STATE OF WISCONSIN

PERSONNEL BOARD

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STATE OF WISCONSIN
MADISON

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ALVIN J. KARETSKI,

Appellant,

v.

CHARLES M. HILL, SR., Secretary, Department of Local Affairs and Development,

Respondent.

Case No. 10

* *

OPINION

AND

ORDER

III

Before JULIAN, Vice Chairman, and SERPE.

Background Facts

In July, 1968, the Appellant was appointed Director of the Bureau of Local and Regional Planning in the Department of Local Affairs and Development (hereinafter referred to as the Department). The position he held was classified as Local and Regional Planner IV. In March, 1971, Robert G. Walter was appointed Administrator of the Division of State and Local Affairs, which included Appellant's Bureau.

On June 13, 1972, George D. Simos, the Deputy Secretary of the Department, on behalf of the Respondent, personally delivered to the Appellant a letter advising him that he was relieved of his managerial responsibilities as Bureau Director and demoted to Local and Regional Planner II. The change in classification had the effect of changing Appellant's pay range from 20 to 17. The letter stated the reason for the demotion was Mr. Karetski's ineffective management of his Bureau and his refusal to accept the directives of his superiors. In addition, the letter listed eight charges as the bases for the Respondent's action.

On June 19, 1972, Appellant filed a timely appeal. The matter came on for hearing before a Board panel consisting of Vice Chairman Julian, Member Serpe and former Member Brecher. Counsel for both parties have stipulated that, since

Mr. Brecher is no longer a member of the Board, the appeal be decided by the two other members of the panel. See Sec. 15.07(4), Wis. Stats. See also Weaver v. Personnel Board, Dane Co. Cir. Ct. Case No. 139-369 (January 8, 1974); Marlett v. Personnel Board, Dane Co. Cir. Ct. Case No. 137-216 (November 30, 1973).

The Appellant Did Not Deliberately Subvert the Department's Policy on the "State Staff Option."

The Appellant is charged with deliberately refusing to accept the decision to discontinue the "State Staff Option" and actively promoting the continuance of the concept. The charge is as follows:

> "1. Despite specific indications from the Department Secretary and your immediate supervisor that the 'State Staff Option' would in all likelihood be discontinued, you deliberately refused to accept the decision and actively promoted continuance of the concept at the Regional Planning Commission level."

We find that the Appellant did not refuse to accept a decision to discontinue the State Staff Option, since no such decision had ever been made, and, further we find that, while Appellant favored the option, he did not promote it in contravention of a clear policy decision that it was to be discontinued.

The "State Staff Option" was a plan whereby a Regional Commission could request that a planner who retained his State civil service status in the Department be assigned fulltime to it to do planning work for the Commission.

The Department did not have a definite policy on the "State Staff Option." There was testimony to the effect that in the Department itself, it was well understood that the "State Staff Option" would end at the close of the 1971-73 biennium. The Governor had left its continuation at the discretion of the Respondent. On November 5, 1971, the Respondent wrote the Chairman of the Southwest Wisconsin Regional Planning Commission, "Please be assured that no action to terminate the State staffing option will be taken at this time. Our Department plans to discuss this situation with each commission or its representatives in the near future. Every attempt will be made throughout these deliberations to ensure continuity of program activity with a minimum of disruption." On February 15, 1972,

Mr. Walter, the Division Administrator and the Appellant's immediate supervisor, sent a memorandum to Appellant and certain Directors of Regional Commissions, which stated, "The Secretary has determined that the State/staff option shall continue through the remainder of this biennium--pending ultimate resolution through the planning law revision work." This meant that the "State Staff Option" was to be viable through June 30, 1973, and might well be continued longer. That no definitive decision had been reached concerning the "State Staff Option" is reflected in the demotion letter itself wherein Appellant was accused of promoting continuance of the "State Staff Option" although he knew it "would in all likelihood be discontinued." In fact, it wasn't; it was merely continued in altered form. It suffices to say that Appellant's lack of managerial skill or loyalty cannot be persuasively demonstrated by pointing to the violation of a policy not clearly or definitively established.

Respondent contends that the Appellant tried to torpedo the State Staff Option by submitting for approval a contract with the City of Ashland, which would have extended the "State Staff Option" for at least six months beyond the 1971-73 biennium. On February 15, 1972, Mr. Walter had written, as previously indicated, that the State Staff Option would continue to June 30, 1973 "--pending ultimate resolution through the planning law revision work." On February 24, Appellant sent the Ashland contract to Mr. Walter for Respondent's signature. Appellant testified that as of that date he had no indication that the State Staff Option would be definitely discontinued at the end of the biennium. Moreover, he testified further that he regarded the agreement as subject to modification regarding extending the State Staff Option feature beyond June 30, 1973, if that was the Department's policy. As things developed, the Ashland contract was changed, apparently due to this feature, and subsequently the State Staff Option was continued in modified form. We find that the Appellant did not actively promote the continuance of the "State Staff Option," in contravention of a Departmental decision to the contrary, by submitting for approval the Ashland contract.

The Appellant Did Not Fail to Follow Specific Instructions on Cutting Expenditures

The Appellant is charged with failure to follow specific expenditure-cutting instructions. The second charge is as follows:

> "2. During a period of fiscal crisis caused by reduction of federal funding, a substantial deficit resulted throughout the Division. Specific instructions were given to you concerning methods to be used to cut expenditures and effect savings in order to operate within allocated funds. You failed to follow the Secretary's directions to accomplish the necessary results."

We find that the Appellant did not fail to follow specific expenditure-cutting instructions.

The Respondent, in support of this charge, introduced evidence to show that the Appellant failed to follow Mr. Walter's direction to assign one of the professional planners on a fulltime basis to the Southwest Regional Planning Commission. On January 6, 1972, Mr. Walter wrote the Appellant the following memorandum:

> "This confirms our oral discussions of December 22, December 30 and January 3, regarding the transfer of a PA-3 or equivalent to SWWRPC, to fill the advertised vacancy.
>
> The transfer must be effective 1/7/72 for pay roll purposes, which you already know.
>
> I have attempted, through our oral discussions, to have this transfer implemented without undo strain. However, if your recommendation is not received by the close of business today (1/6/72), I will have no alternative but to make the selection from this office." *

The same day, the Appellant asked Mr. Walter if he could reply the next day. On the following day, the Appellant wrote Mr. Walter a reply memorandum which said,

> "I also wish to add that in the interest of appealing to what I hope will be a willingness on your part to respond to a reasonable staffing proposal for the SWWRPC situation, I have one which is as follows:
>
> - Have Larry Mugler fill the SWWRPC vacancy."

The memorandum concluded,

> "I should also restate that having Larry Mugler on the Southwest Region programs is a very appropriate solution to helping and not continuing to impede the development of the Commission's programs. I believe this proposal provides a real opportunity to gain a positive and logical solution to our otherwise highly troubled and negative circumstance. If you wish I would by all means be happy to offer other thoughts in support of the proposal."

* Emphasis is in the original unless otherwise noted.

If Mr. Walter's memorandum of January 6, 1972 was an instruction to make a recommendation, then the Appellant's reply of January 7, 1972, is in compliance with such instruction. Moreover, the instruction by its terms specified that if the recommendation were not received, Mr. Walter would make the selection from existing staff personnel. Indeed, such latter provision suggests that it was expected that the Appellant might choose not to make a recommendation and that he was being put on notice that in such event, the assignment would be made by Mr. Walter himself as the Division Administrator. Respondent, in his brief, contends that Appellant's reply was "an unbelievable series of stalls, evasions, and excuses." We do not interpret that to be the purpose or tenor of Appellant's responses at all. If Mr. Walter had ordered Appellant to transfer a planner on the spot, the Appellant would be obliged to have done so or been subject to discipline for failing to follow instructions. However, not even Mr. Walter believed he was administering the Department like the Army. The Appellant had every reason to believe he was being asked for his best managerial and professional recommendation, not blind obedience. We find that the Appellant's conduct with respect to filling the Southwest Commission vacancy did not constitute failure to follow the Respondent's directions and that the Appellant did not, otherwise, fail to follow Respondent's directions to cut expenditures.

The Appellant Did Not Disregard the Conditions of Legislative Appropriations or Submit Proposals for New Expenditures

The Appellant is charged with disregarding conditions on legislative appropriations and submitting proposals for new expenditures. The third charge is as follows:

> "3. After a legislative appropriation of $300,000 was made authorizing the use of such funds only if additional federal funds were unavailable, you disregarded the conditions of the appropriation and submitted proposals for new expenditures of funds in excess of $300,000."

We find that Appellant did not disregard the conditions of the legislative appropriations and did not improperly submit proposals for new expenditures of funds.

On May 24, 1972, the Appellant appeared at a meeting called by an official in the Department of Administration and presented certain proposals for the use of recently released federal appropriations. At the meeting, the Appellant at the outset of his presentation stated clearly that the policy of his Department was that the federal money should go into the State Treasury as the legislative appropriation of a similar amount had prescribed. The Appellant further stated that the proposals he was making were not presented as specific proposals but as planning ideas. After the meeting, Mr. Walter met with the Appellant, together with Emil J. Brandt and Edward J. Gegan of the Appellant's Bureau and George James, another official of the Department. Mr. Walter "expressed (his) extreme displeasure" with the Appellant for presenting the proposals at the earlier meeting. At such latter meeting the participants explained to Mr. Walter that the Appellant had made it clear that the proposals were merely his own ideas and not Department policy, but Mr. Walter was unconvinced. The same day he wrote a file memorandum which said:

> "Notwithstanding his supposed caveats - several reports indicate that few understood that those proposals were <u>not</u> those of the Department."

The testimony of the Appellant, Arthur Doll, the Director of the Bureau of Planning for the Department of Natural Resources and Brandt indicates that the Appellant made clear that his proposals were not Department policy, but more in the nature of planning ideas being presented to a different Department of the State government for the purpose of developing its own policies. We find that the Appellant did not disregard legislative conditions and did not propose new expenditures in contravention of such conditions.

Appellant Did Not Make Irresponsible Merit Pay Recommendations

The Appellant is charged with irresponsible recommendations for merit pay increases for certain staff members in his Bureau. The fourth charge is as follows:

> "4. In the administration of the statutory merit increase program for the current fiscal year, you recommended superior merit increases for certain staff members whose performance during the past year was, to say the least, questionable. You failed to take into account substandard performance and activities not in the interest of the Department in making what I consider to be irresponsible recommendations for salary increases."

We find that the Appellant did not make irresponsible recommendations.

While the charge relates to Appellant's merit pay recommendations, Respondent has subsequently argued that Appellant's real transgression was a failure of judgment in recommending greater than average merit increases without prior consultation with Mr. Walter. However, this is not the charge, and we will not now consider this aspect of Respondent's contention which, in any event, lacks any merit, since any such requirement was not communicated to the Appellant or anyone else for that matter.

It appears that Appellant had frequent contact with all of the people he recommended for 100 percent merit increases and was familiar with the nature of their work. The recommendations were made after Appellant had consulted with his deputy, Mr. Brandt. Appellant viewed them as advisory, to be followed or not followed as Mr. Walter and the Respondent saw fit. As to the recommendation of an 80 percent or average merit increase for Mr. Wood, who was not directly under Appellant's supervision, Appellant deferred to the analysis made by Mr. Brandt. Prior to June 1, 1972, neither Mr. Walter nor the Respondent had ever indicated to Appellant that these recommendations were inappropriate or in what way granting them would reward substandard performance or activities adverse to the interests of the Department. The only concrete evidence along this line is that one of the

employees recommended for a 100 percent merit increase had received a reprimand from the Respondent during the previous year, but the reasons for Mr. Walter's belief beyond this one instance remain obscure. Mr. Walter by his own admission had little contact with the persons involved and thus little opportunity to observe them in their work. The Respondent must have had even less contact. How they were nevertheless able to establish that the particular employees involved performed at a substandard level remains a mystery. Nor, except in the one instance of the Departmental reprimand, is it even vaguely discernible how these employees had acted in ways adverse to the interests of the Department.

Appellant Had Justification For Failing

To Attend a Staff Meeting

The Appellant is charged with failing, without authorization, to attend the May 12, 1972, Bureau directors meeting. The fifth charge is as follows:

> "5. Despite a Division policy requiring all Bureau Directors to attend scheduled meetings, you failed to attend an important staff meeting on May 12, 1972, and failed to secure authorization for your absence in advance."

