



7.f.). During cross-examination of Mr. Erickson by appellant, he testified about the differences in procedures followed and directed by Ms. Gaulke and appellant, specifically regarding the posting of times (See Finding of Fact 7.b.). During re-direct examination of Mr. Erickson, he testified about the fact that grievances filed by crew members would often not be processed until the HSS 3 to which their crew was assigned was available (See Finding of Fact 7.a.). The remainder of the findings included in Finding of Fact 7. were based on the testimony of appellant and Ms. Gaulke. It should be noted at this point that Mr. Erickson's rationale for recommending the reorganization and resulting layoff was not that appellant and Ms. Gaulke did not work effectively together but rather that having two supervisors doing the same job resulted in conflict and confusion. The reorganization was not based on the incidents cited in Finding of Fact 7. per se but, rather, these incidents were offered by respondent as examples of situations of which Mr. Erickson was aware and which reinforced his long-held belief that the custodial unit would be more effectively and efficiently supervised by a single HSS 3. In view of the clear showing in the record that Mr. Erickson had long held this belief but had been prevented from implementing it because his supervisor had disagreed, it was not necessary for Mr. Erickson to present an exhaustive and lengthy list of examples of circumstances which supported his philosophy in this regard. The Commission concludes that respondent sustained its burden in its case in chief.

II. In regard to Finding of Fact 3, the Commission notes that it is not making a factual finding that Mr. Peck and/or Mr. Bender were alcoholics but rather that this was management's understanding and this understanding formed the basis for having a second HSS 3 position as a "backup."

III. The Commission would like to emphasize that this case does not involve the failure of respondent to deal with a clash of personalities or a clash of wills or performance deficiencies on the part of appellant or Ms. Gaulke. As stated in I., above, Mr. Erickson's rationale for recommending the reorganization and resulting layoff was not that appellant and Ms. Gaulke did not work effectively together but rather that having two supervisors doing the same job resulted in conflict and confusion. The reorganization was not based on the

incidents cited in Finding of Fact 7. per se but, rather, these incidents were offered by respondent as examples of situations of which Mr. Erickson was aware and which reinforced his long-held belief that the custodial unit would be more effectively and efficiently supervised by a single HSS 3.

IV. Although appellant has claimed that Mr. Erickson told him, prior to his layoff that, if his relationship with Ms. Gaulke didn't improve, his HSS 3 position would be eliminated, Mr. Erickson denied making this statement. Since this denial is consistent with the record's clear showing that the layoff was based on Mr. Erickson's long-held belief that having a single HSS 3 in charge of the custodial operation would be more efficient and effective and not on a clash of personalities or a clash of wills between appellant and Ms. Gaulke, the Commission finds that Mr. Erickson did not make the alleged statement to appellant prior to the layoff.


V. Appellant argues that his possible call-up for military duty in the Persian Gulf War could not have served as the basis for delaying the effective date of the layoff since respondent knew that such a call-up would have occurred, if at all, in early November. However, Mr. Erickson's handwritten notes (Respondent's Exhibit 9) indicate that "Toward end of November Steve said he might be called up for service with the Air National Guard in New York State to load planes hauling supplies to Saudi Arabia for about a month. This did not happen . . . " Mr. Erickson testified that he wrote this entry in the first part of December of 1990. This shows that Mr. Erickson was under the impression some time in November that appellant may be called up for military duty

but, in early December, was aware that this would not occur. This reinforces respondent's position that appellant's possible call-up for military duty was an issue in November of 1990 but not in January of 1991.

Dated: November 14, 1991      STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt/2

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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\* \* \* \* \*

STEPHEN KELLER

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM (Madison),

Respondent.

Case No. 91-0006-PC

\* \* \* \* \*

PROPOSED  
DECISION  
AND  
ORDER

Nature of the Case

This is an appeal of a layoff decision. A hearing was held on March 26 and 27 and May 1, 1991, before Laurie R. McCallum. The parties were permitted to file post-hearing briefs and the briefing schedule was completed on July 10, 1991.

