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PATRICK J. LYONS,

Appellant,

v.

C. K. WETTENGEL, Director,  
State Bureau of Personnel, and  
EDWARD WIEGNER, Department of  
Revenue,

Respondents.

Case No. 73-36

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**OFFICIAL**

OPINION  
AND  
ORDER

Before AHRENS, Chairman, JULIAN and STEININGER.

Background Facts

In 1956, the Appellant commenced his employment with the Department of Revenue and shortly before February 18, 1973, was classified as a Revenue Administrator III. As such, he was Chief of the Inheritance Tax Bureau in the Department's Income, Sales, Inheritance, and Excise Tax Division. He had complete authority and responsibility regarding all aspects of the administration of the Inheritance Tax Laws of the State of Wisconsin. He supervised a staff of auditors, two attorneys and clerical personnel in this function.

In the latter part of 1972, the Department of Revenue was reorganized. The Inheritance Tax Bureau was combined with the Fiduciary and Gift Tax function to form a new combined Bureau. The Chief of the new Bureau was classified as a Revenue Administrator IV, one class higher than the Appellant's class. Within the Bureau, four separate sections were set up; they were Inheritance Tax, under the Appellant, Fiduciary and Gift Tax, Chief Counsel, and Clerical. The two attorney positions and clerical personnel were removed from the old Bureau and placed in their respective Sections of the new Bureau. Appellant's day to day

work activities remained substantially the same, except that he no longer had final authority regarding the administration of the inheritance tax law, nor was he involved in decisions about work flow, budgeting, or supervision of staff attorneys.

Effective February 18, 1973, Respondent Wettengel reallocated Appellant's position from Revenue Administrator III, salary range 1-18 to Revenue Administrator II, salary range 1-17. Under the rules of the Director pertaining to pay in such instances, Appellant did not receive a reduction in salary as a result of reallocation.

Appellant filed a timely appeal.

#### Burden of Proof

The burden of proof in appeals of interested parties and appointing authorities from actions of the Director is on the Appellant. In such proceedings, the Appellant raises the claim that the Board should reject the action of the Director or in other words, that the Director by his action has violated the law. Therefore, under the normal rule in civil matters it is the party advocating the affirmative of the issue, in this case, that a violation has occurred, that has the burden of proof.

#### Claimed Violations of Reallocation Statutes and Rules

Since we conclude that the Appellant's position was incorrectly reallocated, since he was demoted in lieu of being laid off, we need not consider his allegations that his reallocation was otherwise contrary to law.

#### Appellant Was Demoted in Lieu of Layoff Rather than Reallocated.

Appellant's change in position involved a demotion in lieu of layoff rather than a reallocation. Section 16.28(2), Wis. Stats., 1971, provides that permanent

employees may be laid off "due to ...material changes in...organization." It is the appointing authority that is authorized to lay off employees for just cause. Section 16.28(1)(a) and 16.05(1)(e). When a reorganization requires the abolition of certain positions, the appointing authority may demote an employee in lieu of laying him or her off. Pers. 17.04(2). Demotion is a movement of an employee with permanent status in one class to a position in another class that has a lower single rate or pay range maximum, Pers. 17.01, or some other change in position within the meaning of the term "demotion" as used in Section 16.28(1)(a), Wis. Stats., 1971. Some downward shifting of positions may amount to a reallocation. The Code provides the reduction in the classification of a position held by a permanent employee "that does not involve movement of the employe to a different position" is considered a reallocation. Pers. 17.02(3). Positions may be reallocated for a number of reasons related generally to the evolution of the classification scheme. Pers. 3.02(2). In the instant case, the reason for the reallocation action was given on the notice as "reappraisal of class level." The Code provision is more specific. It provides for reallocation based upon "The reappraisal of the level of the class in terms of the total service such as that resulting from personnel management surveys." (Emphasis added.) Pers. 3.02(2)(d). We find that as a result of reorganization Appellant's former position as a Revenue Administrator III, salary range 1-18 was abolished and a new position as Revenue Administrator II, salary range 1-17, was created. Organizationally, the former position was that of a Bureau Chief, while the latter was a Section Chief within the Bureau. The authorities and responsibilities of the two positions were different. The former involved complete final authority over administration of the Inheritance Tax Law. The latter involved only the power to recommend in that regard and less responsibility for work flow, budgeting, and personnel supervision. The two positions were in different recognized classes. Appellant was demoted from the higher class in lieu of being laid off as a result of the reorganization.

The Remedy

Since February 18, 1973, Appellant's employment has been adversely affected by the reorganization and his resultant demotion. The impact of such change in position may have been lessened somewhat by red circling his pay. The record does not show how Appellant was affected. We do not believe that the Appellant should be compelled to now reimburse the State for any pay he might have received by red circling. This is because the Appellant has been deprived of certain hearing rights and eligibility for placement on reemployment lists. We are, therefore, entering an Order that the Appellant's demotion be treated as such, while at the same time Appellant retains additional compensation, if any, he would not normally have received under such circumstances.

ORDER

IT IS ORDERED that the action of the Respondent Wettengel in reallocating the Appellant's classification from Revenue Administrator III to Revenue Administrator II is hereby rejected.

IT IS FURTHER ORDERED that the Respondent Wiegner initiate the appropriate demotion in lieu of layoff action, pursuant to Wis. Adm. Code Pers 22.

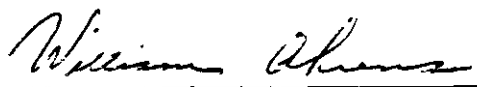
IT IS FURTHER ORDERED that Respondent Wiegner desist from any action to seek reimbursement from the Appellant for any additional compensation he may have received by the action of the Director incorrectly reallocating his position.

IT IS FURTHER ORDERED that Appellant be granted any intervening servicewide salary adjustments including merit to which he would have been entitled.

Dated Nov 21 1974

STATE PERSONNEL BOARD

BY

  
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William Ahrens, Chairman