

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 RONALD D. BAUER,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.
 Case No. 84-0116-PC
 * * * * *

DECISION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the reallocation of the appellant's position from the classification of Police Captain (Pay Range 1-15) to Police Lieutenant (Pay Range 1-15), as the result of a personnel management survey of the Enforcement and Regulation Compliance occupational area.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed in the state classified civil service in the University of Wisconsin - Madison, Department of Police and Security.

2. The Department of Police and Security is organized in 3 divisions -- Administrative, Police, and Security. The Administrative Division is headed by a Police Lieutenant. The Police Division is headed by a Police Captain (Pay Range 1-16). The appellant heads the Security Division. All division heads report directly to the Chief of the Department.

3. The duties and responsibilities of the appellant's position include, in summary, the following:

Generally, this position is responsible for the coordinated operation of building security programs for the Department. It is responsible for the supervision of 54 positions, including one Police Sergeant, 6 Security Supervisors, 8 Security Officers III's, and 39 Security Officer II's. In administering the Division, the incumbent participates in the hiring and promotional process, conducts personnel transactions, establishes divisional policies and procedures, prepares and maintains the division's budget, and assists the Chief with review and control of the departmental budget. In addition, this position is in charge of crowd control and other security and enforcement activities for a part of Camp Randall stadium during 5-7 home football games per year, performs special assignments during occasional special activities such as political protests or demonstrations, and functions as the department's "officer in charge" during the absence of both the Chief and the Police Captain. It is quite rare that both the Chief and the Police Captain are out of town. However, since the appellant works on 8:00 a.m. - 5:00 p.m. shift 5 days a week, the appellant functions as the departmental "officer in charge" during the hours of 5:00 p.m. - 10:00 p.m. 3 days a week. During these special assignments, while functioning as the departmental "officer in charge," and on other occasions from time-to-time, the appellant directs the activities of police officers as well as security officers. However, he spends more time supervising security officers than supervising police officers.

4. As a result of the Enforcement and Regulation Compliance survey conducted by the respondent, new position standards were developed for, among others, Police Lieutenant and Police Captain, see Respondent's

Exhibit 1, and the appellant's position was reallocated from Police Captain (Pay Range 1-15) to Police Lieutenant (Pay Range 1-15), effective June 10, 1984.

5. Respondent's Exhibit 1 includes the following "Class Concepts and Representative Positions":

POLICE LIEUTENANT

(PR 1-15)

This is objective level Police Lieutenant work. Employees in this class perform supervisory and administrative police work under supervision from superior officers. Positions typically have significant involvement in operational and program policy development and implementation.

Representative Position

Under supervision from superior officers, position requires employe to assist in the direction of a comprehensive protection and security program, assist in developing operating methods and procedures, train and instruct personnel on new and revised laws, procedures and enforcement programs, prepare court cases, investigate felonies and/or accidents involving personal injury and/or supervise: 1) all field police, security or detective operations on the Madison campus; 2) all field police operations on the Milwaukee campus; or 3) a comparable level of supervisory and administrative functions.

POLICE CAPTAIN

(PR 1-15)

This is objective level Police Captain work. Employees in this class perform supervisory and administrative police work under supervision of the Police Chief.

Representative Position:

Under the supervision of the Police Chief, position requires employe (as the Assistant Chief of Police at either the Madison or Milwaukee campus) to assist her/his supervisors in planning, organizing and directing all law enforcement operations; formulate policies, procedures, and regulations; prepare reports and budgets; and in the absence of the Chief, assume full responsibility for departmental operations.

6. There are no other positions in state service besides the appellant's which is responsible for a security unit which is classified as high as Police Lieutenant (Pay Range 1-15).

7. The appellant's position is most accurately described by, and most appropriately classified under, the position standard for Police Lieutenant (Pay Range 1-15).

CONCLUSIONS OF LAW

1. This appeal is properly before the Commission pursuant to §230.44(1)(b), Stats.

2. The appellant has the burden of proving by a preponderance of the evidence that the respondent erred in reallocating his position from Police Captain (Pay Range 1-15) to Police Lieutenant (Pr 1-15).

3. The appellant has not sustained his burden.

4. The respondent did not err in reallocating the appellant's position from Police Captain (PR 1-15) to Police Lieutenant (1-15).

OPINION

The "class concept" language in the position description (Respondent's Exhibit 1) for Police Lieutenant and Police Captain is very general. The appellant's position could fit within either the Lieutenant or the Captain description. Since the position fits both descriptions, this alone is not a basis for concluding that the position is more properly classified as a Captain rather than as a Lieutenant.

The representative positions are more specific. The Police Captain representative position is as follows:

Under the supervision of the Police Chief, position requires employe (as the Assistant Chief of Police at either the Madison or Milwaukee campus) to assist her/his supervisors in planning, organizing and directing all law enforcement operations; formulate policies, procedures, and regulations; prepare reports and budgets; and in the absence of the Chief, assume full responsibility for departmental operations. (emphasis supplied)

The appellant's position does not fit within the description of this representative position.