Findings of Fact

1. At all times relevant to this matter, appellant has been employed in the Custodial Services Department of the Physical Plant Division of the University of Wisconsin-Madison: in 1982, appellant was appointed to fill a Building Maintenance Helper 2 position; in 1984, appellant was appointed to fill a Housekeeping Services Supervisor 2 position; and in November of 1989, appellant was appointed to fill a Housekeeping Services Supervisor 3 (HSS 3) position.
2. In November of 1989, the Physical Plant had two HSS 3 positions which had identical duties and responsibilities, i.e., appellant's position and the position held by Sharon Gaulke. These two HSS 3 positions supervised the custodial function for campus facilities. The organizational structure for supervising this function had taken several different forms over the years: from 1969 until the mid-1970's, one HSS 3 position carried out this function; at some subsequent point, four HSS 3 positions carried out this function; when two of these four positions became vacant, a decision was made not to fill them and a Mr. Peck and a Mr. Bender occupied the remaining two HSS 3 positions;

Mr. Peck was demoted in March of 1981 and Mr. Bender functioned as the sole HSS 3 until December of 1982 when Sharon Gaulke was appointed to the other HSS 3 position; Mr. Bender died in July of 1988 and Ms. Gaulke functioned as the sole HSS 3 until appellant was appointed to the other HSS 3 position in November of 1989. During the period Mr. Bender functioned as the sole HSS 3, i.e., March of 1981 until December of 1982, the only assistance he was provided was that of a Custodial Supervisor 2 who assisted him in writing a policies and procedures manual. During the period Ms. Gaulke functioned as the sole HSS 3, i.e., July of 1988 until November of 1989, she had the assistance of an HSS 2 during all or part of some weeks in taking work requests over the phone, ordering keys, sitting in on hiring interviews, and mailing reference forms to applicants for employment. Also during this period of time, the Physical Plant requested that the classification of Ms. Gaulke's position be elevated and that her position be assigned responsibility for supervising the other HSS 3 position. The Classified Personnel Office of the UW-Madison recommended that the Physical Plant not proceed with this request and it was withdrawn.

3. Frank Rice was the Director of the Physical Plant when the decision was made to have four HSS 3's. Mr. Rice made the decision not to fill two of the four HSS 3 positions when they became vacant. Mr. Rice did feel, during his entire tenure as the Director of the Physical Plant, that it was necessary to have at least two HSS 3's in order to provide "backup." This feeling was based at least in part on the fact that both Mr. Peck and Mr. Bender were alcoholics and their alcoholism interfered with their ability to carry out the duties and responsibilities of their HSS 3 positions.

4. Mr. Rice left his position as Director of the Physical Plant in December of 1989. At that time, Robert Lindsay became Acting Director of the Physical Plant. John Erickson had been the Supervisor of Operations for the Physical Plant and the supervisor of the HSS 3 positions since 1972 and had been employed by the Physical Plant since 1956. Mr. Erickson continued as the Supervisor of Operations under Mr. Lindsay. During his entire tenure as Supervisor of Operations, Mr. Erickson had been of the opinion that the custodial function should be supervised by one position, not two. Mr. Erickson first made this recommendation to Mr. Lindsay in September of 1990. Prior to Mr. Rice's hire of appellant for one of the HSS 3 positions, Mr. Erickson had recommended to Mr. Rice that this HSS 3 position be eliminated.

5. When appellant was first appointed to one of the two HSS 3 positions in November of 1989, Mr. Erickson sent the following memo to the Physical Plant's Custodial Supervisors:

Effective today, Steve Keller is Co-Director of the Custodial Service for the Division of Physical Plant along with Sharon Gaulke. This management team has equally shared responsibility for the administration of the custodial organization without any division of area of personnel. The decisions about which person will handle what matters will be made jointly made by Sharon and Steve. Address correspondence to Sharon/Steve or call them at 262-3081 or 262-3082.

