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 *
 JOHNNE SMALLEY, *
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 Appellant, *
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 v. *
 *
 President, UNIVERSITY OF *
 WISCONSIN SYSTEM (Eau Claire) *
 *
 Respondent. *
 *
 Case No. 86-0128-PC *
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DECISION
 AND
 ORDER

The above captioned matter is an appeal of an employment lay off action. Testimony on the merits of this appeal was heard by Commissioner Donald R. Murphy. Exhibits were received in evidence and each party submitted posthearing briefs. After careful consideration of the foregoing information, the Commission enters the following findings of fact, conclusions of law, opinion and order.

FINDINGS OF FACT

1. Appellant, Johnne Smalley, at all times relevant to this matter, was employed as an Education Services Intern-Supervisor (EIS Sup.) at the University of Wisconsin - Eau Claire.
2. Respondent, University of Wisconsin System, is the administrative body which governs public higher education in Wisconsin. The University of Wisconsin - Eau Claire (UW - Eau Claire), where appellant is employed, is one of 13 universities, 13 two-year centers and a statewide extension which compose the system.

3. In a letter dated March 17, 1986, appellant was notified her position was being abolished as a result of implementing a computerized student academic record system and she would be laid off on April 26, 1986.

4. On May 22, 1986, appellant filed an appeal against respondent alleging the layoff violated the just cause requirement.

5. Appellant worked in the Registrar's Office which consisted of three sections: Records Services, Registration Services and Data Systems. Appellant was supervisor of the Record Services section.

6. In August, 1982, the Registrar's Office with the administrative computing center began developing a computerized student records system. In March, 1985, the center released the system to the Registrar's Office, which began training personnel on the new system and data loading.

7. At that time, the registrar determined that a person was needed to perform the data loading function. Appellant, the records manager, was given a temporary assignment to data loading. Her supervisory duties were assumed by the registrar and her other duties were divided among other employes.

8. Data loading, in this instance, involved keying into the computer the academic listing of each student re-admitted to UW-Eau Claire. The paper academic record of each student had to be keyed into the computer. In the fall of 1985 the university had an enrollment of some twelve thousand students.

9. During this 1985-1986 period, the registrar realized she needed a permanent position devoted to data loading. Having functioned for a year without appellant as supervisor of the records section, the registrar concluded that position was the most expendable and proceeded to plan the reorganization of her office.

10. The registrar, in consultation with the university personnel manager and a university systems personnel specialist, developed a reorganization plan for the Registrar's Office.

The reorganization plan, which included abolishing appellant's position and creating a data loading - Program Assistant 1 - position, necessitated a layoff in the EIS Sup. classification.

11. Three employes were in the EIS Sup. classification category and, because of the reorganization plan, were subject to the applicable laws governing lay off. The appellant was the least senior of that group and no limited term, emergency, provisional, original appointment probationary period or project appointment employes occupied positions in the layoff group.

12. On March 4, 1986, the university's Assistant Chancellor for Administrative Services submitted for approval the reorganization plan of its Registrar's Office to the Administrator of the Division of Merit Recruitment and Selection, Department of Employment Relations.

13. By a letter dated March 10, 1986, the administrator of DMRS acknowledged receiving respondent's proposed plan for layoff, advised the assistant chancellor that it complied with applicable provisions in the statutes and the code and approved the plan as it was presented.

14. No evidence was presented showing respondent's layoff violated the applicable state statutes and codes.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(c), Wis. Stats.

2. Respondent has the burden of proving the layoff was conducted in accordance with the applicable state statutes and codes and that the layoff was not the result of arbitrary and capricious action.

3. Respondent met the burden of proof.

4. Layoff of appellant from her Education Services Intern Supervisor position was for just cause.

OPINION

The issue in Smalley's appeal is whether her layoff from the position of Educational Services Intern Supervisor was in accordance with the applicable administrative and statutory law.

Section 230.34(2)(intro),(2)(a) and (3) provide:

Employes with permanent status in class in permanent, sessional and seasonal positions in the classified service and employes serving a probationary period in such positions after promotion or transfer may be laid off because of a reduction in funds 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 employes in the classes used for lay off, are terminated.

(a) The order of lay off of such employes may be determined by seniority or performance or a combination thereof or by other factors.

(3) The appointing authority shall confer with the administrator relative to a proposed layoff a reasonable time before the effective date thereof in order to assure compliance with the rules.

The controlling layoff case provides:

["The appointing authority] sustains its burden of proof when it has acted in accordance with the administrative and statutory guideline and the exercise of that authority has not been arbitrary and capricious." Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46, 52 (1975)

The undisputed evidence supports the conclusion that the University of Wisconsin-Eau Claire complied with the applicable administrative and

statutory guidelines for laying off state classified service employes: The lay off plan was approved by DER, employes were released on the basis of their status in the layoff group, the procedure for making the layoff was followed, proper notice prior to layoff was given appellant and appellant was advised of her appeal rights. Ms. Smalley presented no evidence on the question of whether the university complied with state statutes and administrative codes applicable to layoff procedure. Nor does she argue that point. Thus, the Commission finds the university acted in accordance with the administrative and statutory guidelines for laying off state classified service employes.

The remaining question is whether the university was arbitrary and capricious in the exercise of its layoff authority, which resulted in the lay off of Johnne Smalley. Arbitrary and capricious action, as defined in Weaver, (supra), occurs when the action in question is unreasonable or does not have a rational basis.

To this point, Ms. Smalley argues that the records management function remains despite reorganization; consequently, her position should not have been abolished. Testimony was presented which attempted to demonstrate the current existence of all the functions of Smalley's former position and the loss of efficient records management because of poor supervision of the records staff under the current reorganized structure.

Respondents' witnesses testified that computerization of all student records altered the kind of work being done in the Registrar's Office and produced the need for a data loader. The registrar testified she reviewed the needs of her office caused by the newly acquired computerized records

system, decided there was a need for a data loader and determined that a data loading position could be obtained by substituting it for the records management EIS position, which could be absorbed by other positions. So, she restructured her office, in response to the work demands caused by the computerization of student records in her office.

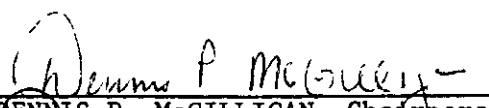
It is clear from the testimony of the registrar and other witnesses of the respondent, as expressed above and in the findings, that Ms. Smalley's layoff was the result of a rational process of analyzing the facts and was not arbitrary and capricious. Ms. Smalley's argument which raises the question of whether the registrar's decision resulted in a more efficient work unit, extends beyond the province of the Commission, except as it might bear on the arbitrary and capricious issue.

ORDER

Respondent's decision to layoff appellant from her position as supervisor of Record Services, Registrar's Office - Educational Services Intern - Supervisor, is affirmed and this appeal is dismissed.

Dated: April 29, 1987 STATE PERSONNEL COMMISSION

DRM:jmf
ID6/2


DENNIS P. MCGHLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

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