3/3) "to return to (your original position if available, or one of like nature for which (you are) qualified" Therefore, you are to report on Sunday, January 13, 1991 to your new position at UW-Eau Claire.

Paragraph 7/3/3 of the contract between the State of Wisconsin and AFSCME Council 24 covering Building Maintenance Helper 2's reads:

An employe who transfers within the same classification between agencies outside the provisions of this labor agreement and is placed on a permissive probationary period will have the

right to return to his/her original position if available, or one of like nature for which the employe is qualified, if the employe's permissive probation is terminated by the Employer prior to completion. If no vacancy exists, the provisions [sic] of Article VIII (Layoff) will be invoked.

The civil service rules regarding employes who are serving permissive probationary periods as a result of transferring between agencies specifically provide that the employes "may be separated from the service without the right of appeal at the discretion of the appointing authority." §ER-Pers 15.03, Wis. Adm. Code. Pursuant to §111.93(3), Stats., where a collective bargaining agreement exists, its provisions "supersede the provisions of civil service and other applicable statutes, as well as rules and policies of the board of regents of the university of Wisconsin system, related to wages, fringe benefits, hours and conditions of employment whether or not the matters contained in those statutes, rules and policies are set forth in the collective bargaining agreement." Here, access to review of a termination during permissive probation following transfer, if any, would be via the contract rather than by way of a statutory civil service review process.¹ Therefore, the Commission issues the following


¹In his letter of appeal, the appellant suggests that the decision to terminate his employment was based in part on management's knowledge that he intended to serve as a union steward. Allegations of unfair labor practices under §111.84, Stats., are properly filed with the Wisconsin Employment Relations Commission rather than with the Personnel Commission.

ORDER

This matter is dismissed for lack of jurisdiction.

Dated: April 18, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

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