



considered to be a journeyman level qualified the person to be an assessor in cities and villages. The 3 level qualified the person for work in the largest counties, Milwaukee and Madison. The examination for the 3 level included questions on administration and supervisory skills.

4. The legislation requiring certification did not provide for "grandfathering" any already working assessors regardless of the length or nature of their experience.

5. Prior to the 1975 legislature there was an "expert assessor certification" program in existence. Examinations were given to determine certification. This program, however, was not mandatory.

6. The assessor certification program was not well received. Some of the hostility toward the program stemmed from the involvement of the state in local affairs. Gradually the program gained acceptance.

7. By 1975 all elected assessors and assessment personnel had to be certified.

8. Most of the assessors fill part-time positions.

9. In order to be eligible to take the exam the applicant had to be 18 years old or older and fill out a department application form. The department received the application to determine the level of the examination to be taken and then sent a confirmation letter to the applicant.

10. Appellant's section had three employes, Eugene Miller, his assistant, Ann Learn, a typist, and appellant.

11. Miller's primary duties and responsibilities were to assist in getting the examinations printed, to proctor and administer the examinations and to do whatever handgrading was necessary.

12. Ann Learn whose position was classified as Typist 2 typed correspondence, answered the telephones and performed all clerical tasks related to the examination process.

13. Learn processed the applications as they were received. She also determined from the printouts who was to receive a "pass" or "fail" letter.

14. Glenn Holmes, director of the Bureau of Property Tax was James Plourde's, Chief of the Equalization and Standard Section, and appellant's supervisor.

15. Holmes delegated some of his supervisory authority over appellant's section to James Plourde.

16. Plourde assisted in the day to day administration of appellant's section.

17. Appellant signed the leave slips and assigned the duties of Eugene Miller and Ann Learn. If appellant were not present, Plourde signed the leave slips.

18. Plourde rarely assigned duties to Miller and occasionally assigned them to Learn.

19. Appellant developed the questions for all examinations except for those on the assessor 3 examination which tested administrative and supervisory skills. Those latter questions were provided to appellant by the Department of Administration (DOA). Appellant did not author each question and answer used but he minimally reviewed, edited and updated all questions except those provided by DOA. About 10% of the questions were used from other sources without any change. Another 25% to 30% were taken from previous examinations and rewritten. The remaining 60-65% were originally authored by appellant.

20. Miller never created questions and very rarely updated them. Any revisions which he authored were approved by appellant.

21. Appellant and Miller proctored the examinations. At the beginning of the program appellant developed rules on how the exams were to be administered and proctored. The security on the administration of the exams was very tight. Great care was taken by appellant in developing procedures to insure that an examination was not compromised.

22. Administering an exam included proctoring and collecting and accounting for the examinations and answer sheets. There was one instance of cheating which was observed. Corrective action was immediately taken. A written record of the incident was placed in the applicant's file.

23. The same test was generally not used twice in succession. Since people who failed were allowed to retake the exam, changing the version of the test used avoided the possibility of memorization of the examination.

24. Miller, Learn and appellant were the only ones with keys to any of the office filing cabinets or desks. Appellant carefully instructed them that no one was to have access to any files.

25. Only Miller and appellant had access to the answer keys. Learn, Miller and appellant had access to the examination questions.

26. After every examination, Miller took the answer sheets over to the Bureau and picked them up after grading.

27. The examinations for Assessor Technician and Assessor 3 were hand graded.

28. After each examination the Bureau prepared an analysis of which questions were answered correctly or incorrectly. Based upon this analysis, appellant would review particular questions to determine if they should be deleted or modified.

29. The reliability of the question was determined by the statistics provided by the Bureau of Personnel, DOA.

30. There were two copies of the grades, the original printout and a carbon. ,There was a printout and carbon provided by the Bureau which gave a breakdown of the questions missed in each category.

31. Ann Learn sorted the grades for passing and failing after Miller brought them back from the Bureau.

32. When the program was first begun, appellant assigned certification numbers. He later delegated this task to Miller. It was his intention that eventually Learn would perform this task.

33. The passing score was 60 percent. However, the examination was graded pass/fail. A person taking the examination was only required to answer a certain number correctly in order to be certified. The examination was not geared to evaluate how good of an assessor a particular person would be. Source of knowledge was not tested or questioned.

34. The grades of those who passed the examination were not divulged to anyone. The computer printouts of the grade were kept in the office files and were not used except as set forth above.

35. It was permissible to advise an applicant over the telephone after he took an examination that he had passed.

36. From the date that an applicant sat for an exam, it took over three weeks to get the certificates and letters issued.

37. Certification became official on the date the certificate was sent. Certification lasted ten years from that date.

38. Many department employes were certified by the assessor certification program when it was first begun. They were used as a control group.

39. Four hours were allowed for taking the examination. The average applicant finished in 3-3½ hours.

40. Appellant had a policy of only filling an examination room about 95% full. He generally left a few places open to take care of any problems which might arise.

41. Miller perceived some problems arising from too few exams being given and cutting off applications before full capacity had been reached.

