

* * * * *

EARL CHANDLER

Appellant,

v.

Superintendent, DEPARTMENT
OF PUBLIC INSTRUCTION

Respondent.

Case Nos. 81-333-PC
82-94-PC

* * * * *

ORDER

This matter is before the Commission for consideration of a "Proposed Decision and Order" (copy attached). The Commission, having considered the arguments of the parties and consulted with the examiner, issues the following order:

1. Pages 12, 13 and 14, and the first two lines on page 15 of the proposed decision are rewritten as follows, for reasons which are set forth in the revision:

In a letter dated July 22, 1981, appellant advised respondent that his second priority (after transfer) was to "to displace into a position available to me."

The record reveals in the MIS position standard that, since neither of the two classification in which appellant had attained permanent status in class (MIS-5 and MIS-6) was part of a progression series, appellant had a right to displace only into the MIS-5 classification. Respondent, although acknowledging that appellant has such a displacement right, argues that appellant wasn't specific enough or aggressive enough in exercising these rights. This position is difficult to reconcile with respondent's statement

in its letter of July 31, 1981, that it had reviewed appellant's "request to transfer, displace, or demote in lieu of layoff." (our emphasis) Furthermore, respondent cites no authority for its argument that appellant was required to be more specific or aggressive and the language of §22.08(2), does not state or imply such a requirement. Within five days of his receipt of his layoff letter, appellant notified respondent that he wanted to exercise his displacement rights. Despite this notice, despite its knowledge that appellant could displace into the MIS-5 classification, and without initiating the layoff process in the MIS-5 classification, respondent concluded that there were no classifications in which appellant could exercise displacement. The only explanations offered by respondent appear in the deposition of Dirk V. Graye, the Personnel Administrative Officer at the DPI, (Appellant's Exhibit #27 at pp.20-21), who stated that respondent concluded that appellant lacked "formal preparation and training in the area of data processing," and in the testimony of Richard Rydecki, the Director of the Bureau of Data Systems and Processing, who stated that nearly all of the MIS positions at DPI required knowledge of COBOL and appellant does not have such knowledge. Such a summary disposition of an employe's exercise of his displacement rights is not permitted under §Pers 22.08(2), Wis. Adm. Code. This section provides that the exercise of displacement rights by an employe induces a layoff in those classification which the employe has a right to displace into. This requires the agency to prepare a layoff plan and to satisfy all other requirements for effectuating a layoff in these classifications. The record in the instant appeal does not indicate that respondent went through the required layoff process for the MIS-5 classification

after appellant exercised his right of displacement and respondent thus failed to comply with §Pers 22.08(2), Wis. Adm. Code.

Section 230.34(2), Wis. Stats., provides that:

(2) Employees with permanent status in class in permanent, sessional and seasonal positions in the classified service and employees serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization but only after all original appointment probationary and limited term employees in the classes used for layoff, are terminated.

Section Pers 22.04 Wis. Adm. Code, provides that:

Before an employe with permanent status in class in a permanent position is laid off, the appointing authority shall terminate all employes in the same class, class subtitle or progression series in the employing unit in which the layoff occurs as follows:

- (1) Limited term employes, including emergency and provisional;
- (2) Employes serving on a project appointment; and
- (3) Employes serving an original appointment probationary period.

Appellant contends that respondent did not comply with these provisions because respondent laid off appellant while retaining limited term and probationary employes classified in the MIS series.

The record indicates that there was one limited term employe (LTE) classified in the MIS series at the time of appellant's layoff and there were three employes classified in the MIS series serving original appointment probationary periods during 1981 (the record does not indicate if these employes were on probation at the time of appellant's layoff). However, none of these LTEs or probationary employes were classified as an MIS-5 and, therefore, they were not required to be laid off prior to appellant.

