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VERN PONTO,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 90-0181-PC

* * * * *

DECISION
AND
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats, of the reallocation of appellant's position from Officer 4 to Supervising Officer 1. This matter was held in abeyance for a period of time, while respondent re-reviewed the transaction.

FINDINGS OF FACT

1. Appellant is employed in the classified civil service at Dodge Correctional Institution (DCI) in a position with the working title of Transportation Lieutenant. This position was classified as Officer 4 until it was reallocated to Supervising Officer 1, a classification newly created as a result of a personnel management survey.

2. Prior to the reallocation, appellant's position description (PD) (Respondent's Exhibit 3), which accurately reflected the duties and responsibilities of his position, contained the following "position summary:"

Under the general supervision of the Security Director, this position will oversee the transportation and security of residents at the institution, and will act as first-line supervisor of officers assigned to the transportation unit. This position not only supervises trips; but also is responsible for planning the trips.

3. During the period prior to the reallocation, appellant was eligible under institutional policies for shift work within the institution on first or

second shift under the limited supervision of an Officer 5 or higher-ranking officer.

4. With the reallocation, appellant's PD was changed (Respondent's Exhibit 4). The position summary was changed slightly and now reads:

Under the general supervision of the Associate Warden - Security, this position will oversee the transportation and security of inmates at the institution, and will act as first-line supervisor of officers assigned to the transportation unit. This position not only supervises trips, but also is responsible for planning the trips. This position will be responsible for the security, discipline and control of the inmates at the Dodge Correctional Institution.

In addition, Activity A1, which is part of Goal A (40% - Supervision of staff) was changed by addition of the underlined language as follows: "Provide first-line supervision for officers assigned to the transportation unit/institute " Also, Activity A7 was added: "Verify and approve officer time reports and leave requests."

5. After the reallocation, pursuant to institutional policies appellant was liable to be ordered to work line supervision within the institution, including 3rd shift when no other senior officer was on duty. Appellant received appropriate training for this additional aspect of his work. This additional responsibility constitutes a very small percentage of appellant's overall duties and responsibilities.

6. The Supervising Officer 1 classification specification (Respondent's Exhibit 1) includes the following definition:

This is responsible supervisory work as an assistant shift supervisor within a secure adult facility or as the supervisor of the transportation of inmates in institutions which require the movement of a significant number of inmates. Employees in this class are responsible for the supervision of the provision of security for inmates, staff and the public within a secure adult facility or while the inmates are outside the perimeter of a secure adult facility. Work is performed in accordance with established rules, regulations and policies under the general direction of a higher level security or management position.

CONCLUSIONS OF LAW

1. This appeal of the reallocation of appellant's position is properly before the commission pursuant to §230.44(1)(b), Stats.
2. Appellant has the burden of proof to establish by a preponderance of the evidence that there was something incorrect about the reallocation.
3. Appellant having failed to sustain his burden, it is concluded that respondent's action reallocating appellant's position from Officer 4 to Supervising Officer 1 was correct.

OPINION

The material facts in this case are basically undisputed. The decision turns on questions of law. Appellant does not contend that his position is not properly described by the Supervising Officer 1 class specification. Rather, he argues that his employment status was improperly and adversely affected by the reallocation in a number of particulars.

Appellant asserts that in connection with the reallocation, certain duties were added (mandatory assignment when needed to third shift supervision within the institution) to which he was not subject prior to the reallocation. Appellant argues that this was improper because: (1) duties can not be added in connection with a reallocation, (2) these duties were not part of his position when he accepted appointment to the position, and have never been agreed to by him, and (3) the survey improperly resulted in the creation of a new position.¹

With respect to appellant's first contention, there simply is nothing in the civil service code that would prevent management from adding duties in connection with a reallocation. As a general rule, agencies have broad power to assign duties to their employees, §230.06(1)(b), Stats. There are limitations on this power. For example, an agency cannot constructively demote an employee by stripping his or her positions of duties in a wholesale manner and then reallocating the position downward, see Juech v. Weaver, Wis. Pers Bd No 450

¹ It is unlikely that these changes in duties were part of the reallocation transaction as such. Rather, it appears they were added by DOC in the wake of the reallocation, possibly in connection with the survey's compressing the supervisors into two class levels. However, since the details of how they were added are unclear, and since respondent directly addressed all of appellant's contentions, they will be addressed as part of this reallocation appeal.

(1/13/72). Also, if by the gradual addition of duties the position is actually functioning at a higher classification level, the employe occupying that position normally is entitled to the higher classification and accompanying salary range. §230.09, Stats. However, in this case the added duties constituted a minor percentage of the overall PD, and fall within the definition of a Supervising Officer 1 as set forth in the class specification.

With respect to appellant's second argument (the added duties were not part of the position when he accepted appointment, and he has not since agreed to them), there is nothing in the civil service code that restricts the right to assign duties in addition to those that were there on appointment to duties to which the employe agrees. Appellant essentially is relying on contract theory. However, outside of the collective bargaining realm, state civil service employment is not contractual in nature. See State v. Industrial Comm., 250 Wis. 140, 144, 26 N.W. 2d 273 (1947) ("These statutory provisions leave no room for a person to become an employe of the state under an implied contract of hire."); Kizas v. Webster, 707 F. 2d 524, 31 FEP Cases 905, 910 (D.C. Cir 1983 ("entitlement to pay and other benefits 'must be determined by reference to the statutes and regulations governing [compensation] rather than to ordinary contract principles.'" (citations omitted)).

Appellant makes the point that as a result of the reallocation he is subject to transfer to positions to which he was not subject prior to the reallocation. Assuming, (as it appears to be) that this is the case, this probably is a function of the compression of the supervisory positions in question into two broader classifications, which would give management more flexibility to exercise its right to transfer employes. There is nothing illegal about this under the civil service law. To the extent that appellant's contention is based on the theory that he should not be subject to transfer to a position different from the position to which he originally accepted employment, this is not supported either by the civil service code, or, for the reasons discussed above, by a contract theory.

Finally, appellant's argument that a new position was created is not supported by the basically undisputed underlying facts. There were only a few minor changes made in his PD, and the additional duties constitute only a small percentage of the overall duties and responsibilities of the position

In addition to protesting the addition of duties, appellant contends that he should have been given the opportunity for competition and promotion. However, under the civil service code, DER has the right to conduct surveys and to move positions and their incumbent employees into different classifications and pay ranges without going through the process of promotion and demotion. §§230.09, Stats.; ER 3.01(4), ER-Pers 1.02(5), ER-Pers 17.02(3), Wis. Adm. Code. Therefore, there was nothing illegal involved in not giving appellant the opportunity for competition and promotion.

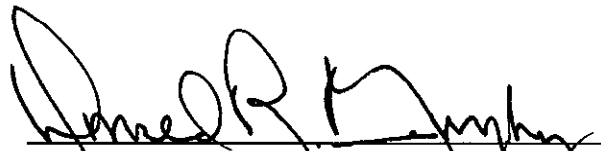
ORDER

Respondent's action reallocating appellant's position from Officer 4 to Supervising Officer 1 is affirmed and this appeal is dismissed.

Dated: April 17, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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