42. Appellant administered every examination from January, 1975 through April, 1976.

43. Miller first approached appellant about becoming certified in January or February, 1976.

44. Miller and appellant both felt that they should become certified in order to maintain credibility with those who were required to be examined. Also if they were certified, they would be qualified for a position requiring certification, if an opportunity arose.

45. Appellant on behalf of Miller and himself asked Glen Holmes what procedures should be followed to get them certified. The first written inquiry into certification was in late April, 1976. (Appellant's Exhibit #6.) The last written inquiry was made in late January, 1977. (Respondent's Exhibit #1.) This inquiry set forth two possible alternatives for getting them certified.

46. It was determined by Holmes that appellant and Miller could become certified by taking one of the already existing examinations. (Respondent's Exhibit #2.)

The procedure to be followed was that Plourde would proctor the examination. The time and location of the examination would be at the convenience of Plourde, Miller and appellant. Since an examination procedure had been established by rule and policy, Holmes believed it should be followed.

47. Holmes, Plourde, Miller and appellant expected the latter two to easily pass the examination.

48. Both Miller and appellant felt that it was essential to complete the April, 1977 exam process before they could formally take the exam themselves. The procedure followed for the April exam was different in that a formal application was not required. An applicant simply telephoned and his or her name, level of examination, location and social security number were recorded.

49. Appellant decided that it would be advantageous for Miller and him to submit prepared answer sheets for machine grading along with the other answer sheets from a regularly administered assessor 2 examination. He advised Miller of this and Miller agreed.

50. Miller and appellant prepared answer sheets from the answer key. They purposefully marked at least several answers incorrectly.

51. Miller took their two answer sheets plus the other answer sheets from the April exam over to the Bureau of Personnel to be graded. He also picked up the answer sheets after they were graded.

52. Appellant wanted to establish on the record that Miller and he had taken and passed the examination.

53. Appellant prepared the answer sheet as he did because he felt that the actual taking of the examination was a formality because of his extensive familiarity with it.

54. The printouts from the April exam, including Miller's and appellant's grades came back from the Bureau on Friday, April 15, 1977. Appellant and Miller were to take the examination on Tuesday afternoon, April 19, 1977. They were to receive exceptional performance awards with their regular pay checks on Thursday, April 21, 1977.

55. Holmes knew of the exceptional performance awards which Miller and appellant were to receive on or before April 18, 1977. (Appellant's Exhibit #13.)

56. Both Miller and appellant were aware in February, 1977 that an exam would be given in Plourde's office in order for them to become certified. The exact time had not been set.

57. Miller told Learn to prepare certificates and letters for appellant and him.

58. Appellant knew that neither Miller nor appellant were entitled to have certification numbers assigned to them or to have certificates and letters issued to them.

59. Appellant never told either Miller or Learn not to assign certification numbers or to prepare certificates and letters.

60. Appellant first learned that certification numbers had been assigned and certificates and letters prepared on April 19, 1977, right after a meeting with Holmes and Miller, at which Holmes advised them that they would receive exceptional performance awards. Miller asked appellant what should be done with the certificates and letters which had been prepared. Appellant told him to destroy them.



61. Miller did not question the instruction to destroy the certificates and letters because he did not feel that they were official state documents.

62. Miller instructed Ann Learn to destroy the certificates and letters made out to appellant and him. She did so on April 19, 1977.

63. On April 18, 1977, at about 3:30 p.m. Miller spoke with Plourde after he realized appellant and he were scheduled to take the exam on April 19, 1977.

64. Plourde asked to see the printout on April 20, 1977.

65. Appellant met with Holmes a second time on April 20, 1977. This meeting was after his meeting with Plourde regarding the printouts for the April examination.

66. Appellant first spoke to Holmes regarding this matter on April 20, 1977.

67. Appellant did not advise Holmes that the certificates and letters had been prepared for Miller and him.

68. Miller and appellant attended an assessors conference held on April 19, 1977. They returned to the office after lunch.

69. Neither Miller nor appellant took the examination scheduled for the afternoon of April 19, 1977, in Plourde's office.

70. Although he submitted a prepared answer sheet, appellant fully intended to take the examination in the manner Holmes had arranged.

71. Miller was not as familiar with the examination questions as appellant was. He was familiar with the subject categories covered by the exam. The categories were assessment law and administration, appraisal and administration. The last category was tested through the Bureau questions.

72. Becoming certified would not affect appellant's or Miller's present or future positions with state service

73. As a result of his participation in the actions which are the subject matter of this appeal, Miller received a 30 day suspension and a lateral transfer out of the section. In addition, his exceptional performance award was rescinded.

