



heavy work load and the critical shortage of supervisory staff to train a new employe, the decision was made to postpone further recruitment attempts. The same decision followed when Mr. Sweet, another research analyst, left on April 23, 1976.

, On February 9, 1976, Janet Stonecipher was hired to fill the already authorized limited term position. Her original appointment was to last until June 30, 1976, but was extended to June 30, 1977, because of delays in the SSIS project created by late approval of the project and staffing problems on the project. The delays meant that Mr. Nettleton would be with the project longer than originally anticipated and that Ms. Stonecipher as his replacement would be needed for that extended period of time. Ms. Stonecipher was in one sense a replacement for Mr. Nettleton but that fact did not mean she simply took over his duties and projects. Instead she became part of the office pool of research analysts to whom projects were assigned on a priority basis. Her primary assignment was the food stamp outreach program on which Mr. Fisher had been working when he left.

In November of 1976, with the easing of the supervisory problems, the recruitment process began anew to fill the two research analyst vacancies in DFS. Mr. Fisher's position was filled on December 20 and it was anticipated that Mr. Sweet's position would be filled in February, 1977. Ms. Stonecipher was to continue her work as an LTE beyond the time that both positions were filled.

#### CONCLUSIONS OF LAW

The appellant charges that Ms. Stonecipher, an LTE, was used to fill a vacancy in a permanent position within the DFS. The charge must refer to the vacancy in Mr. Fisher's or Mr. Sweet's position since Mr. Nettleton was only temporarily on loan to the SSIS project so that his

position was in fact not vacant.\* The basis for the appellant's charge appears to be twofold. First, that Ms. Stonecipher replaced Mr. Fisher because her primary responsibility, the food stamp outreach program, was taken directly from his position. Second, that Ms. Stonecipher's availability in the office pool of research analysts meant that the work she did would normally have been assigned to one of the two vacant positions.

§ Pers. 10.02, Wis. Adm. Code provides:

"Prohibitions on the use of limited term employment. Limited term employes shall not be used to fill vacancies in permanent, seasonal or sessional positions in the classified service, except as provided in sections 16.21(2) and (3), Wis. Stats."

It is concluded that the appellant has not discharged his burden of proving that Ms. Stonecipher was used to fill a vacancy in a permanent position.

The appellant contends that Ms. Stonecipher's takeover of Mr. Fisher's food stamp program meant that she in effect filled that vacancy. We disagree. Mr. Gale, the office supervisor, testified that the office workload because of its varied and often unpredictable nature was assigned, as priorities dictated, to any available research analyst. No specific project was tied to a particular position. Thus, when Mr. Fisher quit his position, the food stamp program reverted to the general pool of office work to be reassigned as priorities allowed. When Ms. Stonecipher reported to work soon after Mr. Fisher left, she was assigned the food stamp program but that fact does not mean she occupied his position.

The appellant argues that Ms. Stonecipher filled one of the vacant positions because she performed work which otherwise would have been assigned to one of the vacant positions. Unquestionably, Ms. Stonecipher did some work which could not or would not have been done without the services of an

---

\* In any case, Ms. Stonecipher's substitution for Mr. Nettleton appears to be justified by the decision in Anderson v. Weaver, Pers. Bd. Case No. 74-83 (8/29/75) in which, despite unfilled permanent vacancies, an LTE was allowed to provide additional office help by filling in for sick or vacationing permanent employes.

additional research analyst. However, that work could have been assigned to Mr. Nettleton, with the same result, had he not been on the SSIS project. Since Mr. Nettleton was already a permanent employe, such a reassignment of work could not be viewed as filling either vacancy. The record indicates that Ms. Stonecipher was Mr. Nettleton's replacement. The characterization as a reassignment of work does not change simply because Ms. Stonecipher was an LTE.

This decision is further reenforced by the fact that Ms. Stonecipher was never intended to fill either Mr. Fisher's or Mr. Sweet's position. The authorization for her position was requested before either vacancy was anticipated. In addition, she was to continue her work in the office despite the filling of both vacancies.


REPRESENTATION BY A NON-ATTORNEY

The respondent has objected to the appellant's representation by a non-attorney union representative and has asked for a statement of the Board's policy on the issue. Personnel Board Rule PB 1.06 prohibits representation, other than self representation, by a non-attorney. However, the Board is currently reviewing PB 1.06 because of possible constitutional problems pointed out in Biddle v. Knoll, Pers. Bd. Case No. 75-195. Pending the outcome of that review, we decline to comment on the Board's policy in the area. We also decline to rule on respondent's objection since he has prevailed on the merits.

ORDER

It is hereby ordered that this appeal is dismissed.

Dated: 10-12, 1977. STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson