STATE OF WISCONSIN PERSONNEL COMMISSION

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JAMES LAROSE,

Appellant,

v.

President, UNIVERSITY OF WISCONSIN SYSTEM (Milwaukee)

Respondent.

Case No. 82-153-PC

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DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(c), Stats., of a layoff-related transaction. This matter has been held in abeyance for a period of time pending the resolution of another proceeding. It now has been submitted on the basis of a stipulation of facts and written arguments. The following are the stipulated findings of fact.

FINDINGS OF FACT

1. The appellant, James LaRose, has been employed by Respondent, UWM, since June 17, 1968.

2. The appellant was notified by letter dated June 9, 1982, from Barbara J. Faucett, Director of Personnel Services, that he would be laid off from his position classified as Administrative Assistant 3, effective as of close of business on June 25, 1982, in accordance with Wisconsin Administrative Code, sec. Pers. 22

3. The appellant was laid off because his position was abolished during a financial crisis and his duties were assumed by Clyde Jaworski, Assistant Director of Labor Relations.

4. The appellant was notified, by the letter referred to in paragraph 2, above, of the alternatives to layoff of transfer, displacement, and demotion and the availability to appellant of such alternatives at that time.

5. At the time he was laid off, the appellant occupied a permanent position classified as Administrative Assistant 3 in pay range SR1-11 at a rate of $9.887 per hour, serving as Safety Officer in the Department of Personnel and Human Resources, Division of Administrative Affairs, which classification was confirmed by a decision of the Personnel Commission dated December 23, 1983.

6. The appellant had previously earned permanent status as a Shipping and Mailing Supervisor 3, in pay range SR1-11, and as an Educational Services Intern, in pay range SR1-10.

7. The appellant was offered, by letter dated June 11, 1982, and he accepted, a demotion in lieu of layoff to Management Information Technician 2, in the Department of Facilities, Division of Administrative Affairs, effective June 28, 1982, at a rate of $8.50 per hour which was, at that time, the maximum hourly rate in the Management Information Technician 2 pay range.

8. By a letter dated September 29, 1982, the appellant was offered, and he accepted, a position classified as Program Assistant 4 in Associated Union Services, Division of Student Affairs, as Night and Weekend Operations Manager at a rate of $9.649 per hour, which, at that time, was the maximum hourly rate in the Program Assistant 4 pay range.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(c), Stats.

2. The appellant has the burden of establishing that he had the right to displace an employe in the Educational Services Intern 1 classification or a comparative class in a series in which he had obtained permanent status.

3. The appellant has not sustained his burden.

4. The appellant did not have the right to displace an employe in the Educational Services Intern 1 classification or a comparative class in a series in which he had obtained permanent status.

OPINION

The parties stipulated to the following as the issue presented by this appeal:

> Did the appellant have the right to displace an employe in the Educational Services Intern 1 classification or a comparative class in a series in which he had obtained permanent status?

It is clear from the parties' briefs that at the time of the transaction here in question there were no Educational Services Intern positions in the appellant's employing unit. Therefore, the real question is whether he had displacement rights to a comparable class in a series in which he had obtained permanent status, and could displace an Educational Services Assistant 1 (PR1-11).

It is undisputed that at the time in question, the appellant's displacement or "bumping" rights were governed by the following rule:

> (2) DISPLACEMENT. (a) An employe shall be entitled to exercise a right of displacement only if there is no vacancy to which he or she could transfer or demote under sub. (1) or (3) that is at a higher level than can be obtained through displacement. Such employe identified for layoff shall be entitled to exercise displacement rights within the employing unit. This right entitles the employe to induce the layoff process in a lower class or approved subtitle in the same series or in a class or approved subtitle in a series having the same or lower pay range maximum within the employing unit, in which the employe has previously obtained permanent status in class, and to lower classes or approved subtitles in those classes in a progression series in which the

> employe has previously obtained permanent status in class at a higher level. However, exercising such displacement rights does not guarantee the employe a position in the class or subtitle selected; it only requires the employe to be included along with other employes in the class or subtitle when the layoff process as provided in §Pers. 22.06, Wis. Adm. Code, is applied to determine which employe is laid off as a result of displacement. An employe electing to exercise displacement rights shall have 5 calendar days from the date of written notification of impending layoff or receipt of such written notification, whichever is later, to exercise that option.
> Section Pers 22.08(2)(a), Wis. Adm. Code (1981)

There are in essence three types of displacements under this rule:

1) "... in a lower class or approved subtitle in the same series..."

