

OFFICIAL

STATE OF WISCONSIN

PERSONNEL BOARD

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WILLARD A. KRANTZ,
 Appellant,
 v.
 WILBUR J. SCHMIDT, Secretary,
 Department of Health and Social
 Services,
 Respondent.

Case No. 8
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MARIAN I. OLSON,
 Appellant,
 v.
 WILBUR J. SCHMIDT, Secretary,
 Department of Health and Social
 Services,
 Respondent.

Case No. 35
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JULIA I. LANDMARK,
 Appellant,
 v.
 WILBUR J. SCHMIDT, Secretary,
 Department of Health and Social
 Services,
 Respondent.

Case No. 38
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SALLY A. COOK,
 Appellant,
 v.
 WILBUR J. SCHMIDT, Secretary,
 Department of Health and Social
 Services,
 Respondent.

Case No. 41
 * * * * *

OPINION

AND

ORDER

Before AHRENS, Chairman, JULIAN, STEININGER, and WILSON.

OPINION

Background Facts

These appeals involve the lay-offs of four teachers at the Wisconsin School for Girls at Oregon, Wisconsin.

On June 15, 1944, Julia I. Landmark commenced her employment as a teacher at the School. She was certified to teach music and while at the School taught various other subjects for many years besides music. She was classified Teacher 6. Up until her layoff she had taught at the School for 28 years and was the most senior of the teachers in length of service.

On January 1, 1948, Marion I. Olson commenced her employment as a teacher at the School. She was certificated to teach Home Economics, possessed a Masters Degree in Home Economics, and has written articles on teaching in correctional schools. She was classified as a Teacher 6 and was the second most senior teacher in years of service at the School.

On May 1, 1964, Sally A. Cook commenced her employment as a teacher at the School. She was certificated to teach Physical Education, but for four years prior to her layoff had been teaching Drivers Education. She was classified Teacher 3.

On June 10, 1968, Willard A. Krantz commenced his employment as a teacher at the School. He was certificated to teach Elementary Education, but taught Science and Biology to grades 7 through 12. He was classified a Teacher 5.

In the later part of 1971, the number of girls at the School dropped percipitously. From 1968 through the middle of 1971, the number averaged over 190 girls. In January 1972, the number for that month was approximately 130 and the projection was for still further reduction. The average student enrollment for 1972 was approximately 110.

Sometime about March 1, 1972, Lawrence M. Douglas was appointed Principal at the School. The Respondent had directed that the staff at the School be reduced, but that they be implemented so as to do the least harm to the School's program. Dr. Douglas and other correction officials decided that since the students who were coming to the School were older than had been the case previously, Elementary Education teachers would make up the layoff group. Seven teachers certificated in Elementary Education, all variously classified from Teacher 2 to Teacher 5 were placed in a layoff group, rated by Dr. Douglas and Assistant Principal Geraldine Nichols, on forms provided by the State Bureau of Personnel, which resulted in Appellant Krantz being rated the lowest of the group. On April 21, 1972, he was notified that he was laid off effective May 26, 1972. On May 1, 1972, he filed a timely appeal with the Board.

Further, layoffs were necessary because of the declining enrollment. Dr. Douglas decided that the layoffs made timely a re-evaluation of the curriculum to insure the best possible program for the students. He then established layoff groups by the subject in which the teachers held their teacher's certificate or license from the State. Three teachers were slated for layoff; one from each of the three subject matter groups. The layoff plan, in addition noted the teacher's seniority and classification. It showed as follows:

<u>Subject</u>	<u>Name</u>	<u>Seniority Date</u>	<u>Classification</u>
Home Ec	Mrs. Marian Olson	1/1/48	Teacher 6
Home Ec	Mrs. Kathleen Beauchaine	11/4/67	Teacher 3
Home Ec	Mrs. Linda Graff	3/30/70	Teacher 5
Music	Mrs. Julia Landmark	6/15/44	Teacher 6
Physical Ed	Miss Sally Cook	5/1/64	Teacher 3
Physical Ed	Mrs. Patricia Martin	8/27/69	Teacher 2

The teachers in the home economics group were rated against one another.

Since Appellant Landmark did not have any other employees in her group to be rated against, 2 English teachers were selected, since Appellant Landmark was teaching English. Appellant Cook, who taught Drivers Education, was rated against the other Physical Education certificated teacher.

Dr. Douglas and Former Principal Durbin R. Pawlisch did the rating on the same standard form intended for such purpose, which resulted in Appellants Landmark, Olson, and Cook receiving composite scores lower than other employees in their respective layoff groups. On October 26, 1972, these Appellants were notified that they were laid off effective January 12, 1973.

Appellants Landmark, Olson, and Cook appealed their layoff.

In her appeal letter, Appellant Landmark stated that she regarded the School's decision unwise to lay her off since she was a versatile teacher who had two subject matter certifications, one in English and one in Music and had graduation credits toward certifications in Library and Art. She further had taught Mathematics, Social Problems and Social Studies at the School. Moreover, she stated that had the layoff group been designated as English she would not have been placed in that group at all since at least three less senior English teachers, under the rules, would have been rated against one another. Finally, she challenged what she claimed was an inadequate rating form which lacked classroom, subject and student orientation.

In her appeal letter, Appellant Olson contended that three new employees had been hired just prior to the layoff. Further, she alleged that seniority was a liability in the layoff procedure, since in every case, the teacher with the most seniority, and who also was senior in years of age, was laid off.

In her appeal letter, Appellant Cook appealed her layoff on the basis she had multiple certification in Drivers Education, Physical Education and English, 9 years seniority, and the lack of more than one rating rather than a number of ratings presumedly at different times.

On July 19, 1973, counsel for the Appellants filed a motion that the 4 appeals be consolidated for hearing purposes only. The matter was noticed for hearing, at which time all parties appeared by counsel and argued their cause and the Board decided to consolidate such appeals for hearing only in an Opinion and Order dated August 3, 1973.

We find the foregoing facts to be the background facts material to these appeals. Other findings of fact will be made in conjunction with our discussion of the issues in the case.

The School Violated the Lay Off Rules

By Failing to Lay Off By Classification

The rules of the Board, which were in effect from October 1, 1971 through October 31, 1972, are applicable to all of the Appellants in this proceeding. Appellant Krantz was notified of his layoff on April 21, 1972 and it was effective May 26, 1972. Both dates are within the effective period of the aforementioned rules. Appellants Landmark, Olson, and Cook

were notified of their layoffs on October 26, 1972, a few days before the end of the period, and their layoffs took place in 1973. Counsel for all the parties in their briefs cite the rule in force at the time the layoff action was taken by the Respondent and we conclude that such rule is applicable to this proceeding.

The Board rule on layoffs, applicable here, provides that within a layoff unit, such as the School, layoffs must be by classification. Pers 22.04(1), Wisconsin Administrative Code, effective October 1, 1971, provides,

Procedure for making layoffs. (1) SENIORITY AND EFFICIENCY. Whenever it becomes necessary for an appointing officer to lay off an employe in the classified service...he shall do so by classes in accordance with seniority and efficiency, (emphasis added).

The designation of the classification for layoff has a direct bearing on an employee's right to be retained in active employment, if his seniority and performance warrant it. His or her seniority rights are relative to other particular employees with various numbers of years of State service in their class. Similarly, his or her performance rating is relative to that of other particular employees of comparable seniority within the class.

An employee's right to retention is based upon his seniority and performance in class and not in some identifiable group, which the School or any other State agency, chooses to reduce by lay off. In the instant case, the School identified those teachers certificated in Elementary Education as the teachers, who should be in jeopardy of layoff. Elementary Education certificated teachers are not a classification. The next lay off involved the identification of a different characteristic that placed a teacher in jeopardy of layoff. Teachers certificated in Music, Physical Education, and Home Economics were put in jeopardy. Teachers at the School

were classified 1 through 6 depending on their academic degrees and graduate credits and were paid accordingly. They all had Teacher classifications and their rights to retention in each case was dependent upon their seniority and performance relative to other particular teachers in the School in their classification. We find that the School did not comply with the Board's rules relative to layoffs in the case of each of the Appellants by failing to implement the layoffs according to classifications.

The School Did Not Rank The Teachers in any
Given Lay Off Group "According to their Relative Performance"
Since the Rating Form Used Lacks Validity or Reliability

The employee rating form used in these layoffs was designed by the Bureau of Personnel and distributed to State agencies for use in effecting layoffs. The form is as follows:

LAYOFF PERFORMANCE RATING SCALE

NAME	CLASS	LAYOFF UNIT					
Rating Factors	Level of Performance					Total Numerical Rating	
	Excellent (80 - 100)	Good (60 - 79)	Fair (40 - 59)	Poor (20 - 39)	Unsatisfactory (0 - 19)		
Quality Accuracy Completeness Neatness Thoroughness							
Quantity Amount Promptness of completion							
Work habits Punctuality Attendance Care of Property & Materials							
Work Interest Attitude Resourcefulness Initiative Adaptability							
Personal Relations Tact Courtesy Patience Loyalty Discretion							
<u>Performance Ranking Score</u>							

INSTRUCTIONS. See reverse side of page.

Dr. Howard L. Stone testified that in his opinion the form was of questionable reliability or validity in the job evaluation of teachers. He testified that he is employed by the University of Wisconsin as the Director of Educational Planning, Development and Evaluation for the Center for Health Sciences, as an Associate Professor of Continuing Medical Education, and as a lecturer in the Department of Educational Administration. He testified that all of these positions involved study and research relative to the development of methods to accurately evaluate teachers. He possesses a Doctor of Philosophy degree in Educational Administration from the University of Wisconsin. He filled various positions in the Wauwautosa Public Schools in Wauwautosa, Wisconsin from 1952 to 1969 and has written papers and participated in workshops on various topics in the field of education.

Dr. Stone expressed the opinion that the form is unreliable. He explained that by reliability he meant that a given rater might not give the same teacher the same numerical score for what the rater perceived as the same level of performance on subsequent ratings. He particularly noted the 20 point spread in the excellent category as illustrative of the fact that two teachers could be regarded as excellent and, at the same time, be given a numerical rating of 20 points apart. He said that this kind of scale, to his knowledge, is not used generally in the field of teacher evaluation.

Dr. Stone further expressed the opinion that the form lacked validity. He explained that by validity he meant the form was valid if it measured what it purports to measure. In the instant case, the form has validity if it measures a teacher's efficiency. Dr. Stone said the criteria or "rating

factors," as the form identifies them, are undefined, and the raters have no agreement as to their meaning. He said that the criteria for teaching personnel should relate to the teachers role function, should include reference to documents produced for instructional programs, instructional materials themselves, records of student achievement, and classroom testing materials. He said that in his opinion the resulting data would be invalid. He concluded that the criteria on the form bear little relation to teaching efficiency "or perhaps come out with a negative correlation between actual teaching efficiency and how people might be rated on this form." Dr. Stone's testimony was uncontradicted and we accept it as credible.

The School officials employed by the Respondent recognized the deficiencies of the form. Mr. Pawlisch said it leaves a lot to be desired. Ms. Nichols said she thought it was a poor form for evaluating teachers. Dr. Douglas, who has a Doctoral Degree in higher education administration, said the forms are poor for evaluating teachers and he didn't think they evaluate teachers fairly. He said they were "good for shit" and would never hold up in court.

We find that the Respondent did not rank the teachers in the various layoff groups by their relative performance since the form used in the rating procedure has not been shown to be sufficiently reliable or valid to ensure that efficient teachers are ranked high and less efficient teachers are ranked lower.

The Respondent Has Not Demonstrated That the
Appellants Were the Least Efficient Teachers In
Their Respective Layoff Groups

In layoff appeals the State must prove by the greater weight of the credible evidence that the laid off employee was the least efficient

employee in the layoff group. Otherwise, the lay off was not for just cause. See Mayes v. Weaver, Wis. Pers. Bd. Case No. 73-112, December 20, 1973.

No evidence was introduced by the Respondent to prove that Appellant Krantz was any less efficient a teacher than any of the other teachers in the layoff group of which he was a member. The forms themselves are not proof of efficiency, but merely indicate the School's opinion as to efficiency expressed in numerical terms. Mayes, supra. Appellant Landmark admitted that she was frequently late for work. On the other hand, she testified that she had never been denied a merit increase, has taught English, Mathematics, Music, and Social Problems and Social Studies for over 28 years at the time of her layoff. Nothing in the record indicates that Appellant Olson is less efficient than any other teacher. To the contrary, in 1962, Mr. Pawlisch called her:

"A very effective teacher with a remarkable knowledge of her field and its teaching techniques which she uses with patience and persistence seldom found in a teacher."

In January 1967, he wrote:

"The type of child enrolled in her classes is increasingly primitive and inadequate. The resultant challenges at times appears insurmountable. Yet her progress with such children is remarkable."

That was her last written evaluation. She always received merit pay increases throughout her 24 years of service at the School. Nothing in the record shows Appellant Cook to be in any way less efficient than the other teacher in her layoff group. Indeed, in December 1972, Dr. Douglas commented to her that she had an excellent room that creates "a wonderful learning environment." We find that the Respondent has not demonstrated that Appellant

Krantz was less efficient a teacher than others in his layoff group or that Appellants Landmark, Olson and Cook were the least efficient teachers in their respective layoff groups.

The Respondent Violated the Statute By Not
Terminating Probationary Teachers Before Laying
Off Appellants Landmark, Olson and Cook

The statute requires that new probationary teachers be discharged before permanent classified employees be laid off. Section 16.28(2), Wis. Stats., 1971. The evidence shows that sometime during the period August to October, 1972, or in other words, sometime shortly before the layoff of Appellants Landmark, Olson, and Cook, Dr. Douglas hired three new teachers, Mr. Leslie Paul, Ms. Vickie Poole, and Ms. Bobbie Moore. All of these employees were then in their original probationary period. We find that the Respondent unlawfully laid off Appellants Landmark, Olson, and Cook by not first discharging three probationary employees.

Board Will Not Resolve the Due Process Issue

The Appellants Landmark, Olson, and Cook contend that they have been denied due process of law since the Respondent declined to permit Dr. Stone the opportunity to visit the School while Appellants Landmark, Olson and Cook were actively employed to make an independent evaluation of their efficiency as well as the other teachers in their respective layoff groups. Since we have determined that the Appellants must be reinstated with back pay for a number of reasons, we need not resolve the question whether they were denied due process.

Conclusion

We conclude that all of the Appellants were laid off without just cause on the grounds that 1) the layoff groups were not composed of all teachers in a single classification, i.e. Teacher 1, Teacher 2, 2) the form used for arriving at a ranking by relative performance of the teachers within the respective layoff groups was of questionable reliability and may well have resulted in invalid rankings, and 3) that the Respondent failed to prove that the Appellants were less efficient than other teachers in the respective layoff groups. We conclude that each of the aforementioned grounds would independently compel the conclusion that such Appellants were laid off without just cause. In addition, we conclude that an additional basis for such conclusion so far as Appellants Landmark, Olson and Cook are concerned is that the Respondent unlawfully failed to discharge probationary employees before laying off those Appellants.

ORDER

IT IS ORDERED that the Respondent immediately reinstate all of the Appellants, namely Willard A. Krantz, Julia I. Landmark, Marion I. Olson, and Sally A. Cook to their former positions, without any loss of seniority or other benefits and with full back pay, from the date of their respective layoffs to the date of their individual receipt of the Respondent's written unconditional offer of recall to active employment.


IT IS FURTHER ORDERED that, within 10 days of the date of this Order, the Respondent shall advise the Board in writing what steps he has taken to comply herewith.

Dated

July 3, 1974.

STATE PERSONNEL BOARD

BY


Percy L. Julian, Vice-Chairman