We find that the Appellant did not attend the meeting in question, but there was nothing out of the ordinary in his not attending since no Division policy required such attendance. We further find that Mr. Walter, when advised by the Appellant of his intention to be absent from the meeting, did not object to the Appellant's intended course of action.

Appellant did not attend the May 12 Bureau directors meeting because he had a prior commitment to serve on a professional planner's examining board. Appellant informed Mr. Walter on May 11, 1972, of his intention to be absent from the meeting and told Mr. Walter that his Deputy, Emil Brandt, would attend the meeting in his place. There was nothing unusual in this procedure, as Mr. Brandt had covered a number of meetings on Appellant's behalf. Mr. Walter did not take exception to this when they discussed the meeting on May 11. Mr. Walter testified that he doesn't

recall the specific conversation. Although the meeting was doubtless an important one, insofar as it involved planning for the next biennial budget, we are unable to detect from the evidence that there ever was a Division policy of requiring the unfailing attendance of Bureau heads at Division meetings. Evidence of a policy of requiring advance authorization before a Bureau director could be absent from such a meeting is equally scarce. Mr. Walter did not order or even request that Appellant alter his schedule to accommodate the Bureau directors meeting. We therefore find that Appellant had a justification for being absent from the directors meeting. But even were this charge sustained by the evidence, in our view it would not, standing alone, constitute just cause for the demotion action taken against Appellant in this case -- a view conceded by Mr. Walter himself in his testimony.

Appellant Did Effectively Use His Own Time and the Time of His Staff

Appellant is charged with failure to properly delegate responsibility to subordinates. The sixth charge is as follows:

> "6. You have been unable to properly assign, direct or manage the Bureau staff and effectively utilize their time and efforts to accomplish the tasks assigned. You have consistently failed to properly delegate responsibility to subordinates and continue to 'double up' on staff and ineffectively utilize your subordinates."

We find that Appellant was able to assign, direct, or manage the Bureau staff, delegate responsibility to them, on occasion go to the same meeting with another staff member, and effectively utilize staff.

The record is devoid of any reliable evidence that Appellant did not effectively supervise the Bureau staff or delegate responsibility. To the contrary, the evidence shows that besides doing that, the Appellant himself spent many hours attending meetings and reviewing the work of his subordinates.

The only proof offered to substantiate this charge was that on occasion the Appellant had a subordinate accompany him to out of town meetings.

The "doubling up" charge rests on Mr. Walter's statement to the Appellant that he should try to avoid doubling up "when we could avoid it." Mr. Walter testified that he told the Appellant,

> "...we don't have enough staff, and one way to get more mileage out of existing staff is to not have but one person /sic/ in a particular high level category at any given meeting when we could avoid it." (emphasis supplied.)

In other words, Mr. Walter did not say that there would be no doubling up at all. The Appellant testified that he judged it was appropriate that his Deputy, Mr. Brandt, should accompany him to some of the meetings, especially night meetings. Such meetings were after their normal working days and didn't involve the State's time, but only their own commitments to "the interest of the people in the State."

Appellant did go to some out of town meetings with other high level Bureau personnel. During the 11-month period from July, 1971, to May, 1972, the Appellant and one or the other of his assistants went to 15 out of town meetings together. The matter did not seem to be of any great moment at the time. In June, 1973, a year after the Appellant's demotion, Mr. Walter reviewed Appellant's itineraries to find out just how many times Appellant had actually doubled up for a meeting.

The whole matter does not point up any misconduct or ineptitute on the part of the Appellant, but rather points up the absence of any evidence at all to support the sweeping charge that the Appellant failed to supervise the work force and delegate responsibility.

Appellant Did Effectively Use His Own Time and Did Not Violate Any Instruction on Travel

The Appellant is charged with not utilizing his time effectively and, contrary to instructions, spending an excessive amount of time traveling on State business. The seventh charge is as follows:

> "7. You have failed to utilize your time effectively to manage and direct your Bureau and, contrary to the express, written instructions of your supervisor, continued to travel excessively on state business rather than delegate traveling assignments to subordinate professionals. Such 'absentee management,' amounting to approximately half of your scheduled business time, has contributed substantially to the problems confronting your Bureau."