Your continued support is greatly appreciated.

By this memo, Mr. Erickson intended to communicate that the Custodial Services Department would function as one unit subject to one set of rules and procedures.

6. When it became apparent, subsequent to November of 1989, that certain ministerial functions carried out by the two HSS 3 positions, such as signing leave slips, needed to be divided between Ms. Gaulke and appellant, certain crews were assigned to Ms. Gaulke and certain crews to appellant for this limited purpose. This division of assignments was not intended by Mr. Erickson to change the original plan that the Custodial Services Department function as a single unit.

7. Mr. Erickson concluded, during the summer of 1990, that the Custodial Services Department was not functioning as a single unit. He based this conclusion on the following observations:

- a. Grievances filed by crew members would not be processed unless the HSS 3 to which their crew was assigned was available. In other words, if appellant were on leave, grievances filed by a member of one of his crews would not be processed until appellant's return from leave.
- b. Appellant delegated the posting of times of crew members, recording of address changes, approval of vacation and sick leave requests, and the routing of work orders to the shops to the HSS 2's supervising the crews assigned to him but Ms. Gaulke did not.
- c. Ms. Gaulke and appellant could not agree on when to order buffing pads and how many to order so Mr. Erickson told them to each order pads for their own crews. Appellant was of the opinion that Ms. Gaulke wanted to place a large order for pads in order

to guarantee a large commission for certain sales people of the 3M Corporation before Christmas. Appellant also was of the opinion that large pad orders created the problem of locating enough room to store the pads on campus. Appellant shared these opinions with Mr. Erickson.

d. Appellant was of the opinion that Ms. Gaulke, due to her friendship with Mr. Tomlinson, a sales representative for S. C. Johnson, was giving a purchasing preference to S. C. Johnson in regard to certain cleaning products in violation of bidding requirements. Ms. Gaulke explained to Mr. Erickson that, as a result of the purchase of certain S. C. Johnson soap products, the soap dispensers were provided free of charge and Mr. Erickson approved the purchase. Mr. Tomlinson had taken Mr. Bender and Ms. Gaulke on a fishing trip some time during Mr. Bender's tenure as an HSS 3 and had taken Ms. Gaulke to lunch in the fall of 1990. Both the trip and the lunch were paid for by S. C. Johnson.

e. Appellant and Ms. Gaulke had frequent confrontations regarding the interactions and responsibilities of their respective crews.

f. Ms. Gaulke and appellant had told one or more of their subordinates assigned to their respective crews not to bring problems to the attention of the other HSS 3.

g. Appellant required certain of the second shift and third shift HSS 1's and HSS 2's responsible for overseeing the crews assigned to him to meet with building managers during the first shift. Ms. Gaulke did not require this since she felt that it resulted in a significant amount of compensatory time being earned by these HSS 1's and HSS 2's and was not necessary. Ms. Gaulke reported this to Mr. Erickson in the spring of 1990.

In Mr. Erickson's opinion, these incidents confirmed his feeling that having two HSS 3 positions necessarily results in the creation of two sets of rules and procedures.

8. Mr. Erickson discussed his concerns regarding having two HSS 3 positions and his proposal to eliminate one HSS 3 position with Donald Sprang, Personnel Manager for the Physical Plant, in October of 1990. Mr. Sprang shared Mr. Erickson's concerns and agreed with Mr. Erickson's proposal. Mr. Erickson met again with Mr. Lindsay on November 9, 1990, to discuss these concerns and his proposal to eliminate one of the two HSS 3 positions. Mr. Lindsay advised Mr. Erickson to review the possible ramifications of his proposal. Mr. Erickson met again with Mr. Sprang and Mr. Lindsay on



November 12, 1990, and Mr. Lindsay approved Mr. Erickson's proposal to eliminate one of the two HSS 3 positions on that date.

