
MARGARET RONINGEN, JEAN THOMPSON,
and ROBERT O. OLSON,
Appellant,

v.

WILBUR J. SCHMIDT, Secretary
Department of Health and Social Services,
Respondent.

OFFICIAL

OPINION 974 M
AND
ORDER

Case Nos. 36, 37, and 40

Before: AHRENS, Chairman; BRECHER; and STEININGER.

By the Board.

OPINION

Background Facts

In November 1960, both Appellants Roningen and Thompson commenced their employment with the Respondent at the Wisconsin School for Boys at Wales, Wisconsin. Prior to their layoff, they were classified as the only Building Maintenance Helper 2's at the School, whose duties primarily involved supervising students in cleaning the public areas of the School's buildings. Appellant Olson commenced his employment in 1958, was classified as the lone Motor Vehicle Operator 1 and operated and maintained the School's vehicles. All three Appellants were laid off November 11, 1972. Due to the nature of this case, further facts will be stated in the Opinion and as stated, are found to be true.

Issue

These proceedings were marked by considerable disagreement as to the issue being raised. The Appellants all quite clearly indicated the nature of their claims in their appeal letters. Appellants Roningen and Thompson contended that they should not be laid off, since the seamstress and youth counselors were performing their work. Appellant Olson contended that youth counselors and inmates from the Wisconsin State Prison at

Waupun, Wisconsin were doing his job. The Board counsel, then employed by the Board, and counsel for the Respondent proceeded on the basis that the issue was whether the layoff procedure was followed. Counsel for the Appellants contended that the Respondents must prove that no other classification, but the Appellants', could have been vacated. In this proceeding, the Respondent had the burden of proof that Appellants were laid off for just cause, rather than retained in active employment to perform certain work allegedly performed by a seamstress and youth counselors. Plainly, the issue is whether under the law, the Appellants were laid off for just cause.

The Layoffs Were Due to a Lack of Work

The Respondent showed by its proofs that there was not enough work available to retain in active employment either Appellants Roningen and Thompson or Appellant Olson. It showed that the student population had dropped from an average daily population of 374 in 1967 to 251 in 1971, a drop of approximately twenty per cent. The average daily population for the first two months of 1972 was two hundred. The testimony of the Superintendent further showed that in order to bring the size of the staff into a proper relationship to the declining population, and, at the same time maintain the most essential services to the students, certain economies had to be effected. Cleaning services were discontinued in the quarters of resident employes, changes were made relative to the canteen and the chapel to reduce the amount of cleaning, youth counselors picked up small amounts of responsibility for the supervision of students cleaning public areas. Some of the work performed by the Appellant Olson was done in other ways. For example, rather than making trips for supplies, some supplies were delivered by common carrier. Students under the supervision of their teacher performed some maintenance work on vehicles. A seamstress

cleaned up the dental office in the hospital, although the evidence is vague regarding what portion of her duties involved this work. The Appellants did not present any evidence relative to job classifications or any other facts that might give rise to any limitations relative to the reassignment of some of the work normally assigned the Appellants to other employes. We find the facts as stated above in this paragraph to be the material facts at issue. We find that the Respondent laid off the Appellants because of a lack of work for them to perform.

Procedural Questions and Due Process

The Appellants, in their brief, raise a number of procedural questions, and a number of Due Process questions, which we conclude are without enough merit to require a new hearing in this case.

Appellants argue that all of the testimony of Superintendent Roland C. Hershman, a witness for the Respondent and the only witness to testify at the hearing, given on redirect examination, should be stricken on the grounds that it was outside the scope of the Superintendent's testimony on direct examination. During the hearing, Appellants did not object to this testimony; and, therefore, their objection after the hearing is untimely. In any event, the Board may hear testimony on redirect which goes beyond the scope of the prior examination. See Callaghan's Wisconsin Pleading and Practice, Section 30.54, Redirect Examination.

Appellants argue that the completed performance rating scales for the Appellants, which the Respondent had furnished copies of to the Appellants earlier in the proceedings, should be stricken for lack of a proper foundation. These forms were offered in evidence merely to show that the Respondent had complied with the layoff rules of the director of the Bureau of Personnel in this case and might be properly

received without foundation where, as here, they are only tangential to the matters in dispute. See Section 227.10, Wis. Stats., 1971.