We find that the Appellant did utilize his time effectively and did comply with his supervisor's instructions regarding travel.

Respondent contends that the Appellant did not comply with instructions to be in the office "well over 50 percent of the time." The Respondent contends that Appellant was in the office only 55 percent of the time, while Appellant contends he was there 73 percent of the time. Respondent's figure was arrived at by examining the itineraries that Appellant had prepared and submitted to Mr. Walter. Appellant testified, however, that the itineraries were inaccurate. Having been prepared in advance, they necessarily did not reflect those meetings which were cancelled and not rescheduled. Moreover, the itineraries do not reflect those instances in which meetings were held in the evenings and, therefore, did not take up any of the Appellant's normal work day. Nor do they note the starting times of meetings, some of which started in the middle of the day, permitting the Appellant to be in the office part of the day. Appellant insists that he cut down markedly on his out-of-office travels following Mr. Walter's instructions to do so. Respondent's figures put Appellant out of the office 80 out of 179 working days or approximately 45 percent of the time between July 1, 1971, and March 3, 1972. On the other hand, Appellant's figures show him to have been absent only approximately 48 of the 179 working days or approximately 27 percent of the time. Moreover, while there is evidence that Appellant submitted expense vouchers covering meals and mileage for his attendance at out of office meetings, nowhere does it appear that Appellant was awarded any extra pay or compensatory time off for the time spent at these meetings. It does not affirmatively appear from the record, and the Respondent did not prove, what percentage of time Appellant spent at the out of office meetings was on State time. The burden, of course, is on the Respondent to show how much state time Appellant spent away from his office so that this Board may adequately assess whether a sufficient factual basis has been developed to warrant the disciplinary action taken. We find that Respondent has not met its burden of proving what amount of state time was utilized by Appellant to attend out of office meetings and has not met the burden of proving a sufficient factual basis for us to sustain the disciplinary action on this charge.

Appellant Did Not Fail to Follow Specific Instructions to Complete Existing Projects.

The Appellant is charged with failing to follow specific instructions to complete certain "P" projects by a certain date. The eighth charge is as follows:

> "8. Despite specific instructions to complete existing projects within prescribed time limits, you have failed to follow such directions."

We find that no such unequivocal direction was given and, therefore, Appellant did not fail to comply with specific instructions to complete existing projects.

The "P" projects are federally funded comprehensive planning projects for states and local units of government. The ones which came into issue in the latter part of 1971 had been in progress for many years. They involved such planning as land use analysis, drafting zoning and subdivision ordinances, community facilities analysis, transportation analysis, county-wide sewer and water study, and similar studies. The project involved Department planners working with County Planning Committees and local planning staffs to develop comprehensive county plans to meet the county's problems.

Mr. Walter sought to terminate the five unfinished "P" projects by the end of 1971. On December 8, 1971, he wrote the Appellant:

> "I therefore ask you to wind down our activities in all 701 programs prior to P-144 with the understanding that all of these will be phased out by January 30, 1972. Please submit completion reports for my review. We must have a mutual understanding of all possible implications of this article. However, we must not delay terminating these projects."

On January 3, 1972, the Appellant wrote a memorandum to Mr. Walter which made reference to their discussions the preceding week, wherein they agreed that the January 30, 1972 close out date would not be possible. On January 6, 1972, Mr. Walter wrote that he had not altered the January 30 close out date, "so I assume you'll want to provide more information... Therefore, prior to any additional work by our staff, I want your ideas on how the remaining work will be funded." On January 12, Appellant asked for some additional time to reply in view of the proposed staff

transfer, discussed in charge 2 herein, and not having received the promised budget data. On January 17, Mr. Walter responded curtly that his instructions were not altered and added, "If you have additional comments please present them in writing and orally." On January 18, Appellant wrote Mr. Walter the following memorandum:

> "Bob, I am as concerned as you are about successfully finishing up the old projects...
>
> I would like to share with you some materials which I have recieved from two of the planners involved with some of the old projects. I have been trying to get as complete a picture of the complexities of the overall situation regarding closing out the projects on January 30 because I thought I should counsel with you as completely as possible on your request. I am working to get an overall statement to you this week including suggestions for funding the remaining work. I anticipate that useful budget data will be provided at Thursday's Division meeting.
>
> I look forward to discussing expeditious completion of the old projects with you in detail."

