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R. C. EVENSON,

Appellant,

v.

JOHN C. WEAVER, President,
University of Wisconsin,

Respondent.

Case No. 73-118

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OFFICIAL

OPINION
AND
ORDER

Before AHRENS, Chairman, JULIAN, and STEININGER.

Background Facts

On November 15, 1970, Appellant commenced his employment at the University of Wisconsin-Green Bay in Green Bay, Wisconsin. His civil service classification was Superintendent of Buildings and Grounds III and his working title was Supervisor of Maintenance in the Department of the Physical Plant. His duties involved supervision of employes engaged in the maintenance, repair, and operation of heating, ventilating, electrical, water treatment and sewage disposal systems in the campus buildings and facilities and planning for and overall administration of the maintenance program.

In the Fall of 1972, a number of grievances were filed by employes in Maintenance, which the University viewed as having resulted from confusion over the proper chain of authority in Maintenance and from the Appellant's position in that chain. The University, after a meeting at the third step of the grievance procedure, decided to remove Appellant from his position as Supervisor of Maintenance, and create a new position of Special Project Assistant to the Director of the Physical Plant. The duties of the new position involved staff responsibilities for the Department's safety program, the planning of a program of preventive maintenance,

and performing various other special assignments. His former position was filled by his former assistant after a civil service examination. On October 3, 1972, the Director of the Physical Plant in a memorandum notified the Appellant of his change in duties. The memorandum said:

"Currently the Bureau of Personnel is completing a maintenance survey. When the results are finalized, we expect your position will be reallocated to Administrative Assistant 3 in salary range 1-11. In this reallocation your salary will be red circled at \$1,118 per month."

In the days immediately following, the Appellant did not file any civil service appeals relative to such change of assignment. On April 27, 1973, Appellant's position was reallocated from Superintendent of Building and Grounds III, salary range 1-13 to Administrative Assistant 3, salary range 1-11. In the days immediately following, the Appellant did not file any civil service appeals relative to his change in classification. On June 12, 1973, the Respondent notified the Appellant that he was permanently laid off because of "budgetary considerations." Appellant filed a timely appeal of his layoff.

In these proceedings, one of Appellant's contentions is that he should have been retained as the Assistant Director of Physical Plant. Since approximately June of 1971, a Landscape Architect worked in a staff position to the Director of the Department of Physical Plant. His duties involved the designing of special ground projects, landscape projects and similar undertakings. He did not supervise the Supervisor of Grounds. On April 27, 1973, the Landscape Architect position was changed to Assistant Director of Physical Plant-Grounds/Landscape Architect. The duties of the new position involved line authority over all Grounds activities, including supply and expense and capital budgeting, the planning, design and on-site implementation and supervision of all grounds projects, and some budget review responsibility for other phases of the Physical Plant operation.

The Board Cannot Consider the Circumstances
of Appellant's Change in Duties and Class Before His Layoff

At the prehearing conference, Appellant contended that he had been discharged

in two stages; first he was transferred to a new position and then laid off from it. Appellant's discharge claim arises out of the Respondent's demotion of him on October 3, 1972, when it relieved him of his job as Supervisor of Maintenance and assigned him the job of Special Project Assistant to the Director of the Physical Plant, a position which he was advised was expected to be classified to salary range lower than his former position. Within 15 days after such notice, Appellant might have filed an appeal with the Director of the Bureau of Personnel alleging that his transfer was illegal or with this Board alleging that he was demoted without just cause. He did not do either and, therefore, the Board is barred by the provision establishing time limits on filing appeals contained in Sections 16.03(4)(d) and 16.05(2), Wis. Stats., 1971, from considering the matter of the change in Appellant's duties on that date. Moreover, on April 27, 1973, Appellant's civil service classification was changed and he was notified of such "reallocation." Yet, within 15 days after such date, he did not appeal such action of the Director of the Bureau of Personnel to the Board under Section 16.05(1)(f). Similarly, the applicable time limit on filing appeals bars consideration in this proceeding of Appellant's having his position "reallocated" from Superintendent of Building and Grounds III to Administrative Assistant 3. We will consider therefore only the matter of whether Appellant was laid off for just cause from such latter position.

The Position of Special Project Assistant
Is Not Substantially Similar to that of Assistant Director

The Special Project Assistant position from which Appellant was laid off is not substantially similar to the position of Assistant Director of Physical Plant-Grounds/Landscape Architect. The two jobs involve different duties and authorities. The former involves staff work in the field of safety and preventive maintenance relative to the maintenance of systems in buildings. On the other hand, the Assistant Director's job involved direct supervision over the Grounds operation, and required the professional training of an architect. The fact that the

positions have a direct reporting relationship to the Director of the Physical Plant and are called "Assistant," does not detract from the essential characteristic of the Assistant Director's job, which requires special training and involves supervising the grounds operations. Appellant does not, so far as the record indicates, have that special training or experience in grounds work. We find that the two positions are not substantially similar.

The parties stipulated that if the Board found that the positions at issue are not substantially similar, "that the financial exigency of the University constitutes just cause for the termination of the Appellant's position." We so find.

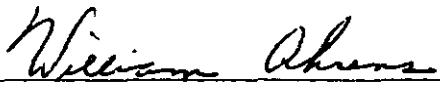
ORDER

IT IS ORDERED that the action of the Respondent in laying off the Appellant is sustained.

Dated January 2, 1975

STATE PERSONNEL BOARD

BY



William Ahrens, Chairman