2. The Commission also deems it appropriate to add to the opinion section of the proposed decision at the end of the first full paragraph on page 15 the following sentence:

The instant case is distinguishable from the case of Thomas v. UW, Case No. 81-332-PC (3/82) by virtue of the fact that in the instant case there was more than one defect in the layoff process, i.e., not only was the layoff notice not timely but appellant's displacement rights were violated.

3. The remainder of the "proposed decision and order" is adopted by the Commission and incorporated by reference as if fully set forth.

Dated: November 17, 1983

STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


DENNIS P. MCGILLIGAN, Commissioner

LRM:ers

Parties:

Earl Chandler
129 Greenbriar Dr.
Sun Prairie, WI 53590

Herbert Grover
Superintendent, DPI
P.O. Box 7841
Madison, WI 53707

* * * * *

EARL CHANDLER
 Appellant,
 v.
 Superintendent, DEPARTMENT
 OF PUBLIC INSTRUCTION,
 Respondent.
 Case Nos. 81-333-PC
 82-94-PC

* * * * *

PROPOSED
 DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal, pursuant to §230.44(1)(c), Wis. Stats., of a layoff. A hearing was held on May 24, 1983, and posthearing briefs were filed.

FINDINGS OF FACT

1. Appellant had been employed in the classified civil service by respondent on a continuous basis from 1965 until July 31, 1981, the effective date of appellant's layoff.
2. At the time of his layoff, appellant's position was classified as a Management Information Specialist 6 (MIS-6) and he had attained permanent status in class as an MIS-6. Appellant had previously attained permanent status in class as a Data Processing Specialist 2 (such classification was abolished as a result of the Data Processing Survey of March 10, 1968) and MIS-5.
3. In response to budget reductions mandated in July of 1981, respondent decided to eliminate appellant's position. Appellant's position was primarily responsible for coordinating the use of computers by regional data processing service centers and serving as a liaison between these regional

centers and respondent's central office. These regional centers were primarily housed in Cooperative Educational Service Agencies (CESAs).

4. Prior to and during this period of time, in response to actions of the State Legislature, respondent assigned CESAs a lower priority status than the Wisconsin Elementary and Secondary School Accounting System (WESSAS) project. The purpose of the WESSAS project was to develop and implement a uniform accounting system for school districts. The WESSAS project was the responsibility of respondent's Division of Financial Aids.

5. In the fall of 1980, appellant was assigned to the WESSAS project. Appellant's position was not reclassified or reallocated and his position description was not modified as a result of this assignment. Due to the fact that the supervisor of the WESSAS project did not feel that appellant's performance had been satisfactory, appellant was reassigned in the late spring of 1981 to those duties he had been performing prior to the WESSAS assignment. Appellant's WESSAS duties were assigned to other employes in the Division of Financial Aids. Appellant had not been advised that his assignment to the WESSAS project would be temporary.

6. In a letter to the Administrator of the Division of Personnel (hereinafter "Administrator") dated July 16, 1981, respondent submitted its layoff plan for the MIS-6 classification. Respondent indicated in this layoff plan that it had no limited term, emergency, provisional, original appointment probationary, or project appointment employes occupying positions in the layoff group and that, of the two employes in the layoff group, James R. Johnson had been exempted from layoff because of his special skills and appellant would be laid off effective July 31, 1981.

7. By letter dated July 17, 1981, the layoff plan was approved by the Administrator. This letter was prepared on the Administrator's stationery, bore a signature which could only be assumed to be that of the Administrator or someone authorized to sign on his behalf, and stated that respondent's MIS-6 layoff plan was approved.

8. By letter dated July 16, 1981, respondent advised appellant of his layoff and, in general terms, of the alternatives in lieu of layoff. Appellant received this letter on July 21, 1981. This letter also incorrectly stated that appellant's position was in pay range 1-19. Appellant's position was actually in pay range 1-16 and this correction was noted in a letter from respondent to appellant dated July 28, 1981.

