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 TED KEITH,
 Appellant,
 v.
 MANUEL CARBALLO, Secretary,
 Department of Health & Social Services,
 Respondent.
 Case No. 75-65
 * * * * *

OPINION
AND
ORDER

OFFICIAL

Before: DEWITT, Chairperson, WILSON, MORGAN, WARREN and HESSERT, Members.

Nature of the Case

This case is an appeal of a layoff pursuant to Section 16.05(1)(e), stats. The appellant was subsequently re-employed in a different position but still contests the layoff.

Findings of Fact

Appellant was permanently employed as an Administrative Assistant 3 by the Division of Vocational Rehabilitation, Department of Health and Social Services, in the Bureau of the Blind. He was so employed from October, 1972, until he was laid off on April 30, 1975.

Prior to the time of the layoff, there were three Administrative Assistant 3 positions in the unit affected by the layoff. Due to a loss of Federal funding, it was necessary to lay off one of the Administrative Assistant 3 employees.

On March 13, 1975, a proposed layoff plan was submitted to the Director of the State Bureau of Personnel for his approval. On March 20, 1975, the layoff plan was approved by the Director. (Respondent's Exhibits #1 - 4)

Pursuant to the layoff plan, the immediate supervisor of the Administrative Assistant 3 employees within the layoff class prepared Layoff Performance Rating Scales for each of the three employees affected. Appellant was ranked number 2 in the scales prepared by the supervisor. (Appellant's Exhibit #2)

The scales were submitted to the Director of the Bureau of the Blind, who differed with the rankings. He then completed his own set of rankings based on his own knowledge and discussions with the supervisor and co-workers of the three affected employees. In the scales prepared by the bureau director, appellant was ranked lowest. (Appellant's Exhibit #1)

Both scales were submitted to the Director of Manpower Plan Development for the Division of Vocational Rehabilitation. He then decided to use the scales prepared by the Director of the Bureau for the Blind as the basis for the layoff decision. He submitted these scales to the delegated appointing authority, in this case the Administrator of the Division of Vocational Rehabilitation, with the recommendation that appellant be laid off, which he subsequently was.

Conclusions of Law

The only questions presented for review by the Board in a layoff are:

". . . whether the procedure outlined in Section 16.28(2), stats., and Wis. Adm. Code ch. Pers. 22 was followed and was the layoff of the employee otherwise authorized by applicable law." Weaver v. Wisconsin Personnel Board, 71 Wis 2d 46, 51 237 NW 2d 183 (1976).

"The only function of the Personnel Board in the determination of 'just cause' in a layoff situation is to determine whether there has been compliance with the statutes and the rules." Weaver supra at 53

Thus, the Wisconsin Supreme Court has set out the framework by which the Board must consider this case. If the various statutes and rules were complied with, the Board must rule that the layoff was based on "just cause".

Section 16.28(2), stats., provides in part:

- "(2) Employees with permanent status in class . . . may be laid off . . . only after all original appointment probationary and limited term employees in the class used for layoff, are terminated.
- (b) The director shall promulgate rules governing layoffs . . .
- (3) The appointing authority shall confer with the director relative to a proposed layoff a reasonable time before the effective date thereof in order to assure compliance with the rules."

At the time of the layoff in this case, layoff schedules were determined by a performance ranking system.

Wis. Adm. Code Section Pers. 22.03(4) provided in part:

"Ranking by Performance. All employees in the group thus to be considered for layoff shall be ranked by the appointing authority according to their relative performance in the given class and unit. Such ranking shall be based on recent and comparable standards of performance."

In the case at hand, the Board concludes that there was compliance with the various statutes and rules concerning layoffs.

There were no probationary or limited term employees in the class affected by the layoff, thus Section 16.28(2) is not applicable.

The appointing authority, in this case by his agent, the agency Director of Personnel, submitted the proposed layoff plan to the Director of the Bureau of Personnel for his approval prior to actually using the layoff plan. The plan was approved by the Director. Thus, there was compliance with Section 16.28(3), stats.

Pursuant to Section 16.28(2)(b), the Director of the Bureau of Personnel had promulgated rules governing layoff procedures. The rules are found in Wis. Adm. Code Section Pers. 22.

Wis. Adm. Code Section Pers. 22.03 prescribed that layoff decisions were to be based upon a ranking of employee performance. The layoff in this case was performed on the basis of such a ranking.

Thus, the criteria announced by the Supreme Court in Weaver, supra, for determining "just cause" in a layoff case have been met in this case. Appellant's layoff was based on just cause, as defined by the Court.

Appellant has taken issue with the fact that two conflicting sets of ranking scales were prepared, the first set indicating that an individual other than appellant be laid off, and the second set indicating the appellant be laid off.

Wis. Adm. Code Section Pers. 22.03 simply provides that all employees in the layoff class be ranked by the appointing authority. The rule does not prescribe any specific method of arriving at the ranking. The fact that there was a dispute between the people preparing the rankings does not mean that there was a lack of compliance with the rule.

No layoff may be the result of arbitrary or capricious action. Weaver, supra, at 49.

The actions of the appointing authority in accepting and adopting the second ranking as opposed to the first ranking cannot be considered arbitrary or capricious action.

"Arbitrary or capricious action . . . occurs when it can be said that said action is unreasonable or does not have a rational basis. . . . and not the result of the 'winnowing and sifting' process." Olson v. Rothwell (1965) 28 Wis 2d 233, 239, 137 NW 2d 86.

The appointing authority, or in this case his agent, attended a meeting with the authors of both rankings, and independently studied the situation before adopting the second ranking. Thus, the decision was reached upon a rational, reasonable basis after a winnowing and sifting process. Therefore, there is no merit to appellant's complaint that the second ranking was adopted as opposed to the first ranking.

Accordingly, the respondent's action in laying off appellant must be affirmed.

Order

The action of Respondent is affirmed and this appeal is dismissed.

Dated June 16, 1977 STATE PERSONNEL BOARD


Laurene DeWitt, Chairperson