74. By letter dated May 3, 1977, appellant was advised of his termination from employment, effective the same date. (Board's Exhibit #2.)  
The reasons set forth were:

1. That on or about April 4, 1977 you falsified an answer sheet for the Assessor 2 Certification examination that you were to take at a later date in that you prepared an answer sheet under your name from the answer key that was in your confidential possession. This is in violation of Department Work Rule number 7 and your duties as a state employe.
2. That on April 11, 1977 you submitted the falsely prepared answer sheet to the Bureau of Personnel of the Department of Administration for machine scoring along with the answer sheets for the examinations administered on April 7, 1977 to the Assessor 2 candidates. This is in violation of Department Work Rule 7 and your duties as a state employe.
3. That with your knowledge and approval, your subordinate Eugene Miller falsified and submitted on April 11, 1977 a personal answer sheet for the Assessor 2 examination to the Bureau of Personnel of the Department of Administration and you failed to take appropriate action. This is a violation of your duty as a supervisor with the Department.
4. That on the morning of April 19, 1977 you directed your subordinate, Eugene Miller, to destroy the following:
  - (a) Prepared letters confirming that Dennis Nelson and Eugene Miller had passed the Assessor 2 examination; and
  - (b) Certificates of certification as Assessor 2 for Dennis Nelson and Eugene Miller.

This is in violation of Department Work Rules 2 and 7 and your duties as a state employe and as a supervisor with the Department.

75. Appellant applied to take the examination in June, 1977. He received a confirmation letter. (Appellant's Exhibit #3.) After taking the examination he was sent a letter and certificate. (Appellant's Exhibit #8.)

76. , Appellant's score was very high on the exam he took in June, 1977.

77. Except for the acts which gave rise to the disciplinary action, appellant had performed exceptionally well in handling a program which was both politically and administratively sensitive. He was an excellent employe.

78. Appellant had received a copy of the department's work rules. (Respondent's Exhibit #8 and 9.)

79. Appellant and Miller with appellant's approval did falsify and submit for grading answer sheets for the assessor 2 examination.

80. The documents which appellant ordered destroyed were not official state documents at the time they were destroyed.

#### CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction over this appeal under Section 16.05(1)(e), Wis. Stats.

2. The burden of proof is on respondent to show to a reasonable certainty, by the greater weight of the credible evidence that the discharge was for just cause. Reinke v. Personnel Board, 53 Wis. 2d. 123, (1971).

3. Respondent met his burden.

4. The termination was for just cause.

#### OPINION

In Safransky v. Personnel Board, 62 Wis. 464 (1974), the supreme court discussed at some length the concept of "just cause." It held:

The court has previously defined the test for determining whether "just cause" exists for termination of a tenured municipal employe as follows:

". . . one appropriate question is whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works. The record here provides no basis for finding that the irregularities in appellant's conduct have any such tendency. It must, however, also be true that conduct of a municipal employe, with tenure, in violation of important standards of good order can be so substantial, oft repeated, flagrant, or serious that his retention in service will undermine public confidence in the municipal service." State ex rel. Gudlin v. Civil Service Comm. (1965), 27 Wis. 2d 77, 133 N.W. 2d 799.

Courts of other jurisdictions have required that a showing of a sufficient rational connection or nexus between the conduct complained of and the performance of the duties of employment.

The basis for such a requirement of "just cause" or rational nexus is between conduct complained of and its deleterious effects on job performance as constituting grounds for termination of tenured government employes has been to avoid arbitrary and capricious action on the part of the appointing authority and the resulting violation of the individual's rights to due process of law. Only if the employe's misconduct has sufficiently undermined the efficient performance of the duties of employment will "cause" for termination be found.

In determining whether "cause" for termination exists, courts have universally found that persons assume distinguishing obligations upon the assumption of specific governmental employment. Conduct that may not be deleterious to the performance of a specific governmental position - i.e. a Department of Agriculture employe - may be extremely deleterious to the performance of another governmental occupation - i.e. teacher or houseparent in a mental ward. Thus it is necessary for the court to determine the specific requirements of the individual governmental position. 62 Wis. 2d at 474-475.

Using the above guidelines, we concluded that appellant's conduct does merit termination. As stated in the findings, appellant who was in charge of the entire program and who had essentially prepared the examination did falsify the answer sheet to the examination. He also approved the falsification of another answer sheet by a subordinate. These answer sheets were graded and the grades

appeared on the official printout.

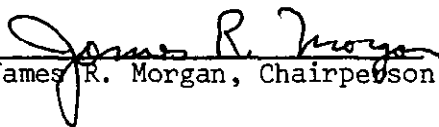
While we recognize that appellant's work record up until the actions leading to the termination was exemplary, we conclude that his conduct was serious and showed an extreme failure in judgment. The certification program was a politically sensitive program. Appellant's misconduct was certainly of a nature that his retention in the position could undermine public confidence in the program just as it was gaining acceptance. His ability to perform efficiently and effectively in his position and continue to maintain a high degree of credibility for the program are seriously undermined. It is for these reasons that we conclude that appellant was discharged for just cause. For the same reasons we reject the Proposed Opinion and Order which was prepared by the hearing examiner and which found the termination was not for just cause.

ORDER

IT IS HEREBY ORDERED that respondent's action to terminate is affirmed.

Dated: May 18, 1978

STATE PERSONNEL BOARD

  
James R. Morgan, Chairperson