

STATE OF WISCONSIN

STATE PERSONNEL BOARD

* * * * *

ETHEL A. SADOWSKI, *

Appellant, *

v. *

SECRETARY, Department of Industry, *
Labor and Human Relations, *

Respondent. *

Case No. 76-92 *

* * * * *

OFFICIAL

OPINION AND ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

NATURE OF THE CASE

This is an appeal of a layoff which lasted about 4 weeks prior to appellant's reinstatement. The parties have submitted this case on a stipulation of facts, which is set forth as the following findings of fact.

FINDINGS OF FACT

1. Ethel Sadowski acquired seasonal employment status with the Department of Industry, Labor and Human Relations on November 21, 1966 (her anniversary date). She has worked since then as a Cyclical Employment Security Assistant in the Kenosha District Office of the Department in what is now known as the Job Service Division.

2. Appellant was reinstated from a periodic layoff on October 22, 1975. She was next laid off on March 19, 1976.

3. At the time of the March 19 layoff, five other CESA workers having less length of service than the appellant, were retained in appellant's work unit.

Two were retained in order to permit them to complete probation. Two others were kept on because their supervisor considered their duties to be considerably different than appellant's, and necessary. The fifth worker was retained because of his abilities as an interpreter for the office.

4. Appellant filed a grievance over her layoff on March 30, 1976, which was returned denied on April 5, 1976, by Edward McDermott, Kenosha District Job Service Director (Board's Exhibit 4). Appellant submitted the grievance to the second step on April 7, 1976, and received an answer by E. M. Kehl for the Job Service Administrator on April 15, 1976. Kehl's answer found that the supervisor's reasons for not following seniority in the March 19 layoff were valid, but he supported the grievance insofar as following seniority for reinstatement purposes (Board's Exhibit 3).

5. Appellant was reinstated to work on April 19, 1976.

6. She submitted her grievance over the March 19 layoff to the third step on April 21, 1976. Virginia Hart, Industry, Labor and Human Relations Commission Chairman, responded May 11, 1976, affirming both the general policy of following seniority for seasonal layoffs as well as of supervisors' freedom to consider other factors in such layoff decisions (Board's Exhibit 2).

7. Appellant's next layoff from work occurred on April 11, 1977.

8. The Kenosha District Office is part of the Department of Industry, Labor and Human Relations Southeast District "employing unit."

CONCLUSIONS OF LAW

1. The layoff of appellant did not violate any civil service statutes or rules of the Director (Chapter Pers, Wis. Adm. Code).

Sadowski v. DILHR
Case No. 76-92
Page Three

OPINION

Section 16.28(1), Stats., provides:

"Employees with permanent status in class in permanent, sessional and seasonal positions in the classified service . . . may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization but only after all original appointment probationary and limited term employees in the classes used for layoff, are terminated."

Section 16.28(1)(b) provides that the Director shall promulgate rules governing layoffs. The chapter in the administrative code governing layoffs is Pers. 22. Section Pers. 22.07 reads:

"Layoff of seasonal employees. For provisions of layoff of seasonal employees see Wis. Adm. Code, Chapter Pers. 9."

Section Pers. 9.03(1), W.A.C. provides:

"This status requires reinstatement of this employe to the same or similar positions within the department during succeeding seasons subject to section 16.28, Wis. Stats., provided the employe continues to render satisfactory services during his employment and his conduct and capacity, after he had been separated, merit such reinstatement. The seasonal status of any employe, however, shall have no bearing on the duration of the seasonal period, in that employes in seasonal positions may be laid off at the expiration, of the seasonal period, at the discretion of the appointing authority."

The appellant argues that the respondent failed to follow and violated the layoff procedures set forth in s. 16.28(1), Stats., and Chapter Pers. 22, W.A.C., in a number of respects. However, the Director has provided separately for the layoff of seasonal employees by s. Pers. 22.07, W.A.C. Seasonal employment is inherently not continuous. A seasonal "layoff" involves required reinstatement pursuant to s. Pers. 9.03(1), W.A.C. Other than periodic layoffs of seasonal employees, e.g., for economic reasons, would still be subject to the general layoff provisions.

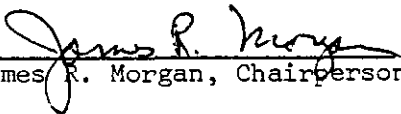
Sadowski v. DILHR
Case No. 76-92
Page Four

ORDER

The action of the appointing authority is sustained and this appeal
is dismissed.

Dated: May 18, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson