

STATE OF WISCONSIN

STATE PERSONNEL BOARD

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JAMES NOWASKEY,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 76-253

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OFFICIAL

ORDER

Before: James R. Morgan and Calvin Hessert with Dana Warren opposing.

ORDER

We hereby adopt the Findings of Fact of the hearing examiner with the following additions:

25. Appellant received a merit increase in each of the four years in question, that is, 1973 through 1976.

26. Appellant's performance evaluations were satisfactory or better during the years in question.

We adopt paragraphs 1 and 2 of the Conclusions of Law in the Proposed Opinion and Order but reject paragraphs 3 and 4 and replace them as follows:

- 3. Respondent has failed to sustain his burden of proof.
- 4. The termination of appellant was not for just cause.

Further, we adopt the portions of the "Opinion" labelled Sufficiency of the Notice and Length of Hearing but reject the portion labelled Just Cause and replace it with the following:

JUST CAUSE

We conclude that respondent by giving appellant merit increases through the period in question, respondent effectively approved appellant's performance.

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In fact, the formal performance evaluations which are in the record indicate a general satisfaction with appellant's work.

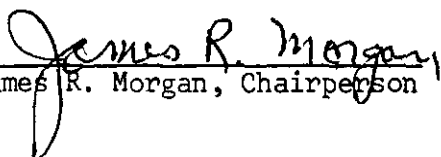
The question then becomes whether there exists just cause for the termination. Based upon appellant's work record from July, 1976 through November, 1976, we conclude there was not. Appellant did receive one written reprimand during that period. The question of the 15-passenger van also really came to light after July 1, 1976. However, we conclude that neither of these taken together or singly are sufficient to meet the standard of just cause. Therefore, we conclude that the termination was not for just cause and appellant should be reinstated.

Finally, we reject the Order in the Proposed Opinion and Order and substitute the following in its place:

IT IS HEREBY ORDERED that respondent's action is rejected and appellant is fully reinstated.

Dated: June 16, 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson

STATE OF WISCONSIN

STATE PERSONNEL BOARD

* * * * *

JAMES NOWASKEY,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 76-253

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PROPOSED
OPINION AND ORDER

Before:

NATURE OF THE CASE

This is an appeal from the termination of a permanent employe pursuant to s. 16.05(1)(e), Wis. Stats., (1975).

FINDINGS OF FACTS

1. Appellant began working for the University of Wisconsin - Stout in 1969 as an Instructor in the Department of Hotel and Restaurant Management and as an assistant football coach.

2. In January, 1971 appellant was appointed to a classified civil service position which was classified as Administrative Assistant 5 and which had a working title of Director of Administrative Services. The working title was changed to Director of General Services in July, 1971. His position was reclassified to Administrative Officer 1 in 1973. Initially appellant reported to Edward Shoepf, Vice President of Administrative Affairs. As of July 1, 1971 he reported to Shoepf's replacement Wesley Sommers, Assistant Chancellor for Administrative Services.

3. Appellant's position was reclassified between January, 1971 and April, 1973 to Educational Services Assistant 4. Effective April 1, 1973, it was reclassified

to Administrative Officer 1.

4. As the position was reclassified, the number of departments and activities over which it had the responsibility and management and administration rose from eleven to sixteen. The position description for appellant's position which was dated October, 1972 and which is attached as Appendix A reflects fairly accurately appellant's duties and responsibilities up until the date of his termination. There were some changes as a result of certain departments being removed from under him. These departments were: Duplicating Services (September, 1974), Campus Security (September, 1975), Parking Lots and Services (September, 1975), Equipment Inventory and Control (September, 1976), and Textbook Services (January, 1976).

5. In June, 1975 most of General Services personnel and equipment were moved into a new building. The move and the new building involved a great deal of planning on the part of the appellant over several years since before June, 1975 personnel and equipment were dispersed over the entire campus.

6. Appellant was advised on November 22, 1976, by memorandum of that date that he was being terminated immediately as Director of General Services. He was further advised that he would be responsible for "Special Projects."

7. By letter dated November 23, 1976, appellant was advised that he was being terminated from employment at U.W. - Stout, effective December 3, 1976. The letter set forth the following as reasons for the termination:¹

1. In an Interim Opinion and Order, dated February 20, 1978, deciding appellant's motion for immediate temporary reinstatement, we passed on the issue of the sufficiency of the letter of termination. We held that all the numbered paragraphs except 6 met the requirements of due process or Beauchaine. We herewith reaffirm our decision and by incorporate the Interim Opinion and Order.

1. You have overbudgeted for your area of responsibility for three successive years and underestimated income from chargebacks. Despite my expressed concerns, you have continued in this regard. The lack of careful analysis and budgeting constitutes serious budgetary negligence. Budget development and expenditures are critical to your position since you direct one of the largest departments at the University in terms of money and personnel. I have lost confidence in this area of your performance and your action violates work rules I.1. and I.7.
2. You were instructed to provide me with a first quarter, 1976-77, financial analysis for your operations by mid-October. As of this writing, you have not presented the analysis. This is a failure to carry out a task which I deem important for our mutual financial analysis of your department. Your failure to respond constitutes violation of work rule I.1 and I.5.
3. During this period, you had deficits in the Duplicating Center; a continuing large surplus of funds in the Central Stores operation and Textbook Library. In spite of conversations with me, you failed to meet our objectives to operate nearer to a break-even point providing the necessary services and materials to the University within its financial resources. In this, you failed to carry out assignments and have caused me to view you as ineffective in financial management. Further, such negligence violates work rule I.7.
4. During the past two years, you have been instructed to establish a Central Receiving system, an effective maintenance scheduling and supervision system and an effective Equipment Inventory and Control System. You have failed to fulfill these specifically assigned tasks and have violated work rules I.1, I.5, and I.7.
5. You have continued to use foul and abusive language after having been advised to cease such action. This has occurred most recently in the clerical work area. I find these support employes with whom you work closely on a daily basis feel degraded and have lost respect for you as a leader. This has resulted in low morale and turnover of valuable employes. In addition, it violates work rule IV.2 and IV.10.
6. You have issued intolerable instructions to clerical personnel including: to "hassle" a faculty member about a lost key; to not use the required procedure for use of the paging system; to keep security personnel waiting for service; and, instructing employes to lie if asked about the new van by stating they knew nothing about it.

Low morale and turnover have occurred with your subordinates. Such instructions, as a way of handling problems in services which affect the entire University community, have made you ineffective with clients, peers, and other administrators, and is a practice which I find unacceptable. For any classified employe, these actions are a violation of work rule IV.10

7. In May, 1975, you procured an automobile air conditioner and had it installed in an assigned fleet vehicle. Your interpretation of a letter as an approval of purchase turned out to be incorrect and caused considerable embarrassment to both myself and the Chancellor. You failed to exercise good judgment and cause myself and the Chancellor to think of you as ineffective to make even minor and routine judgments about what action to take. This lack of judgment has resulted in a violation of work rule IV.10.
8. You purchased a 15-passenger van for use by the Fleet Vehicle operation, utilizing 1975-76 year end funds without adhering to my instructions concerning appropriate arrangements. I consider your action as a failure to carry out the objectives I established based on our meeting. For any employe, this represents insubordination under work rule I.1.

8. Appellant received two written reprimands during the course of his employment as Director of General Services. The first was for his failure to follow proper procedure for the procurement of University property for his personnel use. The incident occurred before July 1, 1973. The reprimand was issued May 27, 1975. (Respondent's Exhibit No. 27). The second reprimand which was issued August 3, 1976, was for the use of foul and abusive language in a public place. (Appellant's Exhibit No. 55). Appellant did not grieve these reprimands. Appellant was not otherwise disciplined for his conduct or performance during the course of his employment as Director of General Services.

9. Apparently at the time appellant was appointed Director, General Services budget was in a deficit position. Appellant was advised that it was to be his responsibility to correct that situation.

10. Appellant did meet his general mandate of operating General Services as a whole in a nondeficit position. However, for the three fiscal years in question, he overbudgeted, that is, prepared a budget which called for more funds than he used in the operation of General Services. Although he was advised by Sommers that this practice of overbudgeting should cease, it continued. Funds were not lost to the university since they or positions represented by them were transferred out of General Services and used by other departments.

11. Appellant did not establish a clear written policy on chargebacks thereby creating budgetary difficulties for the user department as well as for himself. He was unable to effectively estimate the amount of funds generated by chargebacks. These funds exceeded the budgeted amount by over 100% during the years in question.

12. Appellant did not file in October, 1976, with Sommers a financial analysis of the budget for the first quarter, 1976-77 as requested by Sommers nor as promised by himself.

13. Duplicating Services, Textbook Services and part of Central Stores budget were auxiliary operations that is, funds generated from the fees charged to the users of the services, were to equal the total cost of operation on both a yearly and an overall basis. Included in the user fees would be an amount referred to as deferred maintenance. For example, in order to budget for the purchase of new equipment or the replacement or repair of old equipment, guidelines had been set up to add an amount to the fees so that money was available to take whatever action was necessary when it was necessary.

14. Appellant inherited a net operating loss when he took over control of the duplicating center in January, 1971. Again it was his responsibility to

balance the budget. By September, 1974, when the center was removed from his authority there was still a large deficit.

15. Appellant failed to reach a balanced budget in Textbook Services which was under his control. There was a large surplus at the time appellant became Director of General Services. Such surplus was not significantly decreased while he was Director.

16. Appellant was also in charge of Central Stores which was partially an auxiliary operation and partially funded under General Purpose Revenue funds. Again with reference to the auxiliary operations portion of the budget for central stores, appellant failed to balance the budget so that there was an excessively high inventory value as compared to the cash deficit for the three years in question.

17. Appellant had been advised by Sommers that his responsibility included the balancing of the budgets for the auxiliary operations under his control.

18. In June, 1973, appellant did receive general instructions from Sommers to establish a central receiving system. There were no time limits on the development of such a system. Appellant had taken some initial steps toward the establishment of one but had not completed the project.

19. In October, 1973, appellant received a directive from Sommers to establish an equipment inventory and control system. The directive set forth a specific time frame with completion of the project in April, 1974. Appellant responded immediately that the project would be too time consuming and overwhelming to be completed by that time even if a full time effort were made. A limited term employe was hired to develop a computerized inventory and control system which he did. It was not implemented because the manual aspect was not completed. The project was removed from under appellant in September, 1975. There was in

existence already an inventory system which apparently sufficed the insurance needs of U.W. - Stout.

20. Appellant as Director of General Services had the responsibility for developing an effective maintenance scheduling and supervision system. It is clear from the record that appellant had difficulty in accomplishing this because of his personal relationships with the craftworker supervisor and maintenance staff. However, despite the personality differences it appears clear that maintenance work was performed at a satisfactory level both in time of completion and adequacy of the finished job.

21. Appellant had a brusque manner of speaking and of handling people. Also within the perceptions of those who worked with him (supervisors, subordinates and peers) he easily became angry and his anger was clearly reflected in his speech and actions.

22. Appellant used frequent profanity in his speech. However, the profanity was not directed at any personnel under his direct or indirect supervision except in one incident on the record. In that situation the clerical worker brought it to appellant's attention and he ceased using the phrase in referring to her. Other than the above situation and one other which resulted in a grievance being filed, appellant was never advised by any subordinates that they found his use of profanity offensive.

23. In May, 1975, appellant did procure a new automobile air conditioning unit for installation in a fleet vehicle used primarily by the Chancellor of U.W. Stout. Before doing so, appellant conferred with Madison personnel regarding the appropriateness of such action. Based upon conversations and memoranda he bought

the unit and had it installed. Afterwards it was determined that appellant acted incorrectly in attempting to use university funds to buy the unit.

U.W. - Stout Foundation funds (private) were used to pay for the unit and the installation.

24. Appellant placed an order for a 15 passenger van without determining whether a proper funding source was approved. He had been advised by Sommers that the latter determination was a prerequisite to placing the order.

CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction to hear and decide this appeal under S. 16.05(1)(e), Wis. Stats., (1975).

2. In appeals from the termination of employment of a permanent employe the respondent has the burden of proving to a reasonable certainty by the greater weight of the credible evidence that such termination was for just cause. Section 16.28(1)(a), Wis. Stats., (1975); Reinke v. Personnel Board, 53 Wis. 2d 123 (1971).

3. Respondent has sustained his burden.

4. The termination of appellant was for just cause. LaRose v. Weaver, Case No. 73-114 (7/3/74); Faulkner v. Weaver, Case No. 575 (7/12/73); Karetski v. Hill, Case No. 10 (12/13/74); Young v. Schmidt, Case No. 567 (5/11/73); Laufenberg v. Weaver, Case No. 553 (3/1/73); Rodey v. Weaver, Case No. 570 (5/11/73); Marlett v. Estowski, Case No. 422 (10/8/71).

OPINION
SUFFICIENCY OF THE NOTICE

In an Interim Opinion and Order dated February 20, 1978, we passed on the sufficiency of the letter termination dated November 23, 1976. We herein incorporate by reference that Opinion and Order.

Appellant argues that a memorandum dated November 22, 1976, (Respondent's Exhibit No. 152) was a notice of termination and that it fails to meet either the Beauchaine v. Schmidt, Case No. 73-38 (10/18/73), "5-W's" test or the requirements of due process. We agree that the memorandum effectively removed appellant from his position as Director of General Services but not from employment at U.W. - Stout and that as a disciplinary notice it failed both the Beauchaine and due process tests. However, we conclude that any insufficiency was remedied by the letter of November 23, 1976, (Respondent's Exhibit No. 1) which was issued the next day and which we have found was sufficient notice of appellant's termination from his position as Director of General Services and from any employment at U.W. - Stout. (See Interim Opinion and Order, Case No. 76-253 (2/20/78)

LENGTH OF HEARING

We agree with appellant that the hearing in this case was excessively long. There were 35 days of hearing during which over 50 witnesses were called and over 350 exhibits were marked (some were duplicates). We wish to express concern that this hearing took longer than it should have both in actual number of days and the span of months needed in order to schedule the hearing. We attribute most of the fault for the length of the hearing to respondent since he should have been aware of the magnitude of his case from the time of the prehearing and taken steps to present his case as consisely as possible as well as to advise this

Board so that sufficient time could have been scheduled. While we conclude that the responsibility was primarily respondent's, we do not conclude that appellant was denied due process by the protracted length of this hearing. We recognize that the charges against appellant generally involved allegations of his course of conduct over a three year period of time as an administrator of an important aspect of the total operation of U.W. - Stout.

JUST CAUSE

As indicated above we conclude that appellant's termination was for just cause. Appellant's position was a very high level, important civil service position at U.W. - Stout. The range of his duties and the scope of his authority were extremely broad.

The record is clear that appellant had difficulty in balancing the budgets of the various units under his authority whether the accounts were funded by General Purpose Revenues or they were auxiliary operations. It is clear from the record that appellant did not cause the budgetary problems initially. He inherited them when he became Director of General Services. However, he was unable to balance the various budgets within the time they were under his control. The mere fact that the actual objective of a balanced budget was not reached is not as important as the fact that substantial improvement was not made. In one situation, the overall General Services budget went from a substantial deficit position to a substantial surplus position. In that situation appellant remedied one problem only to create another. There is evidence that the surplus in General Services budgets for the three fiscal years in question was not lost because a transfer of funds for use by other departments occurred. Appellant was counselled and advised by his supervisor on many occasions that all budgets for

which he was responsible were to be balanced according to university and state policy. He failed to do so despite the availability of apparently ready assistance through the controller's and his supervisor's offices.

We do not conclude that the failure of appellant to submit the first quarter report for fiscal year 1976-1977 is sufficient ground for just cause. We recognize that a directive was issued, that a promise to meet that directive was made and that the promise was not kept. However, under the circumstances and facts established at the hearing we conclude it was not unreasonable for appellant to fail to file the report. Appellant received the necessary documentation for preparation of the report on October 20, 1976. On October 26, he met with his supervisor who for the first time confronted him with the possibility of disciplinary action and the actuality of an investigation of his performance conduct being conducted.

Appellant did fail to establish a Central Receiving System and an effective Equipment Inventory and Control System despite directives from his supervisor. Appellant recognized the importance of the implementation of these systems but failed to institute them. We understand that implementation of the system required considerable time and effort and that appellant alone could not do them. However, minimally he had available to him surplus funds and positions which could have been used toward implementing the systems.

We conclude that appellant had instituted a Maintenance Scheduling and Supervision System. The record is replete with evidence that the maintenance and crafts personnel were confused by the system. However, we conclude that on the whole the system was effective in producing adequate maintenance of the buildings and grounds as well as providing personnel and time to do a reasonable number of the special projects requested by the various departments.

Appellant's personality and supervisory techniques were abrasive. He used profanity liberally. By themselves these factors are not sufficient for just cause in the instant appeal. While there is ample evidence that the personnel who worked for appellant either under his direct supervision or one supervisor removed disliked him personally, there was really no evidence that they were not able to effectively work and accomplish their duties.

In May, 1975, appellant did procure a new air conditioning unit and had it installed in the fleet vehicle normally used by the Chancellor. We conclude that although he wrongly interpreted the information he received from Madison regarding the propriety of such action and, therefore, went ahead, we cannot conclude that his error in judgment was of such magnitude as to be sufficient for just cause for termination. The incident itself was minor; and the interpretation appellant assigned to the information he received was not that unreasonable.

Appellant received a direct instruction from his supervisor regarding the purchase of the 15 passenger van. That instruction gave approval for the purchase as long as proper funding could be obtained. Appellant failed to make sure that proper funding was found. We conclude that this was a serious error on the part of appellant which cost the university a loss of certain GPR funds.

In light of the above we conclude that the termination was for just cause and should be sustained.

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ORDER

IT IS HEREBY ORDERED that respondent's termination of appellant's employment is sustained and that his employment is dismissed.

Dated; _____, 1978

STATE PERSONNEL BOARD

James R. Morgan, Chairperson

DEPARTMENT Board of Regents of the University of Wisconsin System		B CIVIL SERVICE TITLE OF POSITION Educational Services Assistant 4	
UNIVERSITY University of Wisconsin-Stout		7. NAME OF EMPLOYEE James R. Nowaskey	
PHONE ADDRESS Mobile Unit 12		8. WORKING TITLE OF POSITION Director of General Services	
WORK SCHEDULE NORMAL <input checked="" type="checkbox"/> (7-45-4 30 M-F) 3RD <input type="checkbox"/> ST <input type="checkbox"/> ROTATING <input type="checkbox"/> MO <input type="checkbox"/> HOURS _____		11. NAMES AND CLASSES OF PERSONS WITH SIMILAR DUTIES None RESPONDENT'S	
IS THIS POSITION SUPERVISORY IN NATURE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> IF YES, INDICATE WHICH OF THE FOLLOWING ARE RESPONSIBILITIES OF THE POSITION		12. NAME AND CLASS OF FORMER INCUMBENT (IF ANY) None EXHIBIT # 8	
1. <input checked="" type="checkbox"/> MAKES WORK ASSIGNMENTS TO OTHER EMPLOYEES 2. <input checked="" type="checkbox"/> EFFECTIVELY RECOMMENDS DISCIPLINARY ACTION 3. <input checked="" type="checkbox"/> POSITION IS IDENTIFIED AS A STEP IN GRIEVANCE PROCEDURE		4. <input checked="" type="checkbox"/> EVALUATES EMPLOYEES FOR MERIT INCREASE AND/OR PERFORMANCE 5. <input checked="" type="checkbox"/> EFFECTIVELY RECOMMENDS PROMOTIONS AND TRANSFERS 6. <input checked="" type="checkbox"/> EFFECTIVELY RECOMMENDS HIRING	

CLASSES AND NUMBER IN EACH CLASS SUPERVISED BY THIS POSITION

JOB SUMMARY - PLEASE DESCRIBE BELOW THE BASIC FUNCTION OF THIS POSITION The Director is responsible for the management and administration of the following departments and activities in a direct line reporting relationship:

Maintenance Planning	Mail Service	Fleet Vehicle Service
Central Power Plant	Scheduling & Control	Telephone Service
Academic Custodial	Campus Security	Duplicating Service
Grounds Maintenance	University Stores	Textbook Service
Building Maintenance	Warehousing	Parking Lots & Service
		Equipment Inventory & Control
		Lease Rental - Fiscal Control

LIST (IN DESCENDING ORDER OF IMPORTANCE) THE DUTIES AND RESPONSIBILITIES AND PERCENTAGES FOR WHICH YOU HOLD THIS POSITION ACCOUNTABLE. IF SUPERVISORY LIST PERCENTAGE SPENT IN SUPERVISORY TASKS. USE ADDITIONAL PAGES IF NECESSARY (NO ONIONSKIN PLEASE)

TIME %	WORK PERFORMED
	<p>The position will be responsible for a full and all-inclusive range of duties and responsibilities normally ascribed to an administrator including planning, organizing, controlling, and directing, and more specifically the following:</p> <ol style="list-style-type: none"> 1. Responsible for enforcing and controlling all university and state policies and procedures as they affect the operations of the departments. 2. Formulate, establish, coordinate, and enforce policies and procedures relating to areas of responsibility. 3. Set goals, determine priorities, and develop method to achieve goals. 4. Make recommendations regarding functions to be performed, services to render, charges to make. 5. Establish standards and check for compliance. 6. Develop all budgets and control all expenditures toward budget. 7. Develop and mix resources including personnel, materials, and capital in order that each department is able to carry out its mission. 8. Supervise and delegate to department supervisors and managers. 9. Develop purchasing policies and procedures and personnel policies and procedures for all areas. 10. Meet and confer with various university individuals and groups affected by service. 11. Review and analyze procedures and goals, evaluate programs and install improvements. <p>In summary, this position is to be considered immediately responsible in a line relationship for the fiscal and program management of the above listed activities and departments.</p>

THE ABOVE IDENTIFIED TASKS ARE A GENERAL DESCRIPTION OF THE PRIMARY DUTY ASSIGNMENTS AND ARE NOT INTENDED TO REFLECT ALL OF THE TASKS WHICH MAY BE ASSIGNED TO THE POSITION IN THE FUTURE

NAME AND CIVIL SERVICE TITLE OF FIRST LINE SUPERVISOR Dr. Wesley S. Sommers, Assistant Chancellor for Administrative Services	18 SIGNATURE OF SUPERVISOR <i>Wesley S. Sommers</i>	DATE 10/3/72
SIGNATURE OF PERSONNEL MANAGER <i>John H. ...</i>	DATE 10/23/72	20 SIGNATURE OF EMPLOYEE <i>J.R. Nowaskey</i>
		DATE SIGNED 10-3-72