STATE OF WISCONSIN PERSONNEL COMMISSION

DAVID WIGGINS,

Appellant,

v.

Secretary, DEPARTMENT OF DEVELOPMENT,

Respondent.

Case No. 82-246-PC

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal, pursuant to §230.44(1)(c), Wis. Stats., of a layoff decision. The parties agreed to limit the issue in this appeal to the following: Did the appellant have displacement rights to the Administrative Assistant or Administrative Officer classifications when he was laid off in November, 1982? A hearing was held on May 3, 1983, and posthearing briefs were filed.

FINDINGS OF FACT

1. From approximately November 5, 1965, until August 2, 1970, appellant was employed by the Department of Local Affairs and Development (a predecessor agency to respondent Department of Development) as an Economic Development Specialist (pay range 1-18). On August 2, 1970, appellant's position was reallocated to Administrative Officer 1 (pay range 1-16). Appellant obtained permanent status in class as an Administrative Officer 1. Effective August 20, 1973, appellant accepted in lieu of layoff a demotion to a position classified as an Administrative Assistant 5 (pay range 1-15). Appellant obtained permanent status in class as an

Administrative Assistant 5. Effective April 10, 1975, the classification of appellant's position was changed to Industrial Development Specialist (pay range 1-15). Appellant was classified as an Industrial Development Specialist at the time of his layoff by respondent on November 24, 1982.

2. Respondent's Industrial Development Specialist (hereinafter IDS) layoff plan was submitted to the Administrator of the Division of Personnel by memo dated November 8, 1982. This layoff plan indicated that, at that time, appellant's position was the only position at the Department of Development classified as an IDS and, once the layoff plan was approved by the Administrator of the Division of Personnel, respondent would proceed with appellant's layoff. Respondent also indicated in this layoff plan that the IDS classification was not part of a series; that appellant could only exercise his right of displacement to the Administrative Assistant 5 (hereinafter AA 5) classification; and that, in view of the fact that the other classifications in which appellant had obtained permanent status in class were at a higher pay range than his current classification, he could not exercise displacement rights to those classifications.

3. In respondent's November 9, 1982, letter of layoff to appellant, respondent advised appellant of the alternatives in lieu of layoff, including transfer, demotion, and displacement. Respondent further advised appellant that, at that time, there was no vacancy to offer appellant on a transfer or demotion basis but that appellant was entitled to exercise the displacement option. In a memorandum dated November 12, 1982, appellant advised respondent that he elected to exercise his right of displacement.

4. Following appellant's exercise of his displacement rights, respondent prepared a layoff plan for the AA 5 classification. As of November 17, 1982, there were five positions classified at the AA 5 level in the Department of Development occupied by employes with less seniority than appellant. Four of these were excluded from the layoff plan because they were subtitled. The remaining position was occupied by David Manning. Respondent requested that Mr. Manning be exempted from the layoff action because of his special skills and for affirmative action purposes. As a result of these exemptions, respondent's AA5 layoff plan identified appellant as the employe subject to layoff. Respondent's AA 5 layoff plan was approved by the Administrator of the Division of Personnel in a letter dated November 17, 1982. By letter dated November 17, 1982, respondent advised appellant that he did not survive the layoff action in the AA 5 classification and that his November 24. 1982, layoff remained in effect. On December 21, 1982, appellant filed a timely appeal of such layoff action.

5. An employe who has obtained permanent status in class in only one classification within a series has displacement rights to other classifications within the series only if the series is an approved progression series. Since the Administrative Assistant series is not an approved progression series, appellant had displacement rights only to the AA 5 classification within the AA series.

6. An employe cannot displace to a classification with a higher pay range maximum than that of his classification at the time of layoff. Since the Administrative Officer 1 classification is at a higher pay range (1-16) than the IDS classification (1-15), appellant did not have displacement rights to the Administrative Officer 1 classification.

CONCLUSIONS OF LAW

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

2. The respondent has the burden of proving that there was just cause for its actions relating to the exercise of displacement rights arising from appellant's layoff, i.e., that it has acted in accordance with administrative and statutory requirements governing the exercise of displacement rights and has done so in a manner which is not arbitrary and capricious.

3. The respondent has sustained its burden of proof.

OPINION

In Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 237 N.W. 2d 183 (1976), the Wisconsin Supreme Court held that:

> 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 and the exercise of that authority has not been arbitrary and capricious.

The instant appeal has been limited by agreement of the parties to a consideration of the displacement rights arising from appellant's layoff and respondent sustains its burden of proof by showing that it has acted in accordance with the statutory and administrative provisions which govern displacement and that such action on the part of respondent was not arbitrary and capricious.

