

Opinion No. 65-78A

May 20, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Guyton B. Hays, Commissioner of Public Lands, State Land Office Building, Santa Fe, New Mexico

QUESTION

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Under the Personnel Act is a regulation valid which provides that permanent employees who are terminated because of lack of work must be terminated in reverse order of seniority?

CONCLUSION

No.

OPINION

{*138} ANALYSIS

In your opinion request you state that because of the State Land Office moratorium on land sales it has become necessary to reduce the field force. The performance of these employees has been satisfactory and the termination is due solely to lack of work.

Section 802.1 (b) of the Personnel Board rules provides that when an appointing authority must terminate satisfactory employees because of lack of work, such termination shall be "in reverse order of seniority". You ask whether there is statutory authority in the Personnel Act for such a regulation. Our conclusion is in the negative.

Not only do we find no statutory authority for this rule, it is our opinion that it is inimical to the stated purpose of the Personnel Act. Section 5-4-29, N.M.S.A., 1953 Compilation (P.S.) states that "The purpose of the Personnel Act is to establish for New Mexico a system of personnel administration based solely on qualification and ability . . ." Nowhere in the Act is seniority even mentioned.

The personnel Act provides for a merit system, not a seniority system. When a reduction in force becomes necessary due to lack of work, the appointing authority must have the discretion to consider, along with seniority, other matters such as qualifications, ability and geographical location of the employees.

The latter is particularly important in your present situation. You may need a field man in Catron County but no longer need one in Luna County. Yet layoffs based solely on seniority might require that you terminate the field man in Catron County.

Simply because a state employee has satisfactorily passed his probationary period and is classified as a permanent employee does not necessarily mean that he has the same ability to perform the job as do others who hold the same classification. Seniority is simply one factor to be considered.

Pure seniority systems may well have the effect of locking in mediocrity, and this is not the intent or purpose of the Personnel Act. When an appointing authority finds it necessary to accomplish a reduction in force, it must have {*139} the discretion to attempt to keep the personnel who have the highest qualifications and ability.