9. Mr. Erickson drafted a layoff plan and layoff notification letter on November 12, 1990. This layoff plan and layoff notification letter were submitted for approval by the Classified Personnel Office of the UW-Madison to the Administrator, Division of Merit Recruitment and Selection (DMRS), Department of Employment Relations, in a memo dated January 3, 1991. This layoff plan and layoff notification letter, with minor modifications, were approved by DMRS on January 9, 1991. The approved layoff plan stated as follows, in pertinent part:

The Physical Plant division, Custodial Department, currently has two Housekeeping Services Supervisors 3 (HSS 3) who serve as co-directors of the custodial operations under the general direction of John Erickson, Administrative Assistant 5-Supv. The Physical Plant believes the custodial operations would be improved by having only one person responsible for the Custodial Department thereby providing more consistency in the application and enforcement of policies and better administrative control over custodial programs. Therefore, they have recommended a reorganization which will result in the elimination of one Housekeeping Services Supervisor 3 position. There are presently two employees in the Housekeeping Services Supervisor 3 classification in this employing unit. They are:

Iva S. Gaulke, seniority date 8/14/77, sex F, ethnic code 5, not handicapped, 1.0 FTE.

Stephen L. Keller, seniority date 12/17/79, sex M, ethnic code 5, not handicapped, 1.0 FTE.

There are no limited term, provisional, original appointment probationary or project appointment employees occupying positions in the layoff group.

We have decided to lay off Stephen Keller as the least senior employee. Mr. Keller was previously a Housekeeping Services Supervisor 2 (HSS 2). We have no vacancies at the HSS 2 level but he would have the right to displace another employee at that level. If this option is selected, it would cause displacement from the HSS 2 to the HSS 1 level and could cause a further displacement from HSS 1 to Building Maintenance Helper 2 (BMH 2). Vacancies are available at the BMH 2 level. In the extreme case, three employees (including Mr. Keller) would be affected by elimination of the HSS 3 position.

Upon receipt of approval to implement the layoff written notification of the impending layoff will be given to the affected employe not less than 15 calendar days prior to the effective date. If Mr. Keller elects to displace another employe at the HSS 2 level, notice will be given to the other individual(s) concerned following the same procedures. Our tentative date for the initial layoff is January 26, 1991.

10. Appellant received notice of his layoff in a letter from respondent dated January 10, 1991. This letter mistakenly stated that the effective date of the layoff was February 1, 1990, instead of February 1, 1991. Appellant did not notice this discrepancy until some time after the layoff had been effected and he had filed the instant appeal. Mr. Sprang and Mr. Erickson met with appellant on January 11, 1991, to discuss his layoff. Appellant became very angry during this meeting. On January 14, 1991, appellant notified respondent that he wished to exercise his displacement rights to an HSS 2 position. This displacement was effected by respondent.

11. Mr. Erickson decided not to proceed with the layoff of appellant until January of 1991 to avoid spoiling the Christmas holiday for appellant, because he did not want to make such a change while Ms. Gaulke was on vacation during the last half of December of 1990, and because appellant had mentioned that he might be called up to active duty with the Air National Guard.

12. Appellant's layoff became effective on February 1, 1991. On January 11, 1991, Mr. Erickson notified those in the Custodial Department that, "effective immediately, Sharon Gaulke will be the sole Director of the Custodial Services Department." Also on January 11, 1991, Mr. Erickson approved Ms. Gaulke's request to change the locks on her desk and file cabinet located in the office she shared with appellant and requested that appellant turn in his master key. These actions were based on an incident which had occurred when Mr. Peck was demoted and all the keys had disappeared; on appellant's statement to Ms. Gaulke that he had taken some documents from the personnel file of the union steward who had alleged that he had sexually harassed her (See Finding of Fact 13, below); and on Ms. Gaulke's suspicion that certain documents had been removed from one of her files. The Physical Plant had a very active rumor mill which on occasion created fear and confusion among the members of the custodial crews.