The statutory and administrative provisions governing displacement include in particular:

> Section 230.34(2)(b), Wis. Stats.:
> 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 for reinstatement.

Section Pers. 22.08 (2)(a), Wis. Adm. Code:

> (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 s. 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.

Appellant contends that he had displacement rights to the Administrative Officer (hereinafter AO) series in which he had previously obtained permanent status in class as an AO 1. It is the clear and unambiguous intent of the above-cited provisions, however, that displacement rights are determined by the classification of the employe's position at the time of layoff and that an employe cannot displace to a classification in a higher pay range than his classification at the time of layoff. In addressing the case of an employe who has previously obtained permanent status in class in a series other than the one in which he is classified at the time of layoff, PERS 22.08 (2)(a), Wis. Adm. Code, clearly provides that such an employe is entitled to displace only to a classification having the same or lower pay range maximum than his classification at the time of layoff. The AO 1 classification is in a higher pay range (1-16) than the IDS position (pay range 1-15) occupied by

appellant at the time of his layoff, and, therefore, respondent acted in accordance with the applicable statutory and administrative provisions in concluding that appellant could not exercise displacement rights to the AO series.

Appellant argues further that, in concluding that appellant did not have displacement rights to the AO series, respondent's interpretation of the statutory provision relating to displacement was in conflict with the following language of § 230.28 (1)(d), Wis. Stats.:

> A promotion or other change in job status within an agency shall not affect the permanent status in class and rights, previously acquired by an employe within such agency.

However, appellant has cited no authority or convincing rationale to support the inference necessary for his argument, i.e., that appellant is asserting a "right" protected by §230.28(1)(d). Only if appellant were asserting such a protected "right" would the cited statutory provisions be in conflict. In the absence of such a conflict, reference would be made to §230.28(1)(d) as an aid to the interpretation of the displacement provision of §230.34 (2)(b) only if such provision of §230.34(2)(b) was ambiguous on its face. (See 73 Am. Jur. 2d, Statutes, s.194). However, it has already been concluded that the applicable provision of §230.34(2)(b) is clear and unambiguous as applied to the issue of appellant's right to displace to the AO series, i.e., an employe cannot displace to a classification in a higher pay range than that of his classification at the time of layoff. Finally, the clear weight of authority supports the principle of statutory construction that, in the event of a conflict between statutory provisions, the more specific language shall prevail. (73 Am. Jur. 2d, Statutes, s.257) A statutory construction favoring the more specific language is

strengthened if the specific language was enacted during the same or a subsequent legislative session than the general language. Thus, even if it were found that §230.28(1)(d) was in conflict with §230.34(2)(b), the conflict would be resolved in favor of the specific provision regarding displacement found in §230.34(2)(b) as opposed to the general reference to "rights" found in §230.28(1)(d), particularly in view of the fact that the two statutory provisions under consideration here were originally enacted during the same legislative session, i.e., both were originally enacted as part of Chapter 270 of the Laws of 1971. Respondent's interpretation of the applicable statutes is consistent not only with the clear and unambiguous language of such statutes but also with the generally accepted rules of statutory construction.

Appellant also contends that he should have been allowed to displace to lower classifications within the AA series rather than being limited to displacement to the AA 5 classification, the only classification within the AA series in which appellant had obtained permanent status in class. However, §Pers 22.08(2)(a) Wis. Adm. Code, clearly indicates that appellant would only have been entitled to displace to the AA 1, AA 2, AA 3, or AA 4 classifications if the AA series was an approved progression series. Uncontroverted expert testimony elicited by respondent at the hearing supports respondent's position that the AA series is not an approved progression series. Appellant argues that any series through which an employe can progress through reclassification should be regarded as a progression series. However, the term "progression series" is a term of art--it refers to a series which the Administrator of the Division of Personnel has determined satisfies the relevant criteria and has specifically designated as a "progression series." Progression of an

employe through an approved progression series is governed by different procedures than progression through a series not approved as a progression series. Since the AA series is not an approved progression series, respondent acted in accordance with the governing statutory and administrative provisions in concluding that appellant did not have displacement rights to classifications in the AA series other than the AA 5 classification.

Appellant has not alleged that respondent's actions relating to the exercise of displacement rights arising from appellant's layoff were arbitrary and capricious and the evidence presented to the Commission does not support such a finding.

ORDER

The action of the respondent is affirmed and this appeal is dismissed.

Dated: July 21, 1983 STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

LRM:jmf

LAURIE R. McCALLUM, Commissioner

DENNIS P. McGILLIGAN, Commissioner

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