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 SANDRA MANTHEI,  
                   Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 INDUSTRY, LABOR AND HUMAN  
 RELATIONS,  
                   Respondent.  
 Case No. 81-394-PC  
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DECISION  
AND  
ORDER

NATURE OF THE CASE

This matter is before the Commission on the issue of whether respondent's action of subjecting the appellant to layoff was for just cause.

FINDINGS OF FACT

1. Prior to her layoff, appellant was employed in respondent's Milwaukee North Job Service office as a Job Service Supervisor 2 (JS Sup. 2). She was promoted from the Job Service Assistant Supervisor 3 level to the JS Sup. 2 level on or about February 8, 1981.

2. Appellant's duties were to provide supervision and training for office staff in all phases of Unemployment Compensation and Employment Service programs and the Intake Unit.

3. Due to budget reductions in the federally funded Employment Service program area, it became necessary to eliminate positions within Job Service. Respondent first acted to reduce its staff by eliminating most limited term positions and by diverting Employment Service staff into a special project supported by another funding source. Additional reductions in the Employment Service area federal funding necessitated reduction of permanent positions.

4. By September 10, 1981, respondent's personnel office had determined that five JS Sup. 2 positions within the Southeastern District (i.e., Racine,

Kenosha, Waukesha and metropolitan Milwaukee) would be eliminated in order to meet the budgetary reductions.

5. Pursuant to Pers 22.06(2), Wis. Adm. Code, three of twelve JS Sup. 2 employes within the Southeastern District could be exempted from layoff for "having special or superior skills; for affirmative action purposes; or for other ... purposes."

6. The appellant was not exempted from layoff, even though she was recommended for exemption by her District Director.

7. The respondent instead chose to exempt Georgia Eckhoff, based on the recommendation of Ms. Eckhoff's District Director. Ms. Eckhoff performed a function similar to that performed by the appellant but in the Racine Job Service office. Ms. Eckhoff's exemption was based on the fact that she was handicapped, was performing a function of high priority within Job Service goals, and had significantly improved the output of the Racine office since she had been appointed to fill the JS Sup. 2 position there. Ms. Eckhoff had completed her JS Sup. 2 probationary period by July of 1981.

8. Respondent's decision to exempt Ms. Eckhoff and not the appellant from layoff was a reasonable decision and was not arbitrary or capricious.

9. In a letter dated September 15, 1981, the respondent prepared a layoff plan identifying the appellant as one of five JS Sup. 2 employes to be laid off, and submitted the plan to the Administrator, Division of Personnel, for approval.

10. The layoff plan was subsequently approved by letter dated September 16, 1981.

11. In a letter dated September 24, 1981, the appellant was notified that she was to be laid off from her position as a JS Sup. 2 effective October 5, 1981. The appellant was also notified that she could elect to exercise her right to bump into a position held by less senior Job Service Assistant 2's.

12. As of the date of layoff, there were no limited term employees, no project employees and no employees serving an original appointment probationary period in JS Sup. 2 positions within the Southeastern District.

13. The actual date of appellant's layoff from her JS Sup. 2 position was November 29, 1981.

#### CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to s.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 personnel statutes and administrative code provisions and that the layoff is not the result of arbitrary and capricious action.

3. The respondent has met that burden of proof.

4. The layoff of the appellant from her JS Sup. 2 position was for just cause.

#### OPINION

The standard to be followed by the Commission in reviewing a layoff was announced by the Wisconsin Supreme Court in Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 237 NW 2d 183 (1976):

[A]n 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 applicable provisions] of the Administrative Code and when the layoff is not the result of arbitrary or capricious action.  
71 Wis. 2d 46, 49.

Appellant's primary argument is that the respondent's decision to exempt Ms. Eckhoff rather than the appellant from the layoff process was an arbitrary decision. Pursuant to s. Pers 22.06(2), Wis. Adm. Code:

(2) The appointing authority may exempt from the layoff group up to 2 employes or 20%, whichever is greater, of the number of employes in the layoff group. In applying the percentage, any fraction shall be rounded to the next whole number. Exemptions may be used to retain employes having special or superior skills; for affirmative action purposes; or for other such purposes as may be determined by the appointing authority. Exercise of these exemptions shall be declared by the appointing authority as part of the layoff plan submitted under s.Pers 22.05, Wis. Adm. Code.

The Commission has reviewed the exemption decision that was made and concludes that it was in fact a reasonable decision. The evidence shows that Ms. Eckhoff was handicapped even though that information was not apparent on the face of correspondence relating to the exemption decision. In addition, testimony was received indicating that Ms. Eckhoff had made a major improvement in the productivity of the Racine office since her appointment as JS Sup. 2 there. Both the appellant and Ms. Eckhoff were recommended for exemption by their respective District Directors and both women occupied positions that were assigned functions that were consistent with the respondent department's priorities. Merely because the two women were considered equal in these two particular areas does not make unreasonable the respondent's decision that was based on performance and affirmative action factors as well.

The Commission has also reviewed the other applicable provisions of chapter Pers 22, Wis. Adm. Code and concludes that the respondent had complied with those provisions with respect to the appellant's layoff.

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ORDER

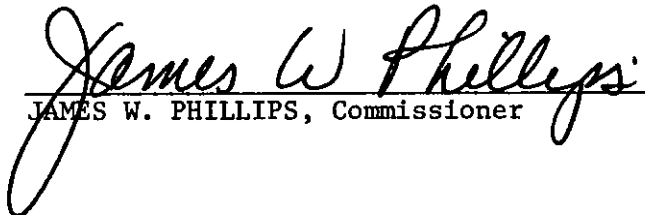
The respondent's decision laying off the appellant from her position as  
Job Service Supervisor 2 is affirmed and this appeal is dismissed.

Dated: October 14, 1982

STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

  
JAMES W. PHILLIPS, Commissioner

KMS:ers

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