13. On November 20, 1990, Mr. Erickson became aware that a female union steward who was employed on one of the Physical Plant's custodial

crews had reported to the UW-Madison's Affirmative Action Office that appellant had sexually harassed her. Mr. Erickson met with this steward on December 14, 1990, to discuss her allegations of sexual harassment against appellant. At appellant's request, Mr. Erickson met with this steward, her union representative, and appellant on December 28, 1990, to discuss the steward's allegations of sexual harassment. As the result of this meeting, Mr. Erickson directed that appellant have no contact with this union steward. Appellant grieved this directive on December 28, 1990.

14. Appellant completed his probationary period for the HSS 3 position on November 18, 1990. His three probationary performance evaluations indicate a generally satisfactory level of performance. In the category measuring his ability to get along with others, the first two evaluations indicate a rating of "average," the middle rating of five rating categories; and the third evaluation indicates a rating of "poor," the fourth highest rating of five rating categories.

15. Since the effective date of the layoff, Ms. Gaulke has not received assistance from subordinate employees in performing the duties and responsibilities of her HSS 3 position.

16. Appellant filed a timely appeal of his layoff with the Commission on January 15, 1991.

#### Conclusions of Law

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

2. The respondent has the burden to show that there was just cause for the subject layoff and that the subject layoff was not effected in retaliation for appellant having filed a grievance on December 28, 1990.

3. The respondent has sustained these burdens.

4. Respondent had just cause for the subject layoff and did not effect the subject layoff in retaliation against appellant for having filed a grievance on December 28, 1990.

#### Opinion

The issue to be decided in this appeal is:

Whether there was just cause for appellant's layoff.

Subissue: Whether the layoff was in retaliation for filing a grievance on December 28, 1990.

The standard to be followed by the Commission in reviewing a layoff decision was enunciated by the Wisconsin Supreme Court in Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 237 N.W. 2d 183 (1976) as follows:

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.

\* \* \*

Arbitrary and capricious action on the part of an administrative agency occurs when it can be said that said action is unreasonable or does not have a rational basis . . . and [is] not the result of the "winnowing and sifting" process.

Compliance with administrative and statutory guidelines

Section 230.34(2), Stats., provides as follows, in pertinent part:

Employees with permanent status in class in permanent . . . 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 . . .

Section ER-Pers 22.05, Wis. Adm. Code, provides as follows, in pertinent part:

Whenever it becomes necessary for an agency to lay off employees, the appointing authority shall prepare a comprehensive written plan for layoff following the procedure specified in this chapter and submitted to the administrator for review and approval prior to implementation.

Section ER-Pers 22.07, Wis. Adm. Code, provides as follows, in pertinent part:

Any employee affected by layoff shall be given written notice of the action, not less than 15 calendar days prior to its effective date. . . .

Appellant argues that the subject layoff plan was not "comprehensive" within the meaning of §ER-Pers 22.05, Wis. Adm. Code. Although it is difficult to determine the basis for this argument, it could be inferred from appellant's post-hearing brief that appellant is of the opinion that the rationale for the layoff enunciated in the subject layoff plan is not sufficiently detailed. This rationale states, "The Physical Plant believes that custodial operations would be improved by having only one person responsible for the Custodial Department thereby providing more consistency in the application and enforcement of policies and better administrative control over custodial programs. Therefore, they have recommended a reorganization which will result in the elimination of one Housekeeping Services Supervisor 3 position." This rationale, although brief, appears to accurately and completely represent management's reasons for and goals of the subject organizational change. Appellant has failed to specify what details are missing from the stated rationale and what authority exists for requiring these additional details. The Commission concludes on the foregoing basis that appellant's argument in this regard is not compelling.

