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ERIK T. THORESEN,

Appellant,

v.

President, UNIVERSITY OF
WISCONSIN SYSTEM (Madison),

Respondent.

Case No. 93-0202-PC

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HOWARD BEHM,

Appellant,

v.

President, UNIVERSITY OF
WISCONSIN SYSTEM (Madison),

Respondent.

Case No. 93-0212-PC

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RULING ON
MOTION
FOR CONSOLIDATION

At a prehearing conference on November 24, 1993 for *Thoresen v. UW-Madison*, Case No. 93-0202-PC, respondent requested that that case be consolidated for hearing purposes with *Behm v UW-Madison*, Case No. 93-0212-PC. The *Behm* case is scheduled for hearing at the Personnel Commission on January 24 and 25, 1994. The *Thoresen* case is scheduled for hearing at the Personnel Commission on April 19, 1994. In a conference report generated from the November 24th prehearing conference, the three parties were advised to file their arguments with respect to whether the cases should or should not be consolidated. The appellants filed arguments against consolidation and respondent filed arguments in favor of consolidation.

FACTS

1. Erik T. Thoresen was employed by respondent's University of Wisconsin Hospital and Clinics (UWHC) in its Plant Engineering Department as

a Mechanical Engineering Supervisor 2 and Howard Behm was employed by UWHC in its Plant Engineering Department as an Electronics Supervisor 4.

2. In a September 24, 1993 document entitled "University of Wisconsin Hospital and Clinics Layoff Plan," respondent identified the appellants along with a number of other individuals for lay off.

3. In separate letters dated October 6, 1993, Thoresen and Behm each were laid off by UWHC effective October 29, 1993. Their layoff letters were identical except for their names, position classifications, pay ranges, and except that Behm was offered another position. Each letter stated, in part:

The reason for this layoff is that your position will be eliminated as a necessary part of the Plant Engineering Department's budget reductions in accordance with the Hospital's cost containment initiative.

4. The issue for hearing in each case before the Personnel Commission asks whether there was just cause for the layoff.

DISCUSSION

The Personnel Commission administrative rule on consolidation states:

The commission may, on its own motion, consolidate 2 or more cases involving the same parties or one or more issues arising substantially out of the same circumstances or closely related circumstances. Consolidation may be for investigation, hearing, decision or a combination thereof. Nothing in this section limits the right of a party to make a motion to consolidate or to object to the commission's motion.

§PC1.10, Wis. Adm. Code.

Both Thoresen and Behm's cases share parties, issues, and circumstances. With regard to parties, although there are different appellants, both cases have the same respondent. The respondent carries the burden of proof in a layoff case and so for both of these cases, this respondent will present its case first at the hearing. Pursuant to *Weaver v Wis Pers Bd.*, 71 Wis.2d 46,52, 237 N.W.2d 183 (1975), the employing agency sustains its burden of proof when it shows it has acted in accordance with administrative and statutory guidelines and the exercise of that authority has not been arbitrary and capricious. With regard to issues, both cases are slated to litigate the same issue, i.e., whether respondent had just cause for each of the appellant's layoffs. Each appellant was employed in the same department and his job loss was the result of the same layoff plan. Thus, their circumstances appear to be closely related. According to respondent, it anticipates calling the same witnesses in each case to establish just cause. For all of these reasons, these cases appear to meet the requirements for consolidation.

Appellant Behm argued that he and Thoresen were in different layoff groups and therefore their cases should be heard separately. This argument does not undermine the conclusion that the appeals arise out of "closely related circumstances." The respondent must establish just cause with respect to each of the appellants and this will necessarily include why each appellant was chosen for layoff (thus subsuming the explanation for the different layoff groups).

Appellant Thoresen argued that his grounds for appeal are different from those of Behm. Thoresen believes his layoff was for disciplinary rather than economic reasons and he does not wish to interfere with Behm's presentation of his case. Again, appellant's separate theory of his case should not be impeded by consolidation. Both appellants will be provided a full opportunity to offer evidence tending to support their individual case.

CONCLUSION

Thoresen v. UW-Madison, Case No. 93-0202-PC and *Behm v. UW-Madison*, Case No. 93-0212-PC are consolidated for hearing on January 24 and 25, 1994. The separate hearing date of April 19, 1994 scheduled for the *Thoresen* case is cancelled.

Dated: January 6, 1994

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STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner