STATE OF WISCONSIN

STATE PERSONNEL BOARD

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ROBERT M. STANTON,

Appellant,

v.

WILLIAM BECHTEL, Secretary, Department of Local Affairs and Development.

Case No. 76-136

* *

ORDER

OFFICIAL

Before: Morgan, Hessert and Wilson, Board Members (DeWitt, Chairperson, and Warren, Board Member, dissenting)

The appellant's request for oral argument dated August 12, 1977, is denied. Objections and arguments may be served and filed in written form.

Dated August 25, 1977

STATE PERSONNEL BOARD

Laurene DeWitt, Chairperson

STATE OF WISCONSIN STATE PERSONNEL BOARD

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ROBERT M. STANTON,

Appellant,

v.

WILLIAM BECHTEL, Secretary,
Department of Local Affairs and Development,

Respondent.

Case No. 76-136

* *

OPINION
AND
ORDER

OFFICIAL

Before: Morgan, Hessert and Warren, Board members.

Nature of the Case

This case is an appeal of Appellant's discharge. Appellant has alleged that the discharge was not based on just cause and has invoked the jurisdiction of the Board under Section 16.05(1)(e), stats.

Findings of Fact

Prior to June 21, 1976, Appellant was a permanent employe in the classified service, with permanent status in class as a Planning Analyst 3, employed by the Department of Local Affairs and Development (DLAD) in Madison. His work consisted of assisting local government units establish and maintain urban and regional planning capabilities. Sometime prior to October, 1975, the Department lost certain Federal Funds. The Department then decided to take certain other funds from the area in which Appellant worked and to use those funds in a new management consulting program. The end result of these changes in funding was that four Planning Analyst positions in Appellant's program area would be abolished.

The Department submitted the plan to the Governor, who approved the change in funding in January, 1976. The Legislature approved the funding change in April, 1976.

In May, 1976, the Department suggested to Appellant that since his position would be abolished on June 19, 1976, he seek a transfer to a Planning Analyst 3 position in the Eau Claire area, doing similar work as he had done in Madison, or that he voluntarily transfer to a Planning Analyst 3 position with the Division of Emergency Government (DEG), a subunit of the DLAD, also located in Madison. The DEG position involved planning for natural disaster recovery. Appellant asserted that he was not prepared by education or work experience to do the DEG job. However, Appellant met all the minumum requirements for the position and was qualified to assume the position.

Appellant stated that he would not accept either of the positions suggested to him.

On May 27, 1976, Appellant was notified by memorandum that he was reassigned by the Department to the DEG position and that he was to report to work at the DEG position beginning June 21, 1976. The memorandum also informed Appellant that if he did not accept the reassignment, then the DLAD would consider him to have resigned. The reassignment or transfer of Appellant to the DEG position was certified and approved by the Director of the Bureau of Personnel.

On June 4, 1976, Appellant responded by memorandum to the reassignment. He stated that he would not accept the DEG position, since it was outside of his field of work. Appellant stated that there was nothing in his background which would prepare him for the position. Appellant declined to resign as well.

On June 7, 1976, William Bechtel, Secretary of DLAD, and the appointing authority, transmitted a memorandum to Appellant ordering him to report for work at the DEG position on June 21, 1976. The memorandum contained a warning that

Appellant would be subject to severe desciplinary action, "perhaps to the extent of your discharge" if he failed to report as directed.

On June 21, 1976, Appellant did not report to the DEG position. Instead, he reported as usual to his place of employment at DLAD. At that time a meeting was held, attended by Appellant, Respondent Bechtel and an administrator from DLAD. At the meeting, Appellant restated his refusal to accept the transfer to DEG. Respondent then issued a previously drafted discharge letter to Appellant, terminating his employment effective immediately.

It is from that discharge on June 21, 1976, which Appellant appeals. It is Appellant's contention that the position at DEG was so far removed from his normal work that it was unreasonable for Respondent to have ordered him to take the position, and conversely, that Respondent had no just cause to discharge him for refusing to take that position. As an additional issue, Appellant urges that he should have been laid off at the end of his DLAD position, rather than transferred so that he could exercise his layoff rights under Wisconsin Administrative Code Section Pers. 22.

Conclusions of Law

In cases of this type, the burden is on Respondent to ". . . present evidence to sustain the discharge . . ." and to prove ". . . that the discharge was for just cause . . ." Reinke v. Personnel Board, 53 Wis 2d 123, 132, 141 N.W. 2d 833 (1971).

This Board must determine whether the discharged employe actually committed the conduct leading to the discharge, and whether the conduct constitutes just cause for the discharge.

In this case, there is no factual dispute concerning the commission of the conduct charged. Appellant has not denied that he refused to report to the DEG

position. That refusal was the conduct for which Respondent discharged Appellant. In so far as there is no disputed issue concerning whether or not Appellant committed the act charged, the Board concludes that Respondent has sustained the first part of its burden and establishes that the conduct charged did take place.

Appellant asserts that the refusal to report to the DEG position was not misconduct, since the order transferring him there was not a reasonable order. This argument goes not to the occurence of the conduct, but rather to the second facet of the case, the issue of just cause for the discharge.

The Wisconsin Supreme Court has discussed the concept of just cause for a discharge in Safronsky v. Personnel Board, 62 Wis 2d 464, 474; 215 N.W. 2d 379 (1974). There, the Court stated:

> ". . . 'One appropriate question is whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works' . . . . Courts of other jurisdictions have required a showing of a sufficient rational connection or nexus between the conduct complained of and the performance of the duties of employment. The basis for such a requirement of 'just cause' or rational nexus . . . has been to avoid arbitrary and capricious action on the part of the appointing authority . . ."

As set forth above, Appellant asserts that his transfer to the DEG position was unreasonable, and, therefore, he was not obliged to accept the transfer. Appellant further contends that since his position was abolished at least in part by a loss of funds, that he was entitled to exercise certain alternatives in lieu of accepting transfer.

There can be no question that the transfer of employes is within the concept of management rights. See Section 111.90(2), stats. In determining whether a management order regarding transfer is so unreasonable as to provide justification for an employe's disobedience of that order, the test is not whether a reviewing

body agrees or disagrees with the merits of the rationale for the order. Such administrative decisions are reviewable on a much less rigorous standard. See, e.g., In re Public Utilities Commissioner of Oregon, 268 P. 2d 605, 616 (Oregon 1954):

> "Webster's New International Dictionary, 2d Ed., defines 'unreasonable' as 'not conformable to reason, irrational; * * * beyond the bounds of reason or moderation; immoderate, exorbitant.'"

While reasonable people could differ as to the soundness of the decision to order the appellant to transfer, it cannot be concluded that the decision is irrational or unreasonable in the sense referred to here.

The Appellant further argues that pursuant to Pers 22.04, W.A.C., acceptance of a transfer is optional with the employe, who can either accept it or one of the other alternatives, including layoff, a status which carries certain rights. However, Section Pers 22.04 provides in part:

> "Alternatives in lieu of separation. In the event that the services of an employe with permanent status in class are about to be terminated by layoff . . . these alternatives shall be available, in the order listed below, in lieu of separation . . . .
>
> (1) Transfer. The employe whall have the right to move to a vacancy in the same class . . . .
>
> (2) Bumping. Where no vacancy exists, the employe identified for layoff shall be entitled to exercise bumping rights . . . ." (emphasis supplies)

It is concluded that this section does not give an employe the right to refuse a transfer that is not unreasonable and then to exercise bumping rights which may result in a layoff, or to exercise some other alternative or move into layoff status. To hold otherwise would create the potential for an employe (either one situated like the appellant or one laid off through a bumping process) to be laid off, with certain restoration rights under civil service law and, potentially, unemployment compensation, while the vacancy to which transfer was refused potentially could be filled by the appointment of someone outside state service.

Order

The action of Respondent in discharging Appellant is affirmed and this appeal is dismissed.

Dated 11-15, 1977 STATE PERSONNEL BOARD

James R. Morgan, Chairperson