Appellant also argues that the elimination of a single position does not qualify as a "material change in duties or organization" within the meaning of §230.34(2), Stats., or as a "reorganization" as that term was used in the subject layoff plan. Appellant appears to argue that this language requires more sweeping structural changes in the employing unit. Again, appellant cites no authority for this argument and the Commission finds none. The language of the referenced statute does not specify the nature or extent of the change in duties or organization required to sustain a layoff decision.

Appellant also argues that the notice requirement of §ER-Pers 22.07, Wis. Adm. Code, was violated by respondent due to the reference in the layoff notice to an effective date of February 1, 1990, instead of February 1, 1991. It seems apparent that the appellant did not even notice this discrepancy until after he filed his appeal with the Commission and the appeal was heard. It is clear from the record that the appellant clearly understood that the effective date of his layoff was February 1, 1991, and that he was notified in writing of his impending layoff more than 15 days prior to its effective date. The Commission concludes that the layoff notice did not violate §ER-Pers 22.07, Wis. Adm. Code.

Just cause

Appellant argues that respondent did not have a rational basis for its decision to eliminate appellant's position. The record indicates that Mr. Erickson had held the opinion for many years that the custodial operation should be supervised by one position but he was unable to put his opinion into practice due to resistance from his superior Frank Rice. Obviously, Mr. Erickson's opinion was not formed after appellant was appointed to the HSS 3 position and could not have been a reaction to appellant's appointment to or performance in this HSS 3 position. Mr. Erickson's opinion was based on his perception that different individuals would necessarily perform a certain function in different ways and such differences would create conflict for these individuals and confusion for their subordinates. Appellant contends that respondent failed to show that Mr. Erickson's perception in this regard was borne out by his experience with Ms. Gaulke and appellant in the two HSS 3 positions but the record indicates otherwise. Specifically, Finding of Fact 7 details the instances of conflict and confusion observed by Mr. Erickson. The record also reflects that Mr. Erickson did not blame either appellant alone or Ms. Gaulke alone for these instances but attributed the instances of conflict and confusion to the organizational structure in which the custodial function was being carried out, not to the individuals carrying out the custodial function. The Commission concludes that respondent has presented a rational basis for its decision to eliminate appellant's position, i.e., the respondent has shown a factual basis for its conclusion that there was conflict and confusion resulting from differences between the two HSS 3's and respondent has shown that the elimination of one of the two HSS 3 positions would be an obvious way to end these differences and achieve uniformity.

Appellant argues that the "reorganization" was a sham and that no bona fide reorganization took place within the Physical Plant. Appellant again implies by this argument that the elimination of a single position does not constitute a reorganization. As concluded above, appellant's argument in this regard is not compelling. From a factual standpoint, the record clearly shows that appellant's position was eliminated, the duties and responsibilities of appellant's position reassigned to Ms. Gaulke's HSS 3 position, and no other position has been created to which the duties and responsibilities of appellant's HSS 3 position have been assigned. This change in organizational

structure and reassignment of duties demonstrates that a reorganization actually did take place within the Physical Plant.

Appellant also argues that the fact that there was enough work for two HSS 3 positions demonstrates that the intent of the "reorganization" was not to effect a needed organizational change but to demote appellant. It is not clear from the record, however, that there was enough HSS 3-level work in the Custodial Services Department to justify having two HSS 3 positions. At various times, there were as many as four HSS 3 positions and as few as one HSS 3 position supervising the custodial operation. Appellant, by his own actions, demonstrated this by delegating certain more routine duties to subordinates. Appellant also asks the Commission to conclude that the better management decision would have been to continue with two HSS 3 positions. This would appear to require a leap of faith since the only policy basis offered for continuing with two HSS 3 positions was to assure a "backup" in the event one of the two HSS 3's was incapacitated. However, it is not necessary for the Commission to reach this question. By this argument, the appellant is essentially asking the Commission to review the policy decisions underlying the reorganization and to decide which policy decisions should have been made by respondent, i.e., which duties should have been assigned to which positions. This is not a proper scope of inquiry for the Commission in reviewing a layoff decision. Oakley v. Comm. of Securities, Case No. 78-66-PC (4/19/79). The assignment of duties is a management prerogative. Respondent need not show that the management decision involved was the best possible management decision which could have been made under the circumstances but only that the decision that was made had a rational basis. Newberry and Eft v. DHSS, Case Nos. 82-98, 100-PC (8/17/83). As the Commission concluded above, respondent has demonstrated a rational basis for its actions in regard to the subject layoff.