A Due Process argument urged by Appellants is that they were denied the right of cross examination by the frequent interruptions of the Board Chairman. As an example, Appellants point to the instance at the hearing where counsel was barred from questioning the Superintendent regarding his own work experience after the Superintendent had indicated he had such work experience in the positions in question. The Board Chairman properly ruled such inquiry immaterial, since the determining issue in this proceeding relates to the factors that caused work to be unavailable, including the reassignment of other employes to the work normally performed by the Appellants. Another example of what Appellants contend is an unwarranted interruption by the Board Chairman in counsel's cross examination is counsel's effort to determine the availability of a complete list of all employes of the School and their classifications. Since counsel had not earlier been denied the right to inspect such records, nor had he subpoenaed them for purposes of introducing such a list as evidence, the Board Chairman did not violate Appellants' rights by foreclosing the inquiry into the matter.

Appellants argue and cite specific portions of the transcript of testimony intended to show that the Board Chairman improperly shifted the burden of proof to the Appellants. We conclude that such remarks merely show an effort by the Board Chairman to elicit from counsel a specific statement of the contention which was the basis of the appeal.

We conclude that the Appellants' hearing was not affected by any procedural error, that they were not denied Due Process at the hearing and, further, that they were laid off for just cause.

ORDER

IT IS ORDERED that the layoffs of Appellants are sustained.

Dated Feb 22, 1974

STATE PERSONNEL BOARD

BY

William Ahrens
William Ahrens, Chairman

OFFICIAL

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and ROBERT O. OLSON,
Appellant,

CONCURRING
OPINION

v.

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WILBUR J. SCHMIDT, Secretary
Department of Health and Social Services,
Respondent.

Before: AHRENS, Chairman; BRECHER; and STEININGER.

AHRENS (concurring).

While I concur in the Board's finding and conclusion that the Appellants were laid off for just cause, I deem it appropriate to comment upon a matter not discussed in the Board's Opinion. This matter relates to certain statements by Board Member Brecher during the course of the hearing.

Appellants argue that the statements of Board Member Brecher show a bias that invalidates the entire proceeding and requires a new hearing. Counsel for Appellants, in his brief, quotes the following statements made at the hearing by Board Member Brecher, which appear in the transcript:

"I don't think we're here to take testimony as to this man's qualifications. I come from a company where the president never even graduated from college and he didn't even know a tinsmith's job or anything else. Now, we're not going to question him, and I see no relevance whatsoever in finding out what he knows about the truck driver or anything else. . ." (Tr. 29, 30.)

"You haven't got a case here as of now. Any time you think for a minute we're going to sit here and listen to you question the Superintendent as to all the clerical details aroqnd here, you're wrong, Mr. Ehlke, your union contract ought to tell you that." (Tr. 41, 42.)

Counsel further cites parts of the transcript where Board Member Brecher comments on the desirability of students, as part of the rehabilitation


program, performing work such as auto repairs.^{1/} Further, counsel refers to parts of the transcript which show that during the hearing itself, Board Member Brecher commented that a United Parcel truck had just pulled up to make a delivery nearby^{2/}, in an obvious reference to the Respondent's testimony that some driving had been eliminated by the use of common carriers.

First, let me indicate that I do not believe these statements were appropriate. The Board aspires to give the parties a fair hearing and to give due consideration to the contentions of all parties. However, Board Member Brecher's statements did not influence me in my determination of the merits of the case. Board Member Steininger has indicated to me that such statements did not influence her decision, either.

Since I find that Board Member Brecher's statements did not influence a majority of the Board panel hearing the case, I conclude that the Appellants were not denied Due Process by reason of those statements.

I am authorized to state that Board Member Steininger joins me in the findings and conclusions made in this concurring opinion.

Dated Feb 22, 1974


William Ahrens, Chairman

^{1/} See pages 58 and 59 of the transcript.

^{2/} See page 67 of the transcript.

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