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 JOHN T. OAKLEY,
 Appellant,
 v.
 COMMISSIONER, OFFICE OF THE
 COMMISSIONER OF SECURITIES,
 Respondent.
 Case No. 78-66-PC
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INTERIM
 DECISION

NATURE OF THE CASE

This is an appeal of an involuntary demotion in lieu of layoff pursuant to s. 230.44(1)(c), Wis. Stats. (1977). The parties through counsel have filed briefs on the questions of the proper scope of the hearing and the issues properly before the Commission. The parties filed a "partial stipulation of facts" which is incorporated by reference as the Commission's findings.

FINDINGS OF FACT

The Commission adopts as its findings the "partial stipulation of facts" filed November 22, 1978, a copy of which is attached hereto and incorporated by reference as if fully set forth. The Commission in the opinion makes reference to certain source documents which the parties have cited without objection in their briefs.

CONCLUSIONS OF LAW

1. This matter is before the Commission as an appeal of an involuntary demotion in lieu of layoff pursuant to s. 230.44(1)(c), Wis. Stats. (1977).

2. The only issue properly before the Commission is whether the respondent acted with just cause in instituting the involuntary demotion in lieu of layoff of the appellant.

3. Just cause in this context is as defined in Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 52, 237 N. W. 2d 183 (1975):

"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."

OPINION

The respondent has taken the position that the sole issue before the Commission on this appeal is, "Did the Respondent/appointing authority act with 'just cause' in instituting a demotion-in-lieu-of-layoff action on April 12, 1978 involving the appellant?" See Respondent's Brief filed January 12, 1979. The appellant's position is outlined in his brief filed December 29, 1978:

"The Appellant contends that in addition to the issue of whether or not the Respondent acted with 'just cause,' the Appellant is entitled to present evidence that the Respondent's actions were illegal, an abuse of discretion, arbitrary and capricious. In order to do this, the Appellant must present evidence of the gradual erosion of his duties and the usurpation of his responsibilities by the addition of employees 'layered in' between the Appellant and the Respondent, his former immediate supervisor.

* * *

As a result of the original appeal (77-197), the acting deputy director found that a reorganization had occurred in the office of the Respondent in 1973. This reorganization resulted in a change in the Appellant's status. The duties he once performed were taken over by an attorney. His title as Chief, Enforcement Division was withdrawn without any notification. Eventually, the attorney position was labelled as Administrator of the Enforcement Division and the attorney was designated as

the Appellant's supervisor. No notice of these changes was provided to either the Appellant or the Administrator of the State Bureau of Personnel.

This appeal is the first opportunity for the Appellant to challenge the reorganization which slowly eroded his duties and usurped his responsibilities. The changes began in 1973, but were not formally recognized until the fall of 1977, when the Appellant received his reallocation notice. His appeal (77-197) led to the involuntary demotion, from which this appeal (78-66-PC) was pursued. The Respondent should not be allowed to limit the injury into the matter of whether or not the Respondent acted with "just cause".

If the parties are limited to the "just cause" issue, then the Appellant's wrongs are not redressed. This ignores the issue of how the Respondent could have acted more effectively in his reorganization. The narrow focus ignores any examination of the relief to which the Appellant is entitled. The focus on the Respondent's acts shifts from the chipping away at the Appellant's position over a four year period, to the question of whether or not the Respondent followed the appropriate administrative and statutory guidelines. The issue should not be reduced to the single act of involuntary demotion. The Respondent should be forced to carry the burden of proof in justifying all of his actions affecting the Appellant from the commencement of the Respondent's term as Commissioner of Securities when he started the reorganization through the involuntary demotion of the Appellant."

See also Appellant's Reply brief filed January 19, 1979:

"What is being challenged in this appeal are the arbitrary actions of the Respondent in restructuring the Office of the Commissioner of Securities to suit his preferences, which have foreclosed the Appellant from working in a job which provides him with the responsibilities and authority which he had previously. The mere application of a statutory cookbook procedure can not be the test by which we evaluate the cost and loss to the appellant resulting from four years of gradual erosion of his responsibilities and the usurpation of his duties."

The applicable standard for review of this type of transaction is set forth in Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 237 N. W. 2d 183 (1975). In that case an employe was laid off for economic reasons and appealed to the Personnel Board under s. 16.05(1)(e), Stats. (1975), the predecessor statute to s. 230.44(1)(c), Stats. (1977). The court stated:

"The principal question on this appeal is what is meant by 'just cause' in a layoff situation.

* * *

The circuit judge, on review, correctly held that an appointing authority acts with 'just cause' in a layoff situation when it demonstrates that it has followed the personnel statutes and administrative standards set forth in ... the Administrative Code and when the layoff is not the result of arbitrary or capricious action.

* * *

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." 71 Wis. 2d @ 49, 52.

The last statement quoted above makes it quite clear that the only potential "arbitrary and capricious action " which properly is subject to Commission consideration is action involved in the effectuation of the personnel transaction in question.

The supreme court in the Weaver case, in determining whether there was "arbitrary and capricious" action, looked only at how the agency had prepared the layoff performance rating scale. The necessity for the layoff was economic. There apparently was no suggestion at any point in the appeal process that it would have been appropriate to review the agency determination of economic necessity to determine whether it constituted arbitrary and capricious action, and, indeed, such a review would be contrary to the court's holding.

In the opinion of the Commission, there is no more authority for it to look into the apparently numerous decisions of the respondent relative to the administration of his office that constitute the alleged four years

of "gradual erosion of [appellant's] responsibilities and the usurpation of his duties" then there would have been for the Personnel Board to have evaluated the determination by the University in the Weaver case that economic reasons dictated a reduction in the workforce. Both a decision regarding office organization and the assignment of duties and responsibilities, and a decision regarding appropriate staffing levels in light of economic conditions are management decisions which are not properly reviewable by the Commission in appeals of this nature. The Commission must review this personnel transaction on the basis of the agency structure that exists at the time the transaction was effectuated.

The conclusion is not altered by the fact that the appellant's original appeal to the Personnel Board (77-197) precipitated a determination by the director of the Bureau of Personnel that "a reorganization occurred within [respondent's] office in 1973, that no formal notice was given of the changes in [appellant's] position, and that the correct action in this case is not a reallocation." See letter dated February 9, 1978, from Knoll to Bartell. The same letter went on to say:

"As a result, we are rescinding our action to reallocate Mr. Oakley's position from Securities Examiner 4 (PR 1 - 15) to Securities Examiner 3 (PR 1 - 13), and ordering you to restore him to his former position.

If in the event that position (grouping of duties and responsibilities) no longer exists, then your agency should prepare a ... layoff plan for the abolished Securities Examiner 4 position."

The respondent proceeded to involuntarily demote the appellant, effective May 3, 1978, see letter from Bartell to Oakley, apparently following reinstatement of the appellant to Securities Examiner 4 after the action

of the director rescinding the reallocation which was the subject of the first appeal. This was not a situation where the respondent attempted to make the transaction retroactive. In terms of classification and salary range, the appellant thus was made whole up to the point of the involuntary demotion in lieu of layoff. Furthermore, the appellant is alleging that the "gradual erosion" of his duties and responsibilities took place over a four year period, only beginning with the reorganization.

The appellant also makes reference to the stipulation for dismissal of the Personnel Board appeal. That stipulation merely recited, in pertinent part:

"Respondent agrees that the dismissal of the above captioned case does not operate as a bar to any remedies in further proceedings filed by appellant, specifically appeals from actions taken in the past by the Commissioner of Securities."

The respondent is not arguing that the dismissal of 77-197 acts as a bar here. What is being raised is a question of the scope of review under the statutory 'just cause' provision.

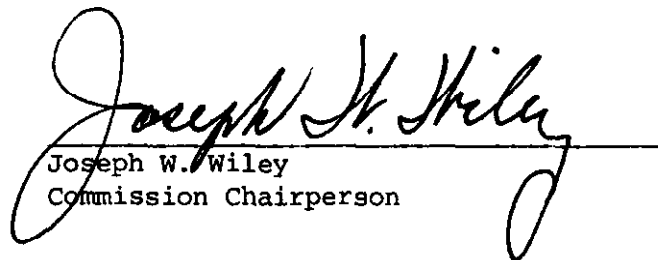
The appellant also has raised issues relating to potential remedies. The Commission has relatively broad authority under the current statute, s. 230.44(4)(c): "the commission shall either affirm, modify or reject the action which is the subject of the appeal." The question of what remedies are appropriate should be reserved until after a determination has been made on the just cause question.