9. In a letter to respondent dated July 22, 1981, appellant indicated his desire to transfer, to displace, or to accept a demotion, in order of priority. Appellant further indicated his desire to be given "the opportunity to be retrained for employment in an area that would provide me with an opportunity for continued state service."

10. In a letter to respondent dated July 23, 1981, appellant indicated his desire to accept a demotion to a vacant Administrative Officer 3 (AO-3) (PR1-18) position.

11. In a letter to appellant dated July 28, 1983, respondent acknowledged the error in the July 17 layoff letter relating to the pay range of appellant's position and advised appellant that his request for demotion could not be considered because the AO-3 position was in a higher pay range than appellant's current position. The AO-3 position required certification as a librarian. Appellant was not so certified.

12. In a letter dated July 31, 1981, respondent advised appellant that there were no vacancies to which he could transfer; no classifications in which he had previously attained permanent status in which he could exercise displacement; and, that, of the three positions which he had indicated an interest in accepting a demotion to, he was found not to be qualified for two of them (MIS-3 and Food Service Administrator 2) and the third had been offered to another employe facing layoff who had more seniority than appellant (Equal Opportunity Specialist 4).

13. The Food Service Administrator 2 position was responsible for supervision of a food service operation and facilities maintenance (house-keeping). Three employes facing layoff were interviewed for this position. The employe with supervisory experience and experience with facilities maintenance (Raymond Genrich) was regarded by the interviewer as qualified for the position. Appellant indicated to the interviewer that he had experience in data processing but did not indicate any experience in supervision, food service, or facilities maintenance. The interviewer concluded that appellant was not qualified for the position.

14. The duties of the MIS-3 position primarily included computer programming duties and required a knowledge of COBOL, IBM DOS/VS(e)-JCL, the telecommunications features of CICS and the data base management features of IDMS. Appellant did not indicate to the person who interviewed him for this position that he had programming skills or experience or knowledge of COBOL. The interviewer concluded that appellant was not qualified for the position.

15. Of the other positions vacant at the time of appellant's layoff, appellant indicated an interest only in an Account Specialist 1 position. This position required knowledge of financial accounting. When interviewed

for this position, appellant did not indicate he had any knowledge of or experience with financial accounting. The interviewer concluded that appellant was not qualified for the position. Subsequent to the interview, respondent, due to budgetary cutbacks in the federal program with which the position was involved, decided not to fill the position.

16. At the time of appellant's layoff, there was a limited term employee (William C. Knight) employed by respondent in the MIS series (as an MIS-2).

17. During 1981, there were three employees (Barbara Lynch as a MIS-4; Susie Pullum as an MIS-3; and Bryan Frank as an MIS-2) classified in the MIS series who were serving an original appointment probationary period.

18. At the time of appellant's layoff, the only other position classified at the MIS-6 level was that occupied by James R. Johnson. An employee named Richard Pierce had occupied a position classified at the MIS-6 level but had vacated the position effective May 15, 1981. This position was downgraded to a MIS-3 (see Finding of Fact #14) and filled on September 20, 1981.

19. At the time of appellant's layoff, the only position classified at the MIS-5 level was occupied by an employee (Joan Poulson) who had more seniority than appellant. Ms. Poulson's seniority date was March 3, 1964. Appellant's seniority date was December 27, 1965.

20. At the time of appellant's layoff, there were positions at the MIS-4, MIS-3, and MIS-2 levels at the Department of Public Instruction (DPI) occupied by employees with less seniority than appellant.

21. The record does not indicate that respondent prepared layoff plans for the MIS-5, MIS-4, MIS-3, or MIS-2 classifications in response to appellant's July 22, 1981, request to displace to an appropriate position.