2) "... in a class or approved subtitle in a series having the same or lower pay range maximum within the employing unit, in which the employe has previously obtained permanent status in class..."

3) "to lower classes or approved subtitles in those classes in a progression series in which the employe has previously obtained permanent status in class at a higher level."

It is undisputed that the first and third options were not applicable to the circumstances of the appellant's impending layoff. The issue in this case comes down to the question of whether the language of the rule with respect to the second type of displacement should be interpreted to have permitted the appellant to have displaced an employe in the Educational Services Assistant 1 based on the appellant having at one time attained permanent status in class as an Educational Services Intern.

In turn, the interpretation of the rule's language comes down to a fairly narrow question. The rule provides in relevant part as follows:

> This right entitles the employe to induce the layoff process ... in a class or approved subtitle in a series having the same or lower pay range maximum within the employing unit, in which the employe has previously attained permanent status in class..."

The question presented is whether the term "in which the employe has previously attained permanent status in class" modifies "class or approved subtitle" or "series having the same or lower pay range maximum."

Clearly, the term "in a series having the same or lower pay range maximum within the employing unit" is a dependent clause modifying "class or approved subtitle." The following clause, "in which the employe has previously obtained permanent status in class" is separated from the preceding clause by a comma. It modifies the entire preceding clause: "in a class or approved subtitle in a series having the same or lower pay range maximum within the employing unit," not just the dependent clause ("in a series having the same or lower pay range maximum within the employing unit") therein.

The Commission can discern no basis for an interpretation that would have the words "in which the employe has previously attained permanent status in class" modify "in a series having the same or lower pay range maximum within the employing unit," as urged by the appellant. The appellant's argument with respect to the specific language was conclusory and not convincing:

> The phrase 'in which the employe has previously obtained permanent status in class' modifies only which classes, series and approved subtitles you may exercise such displacement rights." (emphasis in original) (Appellant's Brief, p.3)

The appellant also makes the argument that his interpretation of the rule is consistent with the governing statute, §230.34(2)(b):

> The administrator shall promulgate rules governing layoffs and appeals therefrom and alternative procedures in lieu of layoff to include voluntary and involuntary demotion and the exercise of a displacing right to a comparable or lower class, as well as the subsequent employe right of restoration or eligibility." (emphasis added)

The appellant argues:

> Chapter 230.34(2)(b) states specifically the exercising of a displacing right to a comparable class or a lower class. Such a class would be an Educational Service Assistant 1 - PR1-11 or other comparable classification. (Appellant's Brief, p.2.)

However, the language of §230.34(2)(b) is very clear that the broad rights referred to therein are to be subject to the specific administrative rules to be promulgated. While the statute refers to a displacing right to "a comparable or lower class," the rule has limited the circumstances under which this right can be exercised. The need for such a restriction is obvious, for if any employe subject to layoff had the right to displace to any position in a comparable or lower classification, the "ripple effect" of layoffs would be virtually unending and potentially costly and disruptive.

Given the plain language of the statute that calls for the promulgation of rules to govern layoffs, the appellant neither can nor does challenge the right and duty of the administrator, (now secretary) to have effectuated §Pers. 22.08(2)(a), Wis. Adm. Code. Once the right to regulate in this area is conceded, the broad general language of the statute has no particular relevance to the question of interpretation here presented. There is no question but that an employe, such as the appellant, has a general right of displacement to a comparable or lower classification, subject to the rules promulgated pursuant to §230.34(2)(b), Stats. The existence of that general right does not suggest a particular interpretation of §Pers. 22.08(2)(a), Wis. Adm. Code.

Since the language of the rule "in which the employe has previously obtained permanent status in class" modifies "class or approved subtitle," and the appellant never obtained permanent status in class as an Educational Services Assistant 1, he had no right to displace into that classification and the respondent's denial of such displacement must be affirmed.

ORDER

The respondent's action is affirmed and this appeal is dismissed.

Dated: Jan. 2, 1985

STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

LAURIE R. McCALLUM, Commissioner

DENNIS P. McGILLIGAN, Commissioner

AJT:ers

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