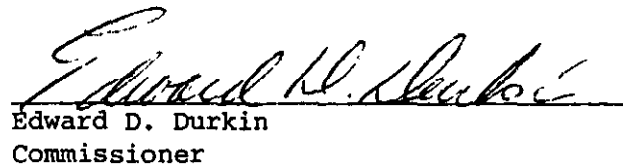
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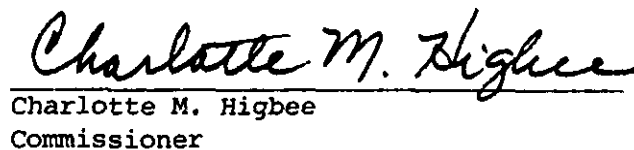
ORDER

It is ordered that this appeal be scheduled for a hearing on the merits on the following issue: Did the respondent/appointing authority act with just cause in instituting an involuntary demotion in lieu of layoff on April 12, 1978, with respect to the appellant?

Dated: April 19, 1979. State Personnel Commission


Joseph W. Wiley
Commission Chairperson


Edward D. Durkin
Commissioner


Charlotte M. Higbee
Commissioner

AJT:skv

4/3/79

JOHN T. OAKLEY,

Appellant,

v. ,

JEFFREY B. BARTELL, Commissioner,
Office of the Commissioner of
Securities,

*
Respondent.

Case No. 78-66-PC

PARTIAL STIPULATION OF FACTS

RECEIVED

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**Personnel
Commission**

The Appellant, John Oakley, began working for the Office of the Commissioner of Securities in February of 1968 as a Securities Examiner. In 1971 the Securities Office was organized into three divisions consisting of Securities Registration, Enforcement, and Licensing and Regulation. The Appellant was named Chief of the Enforcement Division in December of 1971. The Appellant was promoted to Investigator 3 in March of 1972 and continued to function as Chief of the Enforcement Division. In November of 1972, the State Board of Personnel reallocated the Appellant's position along with the other division chiefs in the Securities Office to Securities Examiner 4 in salary range 15. In early 1973, a position was created in the Enforcement Division for an enforcement attorney. This position was filled on May 15, 1973, by the Appellant's present supervisor, Terrance Peppard.

At the time that the attorney position was filled, the Appellant was still listed as Chief of the Enforcement Division. However, in November of 1973, the Commissioner changed the Appellant's title from Chief Enforcement Division to Senior Enforcement Examiner. The change is penciled in on the Appellant's position description form (AD-PERS-10). That form was originally signed by the Appellant on December 27, 1971, when his working title was listed as Chief, Enforcement. On March 21, 1972, the Appellant initialed a change in the civil service title from Securities Examiner 3 to Investigator 3. The only other position description form appearing in the Appellant's file appears on February 15, 1977. This form lists the Appellant's working title as Senior Enforcement Examiner and lists the enforcement attorney as the Appellant's immediate supervisor. The previous position description listed the Commissioner as the Appellant's immediate supervisor. According to the position description form, the position and duties have been substantially the same since 1974. The enforcement attorney prepared employee performance evaluation forms (GPM #4) in June of 1976 and April of 1977 for the Appellant.

In late August of 1977, the Department of Administration, State Bureau of Personnel, at the request of the Commissioner of Securities, conducted a personnel management survey of the Securities Examiner classification series used in the Commissioner of Securities Office. As a result of this survey, several changes were proposed, approved, and implemented regarding the Securities Examiner classification in the Office of the Commissioner of Securities. Eight positions were affected, six of those positions were reallocated to classifications which were at parallel or higher levels than their current class, one position remained the same, and the remaining position, that of the Appellant, was reallocated to a salary range two ranges lower.

Prior to the personnel management survey, the position of two of the division chiefs, Regulation and Licensing, and Registration and Exemption, were reallocated to Administrative Officer 3 in salary range 18. In September of 1977, the Appellant's position was reallocated from a Securities Examiner 4 in salary range 15 to Securities Examiner 3 in salary range 13 as a result of the personnel management survey.

The Appellant filed an appeal on October 7, 1977. On February 9, 1978, the reallocation of the Appellant's position was rescinded, and he was ordered returned to a Securities Examiner 4. The decision also ordered the Commissioner of Securities to submit a layoff plan in the event that the Securities Examiner 4 position no longer existed. The Commissioner of Securities submitted a proposed layoff plan claiming that the position of Securities Examiner 4, that was held by the Appellant, no longer existed. The Commissioner offered the Appellant a voluntary demotion in lieu of layoff from Securities Examiner 4 to the position of Securities Examiner 3. The Appellant rejected this and was involuntarily demoted by the Commissioner of Securities to Securities Examiner 3 on April 20, 1978. As a result of that action, the Appellant initiated this appeal on April 25, 1978.

Dated this 13th day of November, 1978.

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