

* * * * *
 *
 LORAINÉ MARVIN, *
 *
 Appellant, *
 *
 v. *
 DOUGLAS LAFOLLETTE, *
 Secretary of State, *
 *
 Respondent. *
 *
 Case No. 76-2 *
 *
 * * * * *

OFFICIAL

OPINION
AND
ORDER

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

Nature of the Case

This case is an appeal of a layoff.

Findings of Fact

Prior to January 3, 1976, Appellant was a permanent employe in the classified service, employed as an Administrative Assistant 3 in the office of the Secretary of State.

Upon his election to office in 1974, Respondent determined that he wished to reorganize the structure of the office. Accordingly, he prepared a reorganization proposal which was submitted to the Department of Administration for analysis and approval. In a letter to the Governor, dated October 8, 1975, the Secretary of the Department of Administration recommended that the proposal be approved. On October 8, 1975, the Governor granted his approval for Respondent to enact his reorganization.

Under the reorganization plan, many of the duties formerly performed by Appellant were assumed by Respondent. In addition, Appellant's other duties were redistributed to a newly created Administrative Assistant 1 position.

On November 24, 1975, Respondent wrote a letter to the Deputy Director of the Bureau of Personnel informing him of the reorganization plan and designating Appellant's class as subject to layoff. Appellant was the sole member of her class.

On December 3, 1975, the Deputy Director approved Respondent's layoff plan.

In a letter dated December 5, 1975, Appellant was notified that her position was to be abolished effective January 4, 1976, and that she was to be laid off on that date. Respondent informed Appellant that she was eligible to accept a voluntary demotion to the newly created Administrative Assistant 1 position.

Appellant did not accept the voluntary demotion and was laid off on January 4, 1976.

At the prehearing conference the following issue was propounded for resolution in this case:

"Whether the actions and decisions of the Respondent with regard to personnel actions or transactions involved in the reorganization of his office that related to Appellant's layoff were in accordance with relevant law?"

Conclusions of Law

In cases of this type, the burden is on Respondent to prove that the layoff was accomplished properly and with just cause. The Wisconsin Supreme Court has stated:

"while the appointing authority indeed bears the burden of proof to show 'just cause' for the layoff, it sustains its burden of proof when it shows that it has acted in accordance with the administrative and statutory guidelines 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 v. Wisconsin Personnel Board, 71 Wis 2d 46, 52, 53, 237 N.W. 2d 183 (1976)

Thus, the Board is limited in its examination of this case to a determination of whether or not the various rules and statutes pertaining to the layoff were followed.

Section 16.28(2), stats. provides that:

"employees with permanent status in class . . . may be laid off . . . due to a stoppage or lack of work or funds owing to material changes in duties or organization . . ."

Wisconsin Administrative Code, Section Pers. 22.09 provides that:

"Whenever it becomes necessary . . . to lay off employes, the appointing authority shall prepare a comprehensive written plan for layoff and submit it to the director for his review and approval prior to implementation."

Applying the above rules and statutes to the circumstances surrounding Appellant's layoff, the Board determines that there has been compliance as dictated in the Weaver, supra, decision.

Respondent had full authority to propose and implement the reorganization of his office as set out in Section 15.02, stats. The Governor approved Respondent's reorganization plan.

The reorganization plan caused "material changes in duties or organization" as contemplated in the layoff statute, Section 16.28(2), stats.

Respondent submitted a layoff plan to the Deputy Director of the Bureau of Personnel, and it was approved as required by Wisconsin Administrative Code, Section Pers. 22.09.

Appellant was given written notice of the proposed layoff at least 15 days prior to the effective date of the layoff as required by Wisconsin Administrative Code, Section Pers. 22.05.

Since Appellant was the sole member of her layoff class, there were no considerations as to ranking of the class for layoff.

Accordingly, the action of Respondent in laying off Appellant was in accordance with relevant law and must be sustained.

Order

It is ordered that the action appealed from is affirmed and this appeal is dismissed.

Dated July 22, 1977

STATE PERSONNEL BOARD

Laurene DeWitt
Laurene DeWitt, Chairperson