On January 21, the Appellant wrote Mr. Walter another memorandum, wherein he stated:

> "This is the follow-up memo as noted in my January 18, 1972 memo regarding completion of the old P-projects.
>
> I have previously shared with you some of the memos which I have received from staff involved with the projects and which express some of the problems associated with concluding the projects this month. The overriding concern is that the projects be completed in an acceptable fashion as quickly as possible and that by so doing we will enjoy a continued favorable relationship with the affected county and local officials--as opposed to doing an incomplete job which would result in quite an opposite effect. There may also be some difficulties and possibly considerable time involved in obtaining a financial settlement on the projects with local officials and HUD officials.
>
> I won't dwell any further on this point because I believe your real interest is in determining how to accommodate any additional salary costs on projects for any time beyond this month."

In the same memorandum, Appellant describes briefly six alternatives for obtaining additional funds to complete the 'P' projects, one of which was to recover the salary costs for Department planners out of a new "P" project application to the federal Department of Housing and Urban Development. Mr. Walter did not reply and January 30 came and went. Eventually, Mr. Walter and Appellant agreed that the additional staff planner salary to finish the "P" projects should come from a new "P" project federal grant.

Where then were the specific instructions that Appellant failed to follow and for doing so he was demoted? Mr. Walter wanted the "P" projects phased out by January 30, but he also wanted complete reports and "a mutual understanding of all possible implications." He was sticking to the January 30 date, but he also wanted more information and ideas on funding the remaining work. He was not altering the date, but he would also entertain additional comments. Appellant then gave Mr. Walter his assessment of the situation and six alternatives for funding the completion of the projects. Mr. Walter made no reply. If Mr. Walter thought he had ordered all the county planning projects shut down whatever the possible repercussions from county officials, he could have ordered the Appellant to stop work and notify the counties that the Department had ordered them finished. He did not do so. Such would have been "specific instructions" as stated in the charge. The Appellant was attempting to provide information and proposals to his supervisor. He did not interpret Mr. Walter's instructions to be an unequivocal order to stop the projects or be demoted. Nor would any reasonable person under the circumstances, and neither did Mr. Walter at the time. On January 31, Mr. Walter did not take any disciplinary action against the Appellant for failing to follow specific instructions. Indeed, Mr. Walter did not even write Appellant a brief memorandum commenting on his failure to follow specific instructions, though good personnel practice would dictate that Appellant at least be sent a warning letter if he were acting in an insubordinate manner or violating specific instructions. Only in June, when the Appellant's merit pay became a question did Appellant's alleged failure to close the "P" projects according to instructions arouse any interest. By then, of course, the close-out date had been changed to June 30, 1972, because in the previous February, Walter discovered that enough money might be found to fund the P-projects after all. In his testimony Walter described the circumstances in which he granted the extension to June 30, 1972, as follows:

> "The January 30th termination date had expired, that is, we were into February, and we were preparing the testimony or the documents, testimony for the Joint Committee on Finance for our supplemental appropriation, and I believe at the same time we were preparing an application for the, that calendar year 701 funding, and it appeared that we had a pretty good chance of getting the funding from the legislature, and that we would have sufficient funds to close those projects down if they were closed down June 30th, of 1972."

As we have found, Appellant did not fail to follow specific instructions.

Conclusion

In the disciplinary notice, the Respondent makes references to the Appellant's alleged deficiencies as a manager. Yet the charges against the Appellant and the proof that was introduced to support them all relate to allegations that the Appellant failed to follow specific instructions. The eight charges all deal with alleged violations of policies or instructions. The evidence relates almost exclusively to the Appellant's supposed subversion of what his superiors viewed as their policy decisions and instructions. We have found that, in the instance of charge 3, Mr. Walter was mistaken in believing the Appellant was trying to represent a different policy than he had indicated. In regard to charge 1, the Department did not have any clear policy on the State Staff Option and Appellant was not attempting to undermine it. In regard to charges 2 and 8, Appellant made conscientious efforts to offer policy alternatives regarding assigning a planner to the Southwest Regional Commission and abruptly shutting down the "P" projects, to the proposed action of Mr. Walter, but the latter viewed the proposals as evidence of insubordination. It is ironic, to say the least, that Appellant should be accused in charge 4 of using poor managerial judgment in the matter of merit increases and yet be castigated in charge 8 as insubordinate for exercising managerial judgment in counseling Mr. Walter against the immediate closing out of the P-projects. But insubordination became such a dominant contention that Mr. Walter saw the Appellant as violating all kinds of other "instructions," which could not be reasonably viewed as instructions at the time they were communicated. Illustrative

