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EUGENE SHEW,

Appellant,

v.

PRESIDENT, University of Wisconsin,

Respondent.

Case No. 76-213

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OFFICIAL

OPINION AND
ORDER

Before: James R. Morgan, Calvin Hessert and Dana Warren, Board Members.

OPINION

NATURE OF THE CASE

This is an appeal from the third step denial of appellant's grievance. This appeal was taken pursuant to Section 16.05(7), Wis. stats.

FINDINGS OF FACT

1. Appellant began employment at the University of Wisconsin - Whitewater on February 10, 1975 as a Custodial Supervisor 1.
2. Prior to his employment with the state, appellant was self-employed for 25 years as a painting and decorating contractor.
3. In late fall, 1974 appellant saw a notice for the Custodial Supervisor 1 position. He decided to apply because his business had slowed due to the recession, the required governmental paper work had increased, the new work offered additional security and the duties and responsibilities appeared to be similar to those performed when he was self-employed.
4. Appellant was formally offered the position in January, 1975 (See Appendix A, Appellant's Exhibit #7) although apparently there was an earlier offer and acceptance in December, 1976.

5. In anticipation of starting the new job, appellant liquidated his business which at the time employed one person, sold his home, and moved with his family to Whitewater. At the time of the move, there was one daughter age 15 still at home.

6. On some date on or about the commencement of his employment appellant signed a position description form for the Custodial Supervisor 1 position he had accepted. (See Appendix B, Appellant's Exhibit #1.) This form was explained to him by Duane Lenox who had authored the confirmation of employment letter. (Appendix A)

7. Appellant understood the new duties to be a custodial supervisor in charge of residence dorms. He further understood that he would be working from 7:00 a.m. to 3:30 p.m. He would not have accepted the job if it had involved night or evening hours. However, appellant did not advise respondent that the working hours were critical to his acceptance of the job offer or his continuing employment.

8. The job announcement did not indicate the work schedule of the position. (See Appendix C, Respondent's Exhibit #3.) However, both the confirmation letter and the position description (Appendices A & B, respectively) set forth the working hours.

9. Appellant kept the same duties and working shift until July 4, 1976. He was advised in June, 1976 that his position was being abolished as a result of a reorganization but that there was a Custodial Supervisor 1 position that would become vacant on July 4, 1976 because the incumbent was retiring. The latter position was on the second shift. His hours changed to 6:00 p.m. to 2:00 a.m. In June, 1977 the hours became 6:30 p.m. to 2:30 a.m. (See Appendix D, Appellant's Exhibit #3.)

10. The change in shift has disrupted appellant's family life. It also aggravated a nervous condition which appellant had experienced years before. He remained under doctor's care for about six months after he began working the second shift.

11. Appellant's performance was rated, on the average, good upon the completion of probation. A subsequent performance evaluation in May, 1976 rated him good to very good in all categories. Several employees who are supervised by appellant stated that they thought him to be a good supervisor.

12. Appellant was the only person who received written notification of the change in his duties and working hours. Mark Rehraurer, personnel manager for the Whitewater campus stated that the action taken with respect to appellant's position was a reassignment and that formal written notices of reassignment were rarely issued.

13. Appellant stated that he believed the position description to be an employment contract which was signed by his supervisor, the personnel manager and himself. Mark Rehraurer stated that his signature only implied that he had reviewed the position description and approved the classification level for the duties and responsibilities described.

14. Prior to the reorganization there was one Custodial Supervisor 1 position on the day shift (Appellant) and two on the night shift (Agnew and Hoffman). After the reorganization there were two Custodial Supervisor 1 positions on the day shift (Hoffman & Weber) and three on the night shift (appellant, Knuteson & Sherman). (See Board's Exhibits 3 and 4.)

15. The reorganization centralized the maintenance program for the entire campus. Under the prior system there were three independent divisions (academic buildings, university complex and the dorms) with no overall supervisory control over maintenance. (See Board's Exhibits 3 and 4.)

CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction to hear this appeal under Section 16.05(7), Wis. stats.
2. Appellant has the burden of proof in a case of this nature.
3. A position description is not an employment contract.
4. An appointing authority has a discretionary authority to change the working hours of an employe.
5. Respondent did not abuse its discretion in reassigning appellant to different working hours.

OPINION

A position description identifies a position by setting forth a listing of its duties and responsibilities and its classification. That is its primary function. It also identifies the name of the incumbent, the department involved, the job location and the hours to be worked plus a few other factors including the name of the first line supervisor. There are spaces on the document for the signature of the incumbent, the position's first line supervisor and the personnel manager of the department.

The position description is not a contract. The personnel manager who represents the department does sign the document. But his signature signifies that the duties and responsibilities and the classification title assigned to the position by the supervisor are proper. The employe's signature signifies that he has reviewed the position description and determined that it accurately reflects the duties and responsibilities assigned to him to perform. We realize that a new employe generally signs a position description sometime around the time he begins working. His signature implies that he has reviewed the document and understands the nature of the duties and responsibilities assigned to him.

The position description is not intended to be a rigid document which is not subject to change. If that were the case, no employe would be able to successfully seek reclassification of his position. There would be no opportunity for a position to evolve so that it should be reclassified to a different classification.

In Alexander v. Wisconsin State Personnel Board, Dane Co. Cir. Ct. 139-490 (1973), the court held that the relocation of an employe's work situs from Chicago, Illinois to Hudson, Wisconsin was not a transfer or demotion within the definitions of those terms in the Wisconsin Administrative Code. The court stated that: "While position may refer to location in one sense, we believe that, as used in the statute, it refers to the job and its character." (Id., pg. 1-2).

In the instant case, appellant's job duties and responsibilities remained the same. His job changed in two areas, hours and location. The latter change was minimal in that he remained within the same employing unit and on the same campus. But he did supervise the custodial work in different buildings. The former change was much more significant but again did not affect the position itself. Appellant still performed essentially the same duties and responsibilities on the second shift as he did on the first shift. Respondent was in error when he advised appellant that his position had been abolished and he was being reassigned to a vacant position on a different shift. (See Appendix D).

The real question involved here is whether respondent abused his discretion in changing the working hours of appellant's position. We conclude he did not. Management does have the perogative of changing an employe's work shift as well as relocating his work situs in addition to changing the assignment of duties and responsibilities. Of course, management must exercise those perogatives within reasonable limits. There was no showing that management was unreasonable in

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its decision to assign appellant's position to the shift beginning at 6:00 p.m.

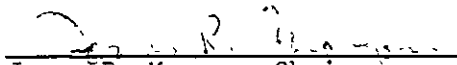
We note, however, that there was little communication formal or informal between management and appellant regarding how the reorganization might affect appellant and his position. We feel respondent was remiss in not advising appellant earlier of the impending change.

ORDER

IT IS HEREBY ORDERED that respondent's action is affirmed and this appeal is dismissed.

Dated: April 11 1978

STATE PERSONNEL BOARD


James R. Morgan, Chairperson