

S.
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STATE OF WISCONSIN : CIRCUIT COURT : FOND DU LAC COUNTY

DAVID M. KUTER,

Petitioner,

-vs-

STATE PERSONNEL COMMISSION

Respondent.

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**Personnel
Commission**

DECISION

Case No. 85-CV-636

This is an action for Judicial Review under Wis. Stats. 227.52 stats. 1985. The petitioner challenges the findings by the State Personnel Commission that the appellant was layed off for just cause and that there was no pretext for taking an adverse personnel action against the appellant, 2) that the determination of economic necessity required a layoff in April of 1982 and was not a pretext for laying off the appellant, and 3) that the Robert Polston letter of December 12, 1979 does not estop the respondent from undertaking the layoff transaction.

The scope of Judicial Review is limited by Wis. Stats. 227.20. The facts concerning the decision of the Commission dated July 15, 1985 affirms the layoff of petitioner by his employer the Department of Industry, Labor and Human Relations. Petitioner contends that the layoff was illegal for the following reasons:

That the Polston Agreement of 1979 affirmed to the appellant that he was to continue in his Job Service Supervisor 5 classification, "as long as he wished to remain in the Fond du Lac Job Service office and perform his duties as directed."

2) That reorganization of the State Job Service Administration resulted in his being layed off and was a pretext for retaliating

against the petitioner for a prior grievance.

3) That the reorganization was not justified on the basis of economic necessity as it applied to the petitioner and further, an additional argument in which petitioner describes his position as having been camouflaged for his actual duties.

Distilling the issues, the Court is of the opinion that the court question is whether or not the appellant was treated in the same fashion as all other similarly situated employees throughout the state and whether or not his layoff could be deemed to be arbitrary and capricious. The Department contends that the reorganization of Job Service was reasonable as an economic necessity in that 90 percent of its programs were federally funded and that a reduction in work force of at least 10 percent in each district was required.

The appellant further asserts that the suggested Model 3 table of organization for an office the size of the Fond du Lac Job Service office was not used and was modified to exclude his position and that this nonconformity of the Fond du Lac office constitutes the only exception in the state. The Court finds the record barren of any suggested reason for the modification to the suggested model for reorganization. The Court further wishes to couple with this the fact that an agreement was made by a Job Service administrator, Robert Polston, by his letter of December 12, 1979, and the terms of that letter has a common and ordinary meaning which does not support the opposing view of limited intent.

The Court further finds that the Polston Agreement could have been carried out by the supervisor exempting him under 22.06(2)

of the Administrative Code dealing with personnel. It becomes evident then that Mr. Kuter, the appellant, was not treated in the same fashion as all others who were similarly situated throughout the state and that his layoff can be deemed arbitrary and capricious.

Therefore. this Court reverses the decision of the Commission and remands this case with instructions to award to the petitioner that amount of salary which he would have received from the date of layoff to the date that he would have retired.

Dated this 1st day of October, 1986.

BY THE COURT,



Steven W. Weinke
Circuit Judge, Branch 4