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KEITH A. WILKINSON,
 Appellant,

v.

Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.

Case No. 92-0613-PC

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RULING
 ON
 APPELLANT'S
 MOTION FOR
 JUDGMENT

This matter is before the Commission on appellant's "motion for judgment" filed on January 2, 1996. In support of his motion, appellant contends that the reallocation which is the subject matter of this appeal actually constitutes a demotion without just cause, and therefore he is entitled as a matter of law to judgment in his favor.

It is undisputed that respondent took action which it denominated a reallocation of appellant's position from Environmental Engineer Senior to Plumbing Plan Reviewer 2.¹ Respondent's stated basis for this reallocation was the "correction of an error" pursuant to §ER 3.01(2)(e), Wis. Adm. Code. It also is undisputed that this transaction did not affect appellant's then current base pay,² although the pay range of the new classification is lower than the pay range of the prior classification, and this factor either has had or could have a negative impact on appellant's salary progression.

Appellant bases his motion on the dictionary definition of demotion -- "to reduce to a lower grade or rank...." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1989). He contends that because he was hired as an Environmental Engineer and has performed "all necessary work activities ... DER HAS NOT established 'just cause,' as is required by the statutes, for this demotion."

Although there is no statutory definition of demotion, it is defined in §ER-MRS 1.02(5), Wis. Adm. Code, as follows:

¹ Appellant's appeal of this transaction has been processed as an appeal of a reallocation pursuant to §230.44(1)(b), Stats.

² Appellant's base pay was "red circled" pursuant to §§ER 29.025 and 29.03(3)(e)2., Wis. Adm. Code.

"Demotion" means the permanent appointment of an employe with permanent status in one class to a position in a lower class than the highest position currently held in which the employe has permanent status in class, unless excluded under s. ER-MRS 17.02.

Section ER-MRS 17.02(3), Wis. Adm. Code, excludes from the definition of demotion "[t]he change in the classification of a position held by an employe with permanent status to a lower classification [which] is a reallocation or reclassification under ch. ER 3." These provisions clearly except a downward reallocation (which is what occurred here) from the definition of a demotion. However, appellant argues as follows:

[Respondent] contends that the proper definition is found in s.ER 1.02(5), Wis. Adm. Code. If this were true then it would follow that DER has the authority to do whatever they want, with regard to the classification of a state employee. Additionally, based on the definition presented for reallocation/reclassification (ch. ER 3) there is no such thing as a "demotion." Not only is this absurd, it is incomprehensible to think that this is the intent of the statutes.

An administrative code rule "has the effect of law." §227.01(13), Stats. Since the rules cited above unambiguously except downward reallocations from the concept of demotion, the Commission must comply with those rules and deny the motion. Appellant's arguments quoted above simply do not follow. DER is not free "to do whatever they want with regard to the classification of a state employe" -- it must comply with the statutory and administrative code requirements governing classification matters. Furthermore, the applicable rules do not eliminate demotions, as appellant appears to argue -- rather, they only provide that downward reallocations and reclassifications are not part of the definition of demotion. These rules do not affect disciplinary and voluntary demotions.

Finally, if the transaction in question were truly a demotion, any recourse appellant would have would be under the collective bargaining agreement,³ and not before this Commission. See §111.93(3), Stats.; Swenson v. DATCP, 83-0152-PC (1/4/84).

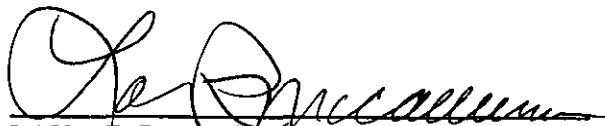
³ According to appellant, he was a represented employe both before and after the reallocation of his position.

ORDER


Appellant's motion for judgment is denied.

Dated: January 31, 1996

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT:rcr


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

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