22. Appellant filed a timely appeal of his layoff with the Personnel Commission on August 3, 1981.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(c), Wis. Stats.
2. The respondent has the burden of proving that the layoff has been conducted in accordance with the applicable statutes and administrative code provisions and that the layoff is not the result of arbitrary and capricious action.
3. The respondent has failed to sustain that burden of proof.
4. The layoff of the appellant from his MIS-6 position failed to comply with §Pers 22.07, Wis. Adm. Code, which requires that the employe "be given written notice of such [layoff] action, not less than 15 calendar days prior to the effective date thereof."
5. The layoff of the appellant from his MIS-6 position failed to comply with §Pers 22.08(2), Wis. Adm. Code, which delineates the displacement rights of an employe who has received notice of his layoff.

OPINION

The Supreme Court decision of Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 237 N.W. 2d 183 (1976), provides the framework for decision of this appeal. In that case, the court held:

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.

* * *

Arbitrary or capricious action on the part of an administrative agency occurs when it can be said that said action is unreasonable

or does not have a rational basis ... and [is] not the result of the 'winnowing and sifting' process. 71 Wis. 2d at 52-54.

Respondent submitted its layoff plan for the MIS-6 classification to the Administrator in a letter dated July 16, 1981. This letter stated, in pertinent part, that:

Written notification of his impending layoff will be given to the affected employe not less than fifteen (15) calendar days prior to the effective date of layoff upon receipt of approval to implement the layoff. A copy of the proposed letter is enclosed.

Such written notification was provided to appellant in a letter dated July 17, 1981. This notification letter contained an error and an amended letter dated July 28, 1981, was provided to appellant. Respondent's layoff plan was approved by the Administrator in a letter dated July 17, 1981. Appellant argues that because the corrected notification letter was never approved by the Administrator, the respondent failed to satisfy the following requirements of §Pers 22.05, Wis. Adm. Code:

Whenever it becomes necessary for an agency to lay off employes, the appointing authority shall prepare a comprehensive written plan for layoff following the procedure specified in this chapter and submitted to the administrator for review and approval prior to implementation.

Section Pers 22.07, Wis. Adm. Code, provides in pertinent part:

Any employe affected by such layoff shall be given written notice of such action, not less than 15 calendar days prior to the effective date thereof.

Appellant cites no authority for his position that the written layoff notice is to be regarded as an integral part of the layoff plan and, as a consequence, required to be approved by the Administrator. In view of the separate treatment of the plan and the notice in the Wis. Adm. Code and the lack of any express requirement to the contrary, the Commission concludes

that the written layoff notice need not have been approved by the Administrator before respondent implemented the layoff of appellant.

Appellant further argues that, because respondent's MIS-6 layoff plan was not reviewed and approved by the Administrator personally but by Dale Bruhn, an employe of the Division of Personnel, the review and approval requirement of §Pers 22.05, Wis. Adm. Code, was not satisfied. However, it is uncontroverted that respondent prepared and submitted its MIS-6 layoff plan to the Administrator and that the letter of July 17, 1981, was prepared on the Administrator's stationery, bore a signature which could only be assumed to be that of the Administrator or someone authorized to sign on his behalf, and stated that respondent's MIS-6 layoff plan was approved. It was reasonable under these circumstances for the respondent to regard the July 17, 1981, letter as the required approval of respondent's MIS-6 layoff plan by the Administrator. The respondent has clearly sustained its burden of proceeding in regard to this issue, and in the absence of any evidence that Mr. Bruhn was not authorized to sign on the Administrator's behalf or that the Administrator improperly delegated his authority to approve layoff plans, the Commission concludes that the respondent sought and obtained the necessary approval of its MIS-6 layoff plan.

Section Pers 22.08, Wis. Adm. Code, provides in pertinent part:

In the event that the services of an employe with a permanent status in a class are about to be terminated by layoff as a result of a reduction in force, these alternatives shall be available, in the order listed below, in lieu of layoff, provided that the order of layoff as set forth in the law and these rules permit:

(1) TRANSFER. (a) All employes who have received a notice of layoff have the right to transfer:

1. Within the employing unit: to any vacancy in the same or counterpart pay range for which the employe is qualified to perform

the work after being given the customary orientation provided to new workers in the position; or

2. Within the agency: to any vacancy in the same class, class subtitle or progression series from which the employe is being laid off.

* * *

(3) DEMOTION IN LIEU OF LAYOFF. (a) Within an agency. An appointing authority shall offer an employe a demotion to the highest level vacancy available for which the employe is qualified, after the customary orientation provided to new workers in the position, after taking into consideration the employe's appointment preferences, in lieu of laying the employe off when the employe cannot be appointed under §Pers 22.08(1) and (2), Wis. Adm. Code. Such offer shall meet the criteria for a reasonable offer of appointment under §Pers 22.09, Wis. Adm. Code.

There were no vacancies at the DPI into which appellant could transfer at the time of his layoff. Appellant did, however, indicate that he would like to demote into certain vacant positions within the agency:

1. Administrative Officer 3 -- This position was at pay range 1-18. Since appellant's position at the time of layoff was at pay range 1-16, appellant could not transfer or demote into the AO-3 position. In addition, the AO-3 position required certification as a librarian. Since appellant did not hold a librarian certification, he was not qualified to perform the work of the AO-3 position. Appellant argues that respondent should be estopped from denying appellant's request to "demote" into the AO-3 position because the original layoff notification letter respondent sent to appellant incorrectly stated that the pay range of appellant's current position was 1-19. However, even if the pay range of appellant's position had been at the 1-19 level, appellant was not qualified to do the work of the AO-3 position and, under the language of §Pers 22.08(3), Wis. Adm. Code, could not have transferred or demoted into the AO-3 position.

2. Food Service Administrator 2 -- This position was responsible for supervision of a food service operation and facilities maintenance. Appellant did not indicate to the person interviewing candidates for this position that he had any experience in supervision, food service, or facilities maintenance. Another employe of the DPI facing layoff who had experience as a supervisor and with facilities maintenance was selected for the position. This employe was clearly better qualified for this position than appellant.

3. Management Information Specialist 3 -- This position had been vacated in May of 1981 and was classified as a MIS-6 at that time. Prior to the date of appellant's layoff, a decision had been made to downgrade the position to a MIS-3 and fill it at that level. The position was primarily responsible for computer programming and required knowledge of COBOL. Appellant did not indicate to the person who interviewed him for the position that he had programming skills or experience or knowledge of COBOL. The interviewer justifiably concluded that appellant was not qualified for the MIS-3 position.

4. Account Specialist 1 -- This position required knowledge of financial accounting. Appellant did not indicate to the person who interviewed him for this position that he had any knowledge of or experience with financial accounting. The interviewer justifiably concluded that appellant was not qualified for this position. This position was never filled as a result of federal budget cutbacks.

5. Equal Opportunity Specialist 4 -- The appellant was considered to be qualified for the position but another qualified candidate with more seniority was selected for the position.

Appellant contends that "customary orientation" should include on-the-job-training for the position and appellant was, therefore, qualified to perform the work of each of these positions within the meaning of §Pers 22.08(3), Wis. Adm. Code. However, this code section does not require the employer to accept a person without the basic knowledge, training, or experience and provide him with this basic knowledge, training, and experience while he is on the job. The appellant's interpretation is unreasonable and would certainly not result in the efficient and effective delivery of services by state agencies. (See §230.01, Wis. Stats.)

Appellant also contends that his displacement rights were unlawfully denied by respondent. Section Pers 22.08(2), Wis. Adm. Code, provides in pertinent part that:

(2) DISPLACEMENT. (a) An employe shall be entitled to exercise a right of displacement only if there is no vacancy to which he or she could transfer or demote under sub. (1) or (3) that is at a higher level than could be obtained through displacement. Such employe identified for layoff shall be entitled to exercise displacement rights within the employing unit. This right entitles the employe to induce the layoff process in a lower class or approved subtitle in the same series or in a class or approved subtitle in a series having the same or lower pay range maximum within the employing unit, in which the employe has previously obtained permanent status in class, and to lower classes or approved subtitles in those classes in a progression series in which the employe has previously obtained permanent status in class at a higher level. However, exercising such displacement rights does not guarantee the employe a position in the class or subtitle selected; it only requires the employe to be included along with other employes in the class or subtitle when the layoff process as provided in §Pers 22.06 Wis. Adm. Code, is applied to determine which employe is laid off as a result of displacement. An employe electing to exercise displacement rights shall have 5 calendar days from the date of written notification of impending layoff or receipt of such written notification, whichever is latter, to exercise that option.

In a letter dated July 22, 1981, appellant advised respondent that his second priority (after transfer) was "to displace into a position available to me."

The record reveals that, although the only position classified at the MIS-5 level was occupied by an employe (Joan Poulson) with more seniority than appellant, there were positions at the MIS-4 , MIS-3, and MIS-2 levels which were occupied at the time of appellant's layoff by less senior employes. Under the provisions of §Pers 22.08(2), an employe may exercise a right of displacement to "a lower level within the employe's present classification series ... in which the employe has previously obtained permanent status in class and to lower classes or approved subtitles in those classes in a progression series in which the employe has previously obtained permanent status in class at a higher level." Respondent, in its brief, acknowledges that "As a MIS-6, Mr. Chandler could have selected any class from MIS-1 to MIS-5 for inducement of layoff and his displacement of a coworker in the class selected." In view of such an acknowledgment by respondent and of the above-cited language of §22.08(2), and in the absence of any evidence to the contrary, the Commission must conclude that appellant's MIS-6 classification was part of a progression series. Even if this were not the case, appellant would have had displacement rights to the MIS-5 classification in which he had previously obtained permanent status in class. Respondent, although acknowledging that appellant had such displacement rights, argues that appellant wasn't specific enough or aggressive enough in exercising these rights. This position is difficult to reconcile with respondent's statement in its letter of July 31, 1981, that it had reviewed appellant's "request to transfer, displace, or demote in lieu of

layoff." (our emphasis) Further- more, respondent cites no authority for its argument that appellant was required to be more specific or aggressive and the language of §22.08(2), does not state or imply such a requirement. Within five days of his receipt of his layoff letter, appellant notified respondent that he wanted to exercise his displacement rights. Despite this notice; despite its knowledge that appellant could displace into lower classifications within the MIS series; despite the fact that there were positions classified at the MIS-4, MIS-3, and MIS-2 levels occupied by less senior employes; and without initiating the layoff process in any of the lower MIS classifications, respondent concluded that there were no classifications in which appellant could exercise displacement. The only explanations offered by respondent appear in the deposition of Dirk V. Graye, the Personnel Administrative Officer at the DPI, (Appellant's Exhibit #27 at pp. 20-21), who stated that respondent concluded that appellant lacked "formal preparation and training in the area of data processing," and in the testimony of Richard Rydecki, the Director of the Bureau of Data Systems and Processing, who stated that nearly all of the MIS positions at DPI required knowledge of COBOL and appellant does not have such knowledge. Such a summary disposition of an employe's exercise of his displacement rights is not permitted under §Pers 22.08(2), Wis. Adm. Code. This section provides that the exercise of displacement rights by an employe induces a layoff in those classification which the employe has a right to displace into. This requires the agency to prepare a layoff plan and to satisfy all other requirements for effectuating a layoff in these classifications. The record in the instant appeal does not indicate that respondent went through the required layoff process for any of the lower classifications in the MIS

series after appellant exercised his right of displacement and respondent thus failed to comply with §Pers 22.08(2), Wis. Adm. Code.

