

submitted to the Division of Corrections in Madison, Wisconsin a layoff plan scheduled for implementation on October 28, 1972. The proposed plan provided for the Appellant's layoff. It provided:

" One Teacher (Music) position will be vacated. The following individual will be laid off.

<u>Name</u>	<u>Classification</u>	<u>Seniority Date</u>
Thomas Eisenhut	Teacher 6 (Music)	11-22-67 "

Subsequently, both the Respondent and the Director of the State Bureau of Personnel approved the plan. However, when the Respondent submitted the proposed plan to the Director he mentioned that implementation might "be delayed 14 days to November 11." On November 14, 1972, the Appellant was notified in writing that he was laid off effective January 6, 1973.

On November 17, 1972, Appellant filed a timely appeal. The matter was heard by a Board panel consisting of Chairman Ahrens, and former Member Brecher and Member Steininger. Since then Mr. Brecher has been replaced by Member Wilson. Since only two members of the Board heard live testimony and they do not constitute a quorum of the Board, this matter has been considered by a quorum of the Board through a reading of the transcripts and the entire record.

We find the foregoing facts to be the background facts in the matter. Other findings of fact will be made in connection with our discussion of the timing of Appellant's layoff and his job classification and option.

On November 1, 1972, the Layoff Rules Changed

The rules concerning layoffs were the subject of a significant change effective November 1, 1972. Prior to that date, the rule required the appointing authority in an employing unit to lay off by classification. Pers. 22.04(1), Wis. Adm. Code, eff. 10-1-71. Under such prior rule, an employee with a Teacher 6 classification would have a right to retention in that class in

the face of a layoff, conditioned upon first his seniority and, then if he was placed in the layoff group, upon his efficiency relative to other employees in the group. Mayes v. Weaver, Wis. Pers. Bd., Case No. 73-112, 12-20-73. As amongst teachers, the basic classification scheme was one wherein they were classified as Teacher 1 through 6. Krantz v. Schmidt, Wis. Pers. Bd., Case No. 8, 7-3-74. After November 1, 1972, the layoff rules were changed to permit layoff by classification "or options within the class." Pers 22.03(1), Wis. Adm. Code, eff. 11-1-72. The term option is defined as a position with special character and qualifications which are necessary to be used in recruitment, examination, certification, or layoff. Pers. 2.03(2), Wis. Adm. Code, eff. 11-1-72. Within any particular Teacher class, be it Teacher 1, 2 or 6, options for recruitment purposes existed in terms of the subject matter to be taught which were special qualifications for the position. Hence such options were available to the Respondent for layoff purposes. This means that, whereas before November 1, 1972, the State was limited to effecting layoffs by class, after that date, it might effect them by class and option within the class.

Appellant Was Laid Off After November 1, 1972

Appellant contends that the decision to lay him off was made before November 1, 1972. As early as the Spring of 1972, Donald W. Gudmanson, the School Principal started planning for cutbacks in some of the School's academic programs to meet the decline in student population. The music program was identified as a program area in which a layoff would be effected. In August 1972, Mr. Gudmanson advised the Appellant of impending layoffs and that it was inadvisable for him to proceed to build a house near the School as he had planned. On September 6, the Superintendent submitted a layoff plan which by October 5 had been approved by both the Respondent personally and the

Director of the Bureau of Personnel. While all of this planning had taken place over a matter of months, the Appellant had not yet been laid off. Indeed, the School's population might have increased, the music program continued and the Appellant's planned notification that he was laid off cancelled. Personnel actions affecting employees take place when the employee is notified of the action, even though it is to be effective sometime in the future. On the other hand, the personnel action does not take place at the moment the Employer decides on a course of action but does not in some manner formally advise the employee of the action. On November 14, 1972, after the effective date of the layoff rule change and perhaps so that the layoff would be made under the new rules, Respondent notified the Appellant he was laid off and that the effective date of his layoff was January 6, 1973. We find that the Respondent laid off the Appellant on November 14, 1972.

Appellant Was Laid Off According to
An "Option" Within His Class

The Appellant was classified as a Teacher 6, which is a civil service classification. The Respondent in the layoff plan prepared by the Superintendent designated the Appellant's class and option as Teacher 6 (Music). Since teachers were recruited for vacancies by specifying that they must either hold certification to teach a particular subject or be eligible to be granted such certificate, the subject matter designation is an "option" within the class. Moreover, the layoff group in the Teacher 6 (Music) class and option consisted of only one employee, the Appellant. Therefore, the Appellant's seniority and efficiency became irrelevant under the new rules. We find that the Appellant was laid off by class and option within the class.

Conclusion

We conclude that the correct procedure was used in making the layoff, that the correct teacher was laid off under the applicable rules, and that the layoff was for just cause.

ORDER

IT IS ORDERED that the layoff of the Appellant is sustained.

Dated Oct 10, 1974

STATE PERSONNEL BOARD

BY

William Ahrens

William Ahrens, Chairman