It is not involved in "planning, organizing and directing all law enforcement operations," inasmuch as the involvement with the Police Division is limited to providing direction to those personnel when the incumbent is involved in an occasional special assignment or acting as the departmental "officer in charge." The "planning", "organizing", and most of the "directing" functions with respect to this division is the responsibility of the Police Captain who reports directly to the Chief, not through an assistant Chief.

Furthermore, the appellant does not, "... in the absence of the Chief, assume full responsibility for departmental operations." The appellant only assumes full responsibility for departmental operations in the absence of the Chief and the Police Captain. See Chief Hanson's testimony and his written statement, Appellant's Exhibit 4:

... the Captain [appellant] is in fact a Deputy Chief and has and will serve in that capacity in the absence of the Chief and the Police Patrol Captain.

A key thrust of Chief Hanson's testimony was to attempt to characterize the appellant's position as equivalent to and more or less interchangeable with the Police Captain position. However, a number of facts are inconsistent with this approach. The Police Captain job is primarily responsible on a day-to-day basis for the Police Division while the Security Lieutenant job is primarily responsible on a day-to-day basis for the Security Division, notwithstanding that the appellant has some responsibilities in the enforcement/police field. There can be no question but that the Enforcement and Regulation Compliance Survey generally pegged enforcement activities at higher levels than security activities for classification purposes. Furthermore, it is the Police Captain who has the primary responsibility to fill in for the Chief in the Chief's absence.

There is no way, on this record, that it can be concluded that the Police Captain position is equivalent to the Security Lieutenant position from a classification standpoint.

Testimony in this case revealed a number of apparent misunderstandings about the reallocation of the appellant's position.

This transaction was characterized at a number of points in the appellant's case as a "demotion." However, it was not a demotion under the civil service law.

A demotion occurs only when an employe is appointed "... to a position ... in a lower class than the highest position currently held in which the employe has permanent status in class." (emphasis supplied) §ER-Pers. 17.01, Wis. Adm. Code. Here, the appellant was not appointed to a position in a lower classification. Rather, his position was reallocated from Police Captain (Pay Range 1-15) to Police Lieutenant (Pay Range 1-15). This was not only not a demotion, it was not a downward reallocation. This transition was a lateral reallocation as there was no change in pay ranges.¹ What occurred as a result of the survey, and what contributed to the impression of a demotion, was that the pre-existing classification structure titles and concepts were changed. Thus the reallocation of the appellant's position from Police Captain to Police Lieutenant may have implied a downward move because, in common parlance, a captain is a higher rank than a lieutenant, but under the actual classification structures involved, there was no downward movement.

These factors also relate to another matter that arose during the course of the hearing, and help explain why the classification of the

¹ Even if there had been a downward reallocation, this would not have been considered a demotion, pursuant to the specific exclusion set forth at §ER-Pers. 17.02(3), Wis. Adm. Code.

position in question as a Captain under the old class structure in 1980 is not material to the issues in this appeal.² This was a determination that the appropriate classification of the position was as a Pay Range 1-15 title as defined under the old position standard that ceased to exist once the new position standard came into effect with the implementation of the Enforcement and Regulation Compliance Survey in 1984. This does not tend to show that it should be a Police Captain, Pay Range 1-16, under a new position standard implemented in 1984.

Another unfortunate misunderstanding concerned the summary of survey results that was presented to the Secretary of DER prior to the survey implementation. The entry for Police Captain was as follows:

Police Captain - 3 positions

This classification currently assigned to PR 1-15 is recreated and assigned to PR 1-16. Respondent's Exhibit 1.

The appellant interpreted this to mean that all three pre-existing Police Captain positions would be reallocated to Pay Range 1-16. This is not what the language was intended to convey. It says that the classification is recreated and reassigned to PR 1-16. It does not indicate that the three existing positions that were classified Police Captain would be reallocated to PR 1-16, although it is understandable that someone who is not a personnel technician might get that impression.

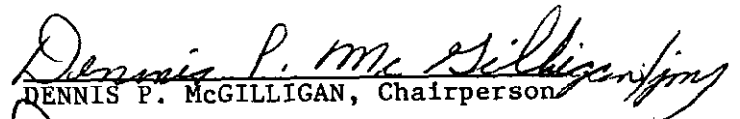
² The appellant successfully competed for appointment to the higher level position and was promoted to that position in 1980.

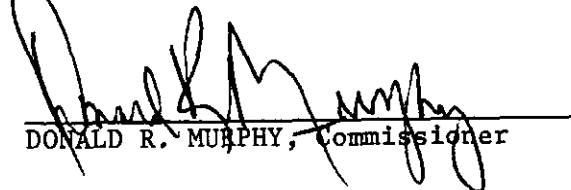
Based on the entire record, the appellant has failed to satisfy his burden or proving that the respondent erred in the reallocation of the appellant's position.

ORDER

The respondent's action reallocating the appellant's position from Police Captain (Pay Range 1-15) to Police Lieutenant (Pay Range 1-15) is affirmed and this appeal is dismissed.

Dated: April 12, 1985 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

AJT:jmf
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Parties

Ronald D. Bauer
722 Topaz Lane
Madison, WI 53714

Howard Fuller
Secretary, DER
P. O. Box 7855
Madison, WI 53707