Section 230.34(2), Wis. Stats., provides that:

(2) Employees with permanent status in class in permanent, sessional and seasonal positions in the classified service and employees serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization but only after all original appointment probationary and limited term employees in the classes used for layoff, are terminated.

Section Pers 22.04 Wis. Adm. Code, provides that:

Before an employe with permanent status in class in a permanent position is laid off, the appointing authority shall terminate all employes in the same class, class subtitle or progression series in the employing unit in which the layoff occurs as follows:

- (1) Limited term employes, including emergency and provisional;
- (2) Employes serving on a project appointment; and
- (3) Employes serving an original appointment probationary period.

Appellant contends that respondent did not comply with these provisions because respondent laid off appellant while retaining limited term and probationary employes classified in the MIS series.

The record indicates that there was one limited term employe (LTE) classified in the MIS series at the time of appellant's layoff and there were three employes classified in the MIS series serving original appointment probationary periods during 1981 (the record does not indicate if these employes were on probation at the time of appellant's layoff). If, after the exercise of appellant's displacement rights, layoffs had been properly effected in any of these lower MIS classifications, any LTE or probationary

employee classified at the level targeted for layoff would have been required to be laid off prior to appellant.

It is uncontroverted that appellant did not receive written notice of his layoff until July 21, 1981. Section Pers 22.07 provides in pertinent part that:

Any employee affected by such layoff shall be given written notice of such action, not less than 15 calendar days prior to the effective date thereof.

The effective date of appellant's layoff was July 31, 1981. Since the intent of the above-cited provision is obviously to provide an employee facing layoff with 15 days in which to pursue alternative employment opportunities, it is reasonable to assume that the 15-day period should begin to run on the date that the employee receives the written notice. In the instant case, given that the appellant received the layoff notice on July 21, 1981, the effective date of the layoff could not have been established any earlier than August 4, 1981, in order to be consistent with §Pers 22.07, Wis. Adm. Code. Respondent's establishment of the effective date of appellant's layoff as July 31, 1981, was clearly in violation of this 15-day requirement.

Appellant argues that, because appellant's duties continued to be performed after appellant's layoff, appellant's position continued to exist and appellant's layoff, therefore, should not have occurred. However, the duties appellant references in support of this argument are appellant's WESSAS duties which appellant performed on a temporary basis from the fall of 1980 to the late spring of 1981, which were never included as a part of appellant's position description, and which appellant was not performing at the time of his layoff. There is no evidence in the record to support a finding that the duties of appellant's position as detailed in his position

description at the time of his layoff continue to be performed at DPI and/or constitute the majority of the duties of a position other than appellant's.

Appellant argues that respondent did not follow the proper procedures in its assignment of appellant to the WESSAS project. However, it would be inappropriate for the Commission to consider these arguments since the only issue under consideration here is that of appellant's layoff and appellant was not performing duties relating to the WESSAS project at the time of his layoff, such duties did not constitute a part of appellant's position description at the time of his layoff, and appellant had not been involved with the WESSAS project for a period of several months prior to the effective date of his layoff.

Appellant implies in his brief that the respondent was required to provide training for appellant. However, the statutory provision cited by appellant in support of this position (§120.046(3), Wis. Stats.) specifically states that the Secretary of the Department of Employment Relations "may authorize appointing authorities" to provide training opportunities for employes. This is not a mandate but a discretionary matter for the Secretary of DER and the appointing authorities.

ORDER

The respondent's layoff decision is rejected and the appellant shall be reinstated to his former position. This matter is remanded for action in accordance with this decision, as provided in §§230.43(4) and 230.44(4)(c), Wis. Stats.

Dated: _____, 1983

STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

LAURIE R. McCALLUM, Commissioner

LRM:ers

DENNIS P. MCGILLIGAN, Commissioner

Parties:

Earl Chandler
129 Greenbriar Dr.
Sun Prairie, WI 53590

Herbert Grover
Superintendent, DPI
P.O. Box 7841
Madison, WI 53707