Appellant argues further that the earlier proposal to change the classification of Ms. Gaulke's position (See Finding of Fact 2, above) and to assign to her position the responsibility for supervising the remaining HSS 3 position lends credence to his argument that there was enough HSS 3-level work or higher supervisory-level work to justify continuing the two HSS 3 positions. However, it appears as though the earlier proposal could also be used to reinforce respondent's contention that management was of the opinion that a single position should be in charge of supervising the custodial operation.

### Retaliation

Appellant alleges that the subject layoff was effected by respondent in retaliation for appellant's filing of a grievance on December 28, 1990. This argument ignores, however, the chronology of events set forth in the record. The record clearly shows that layoff discussions between Mr. Erickson and Mr. Lindsay had taken place during September of 1990, and that Mr. Lindsay had given his approval for the subject layoff action and the layoff plan had actually been prepared by November 12, 1990. The record also clearly shows that Mr. Erickson did not become aware of the union steward's allegations of sexual harassment against appellant until November 20, 1990, and could not have become aware that appellant had filed a grievance until December 28, 1990, the date the grievance was filed. There is no evidence in the record from which to conclude that Mr. Sprang or Mr. Lindsay or anyone else involved in the layoff decision knew of the allegations of sexual harassment prior to November 20, 1990.

Appellant argues that respondent's delay in seeking approval of its layoff plan from DMRS places the above chronology into question. Not only would this require the Commission to ignore the corroborated testimony and the dated exhibits, some dated by computer, that establish the chronology in the hearing record, but it would also require the Commission to conclude that the reasons offered by respondent for the delay were not credible. The primary reasons offered to explain the delay related to respondent's reluctance to make the subject change during the Christmas holiday season and during the absence of the employe who would be assuming responsibility for the duties and responsibilities of the eliminated position. These reasons, on their face, do not seem unusual under the circumstances nor clearly inconsistent with usual business practices. The Commission does not find the appellant's argument in this regard compelling.

Appellant also argues that respondent's failure to wait until the effective date of the layoff to announce the reorganization and respondent's approval of Ms. Gaulke's request to change the locks on her desk and file cabinet demonstrate a retaliatory animus on respondent's part. However, through his own testimony, appellant showed what an active rumor mill the Physical Plant is and how such rumors produce fear and confusion. Under those



circumstances, it does not appear that respondent did not have a rational basis for announcing and effecting the reorganization as soon as possible. In addition, the record shows that the loss or destruction of keys had been a tool used by disgruntled custodial employees in reaction to an adverse management decision. The record shows that management of the Physical Plant did not want to experience another loss or destruction of keys and that Mr. Erickson and Mr. Sprang, having observed appellant's anger at the January 11, 1991, meeting, were aware that he was disgruntled with the layoff decision. In addition, appellant does not deny that he told Ms. Gaulke that he had taken a document from the personnel file of the union steward who had alleged that he had sexually harassed her in order to give it to his attorney. In view of appellant's anger and in view of his previous actions, it does not appear as though respondent lacked a rational basis for granting Ms. Gaulke's request to change the locks on her desk and file cabinet. The Commission concludes that appellant's arguments in this regard are not compelling and that the subject layoff was not effected in retaliation against appellant for having filed the December 29, 1990, grievance.

Order

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

Dated: \_\_\_\_\_, 1991      STATE PERSONNEL COMMISSION

\_\_\_\_\_  
LAURIE R. McCALLUM, Chairperson

LRM/lrm/gdt/2

\_\_\_\_\_  
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