of these were instructions on merit pay conferences that didn't exist and policies about attending staff meetings that didn't exist. The same is true regarding the matter of travel.

Throughout the entire record in this case, which is extensive, runs the theme of Mr. Walter's vague, ambiguous and inconsistent managerial practices; e.g., the failure to articulate a definite policy on the State Staff Option, as discussed above in connection with charge 1, or the issuance of ambiguous, inconsistent orders, as discussed above in connection with charges 2, 6 and 8. Appellant may well have been guilty of one or more of the charges against him, but none of the charges has been proven, due in no small measure to Mr. Walter's apparent inability to fashion a clear, unequivocal policy and to stand by it once made. The record is replete with Mr. Walter's memoranda which are notable for the ambiguity they seem to infuse into every clear-cut situation they touch upon. Respondent was thus placed in the uncomfortable position of having to prove allegations for which concrete proof was utterly lacking. Either the charges should have been narrowed or more concrete proof marshalled to establish them. As the record now stands, the allegations are not supported by anything more substantial than mere surmise. And we cannot ground a finding of just cause on what is essentially speculation. What the record does seem to establish is that this case had its origins in the less than adequate personnel practices of the Division. For these problems, which in our judgment could have been corrected by more effective personnel management, as indicated above, the Division bears the ultimate responsibility. We are reluctantly compelled to conclude that the charges against the Appellant, which are in essence that he is guilty of insubordination, have not been proven, and therefore Appellant was demoted without just cause.

In his brief, Appellant contended that he was denied Due Process of Law since 1) the charges were vague and overbroad, therefore, not constituting adequate notice, 2) he was not given a hearing before his demotion, and 3) he was not given a hearing "before a fair and impartial decision-maker." The first due process

claim was decided adversely to the Appellant in an Opinion and Order dated October 18, 1973. The second claim gives rise to questions as to what minimal procedures are required by government before it acts to deprive a government employee of his property interests in his job. The Board dealt with this contention in the manner of an application for reinstatement pending the hearing but did not resolve it on its merits in an Opinion and Order dated May 15, 1973. See Schroeder v. Weaver, Wis. Pers. Bd. Case No. 73-24, Opinion dated July 22, 1974. The third claim is premised on the fact that Mr. D. J. Sterlinske, who was an attorney with the Department of Administration, drafted the demotion letter and represented the Respondent at the start of the case. At the same time, Mr. Sterlinske was the Board's counsel, although the record does not indicate that he was involved in any way with this particular case on behalf of the Board during that period. On December 8, 1972, Mr. Sterlinske withdrew as Respondent's counsel. Since we have determined that the Appellant was demoted without just cause, we need not resolve the question whether he was denied due process.

ORDER

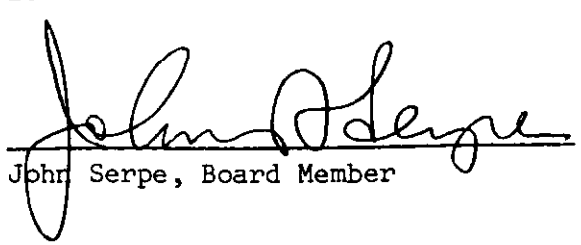
IT IS HEREBY ORDERED that the Respondent immediately reinstate Appellant to his former position, or a substantially similar position, without any loss of seniority or other benefits and with full back pay from the date of his demotion to the date of his reinstatement.

IT IS FURTHER ORDERED that, within 10 days of the date of this Order, the Respondent shall advise the Board in writing concerning what steps he has taken to comply herewith.

Dated December 13, 1974

STATE PERSONNEL BOARD

BY



John Serpe, Board Member