

JAMES ALEXANDER,

Petitioner,

v.

WISCONSIN STATE PERSONNEL BOARD,

Respondent.

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Before: Hon. W. L. Jackman, Judge

Hearing on Judicial Review: September 13, 1973

Appearances: Petitioner by Allan R. Koritzinsky

Respondent by Robert J. Vergeront,  
Assistant Attorney General

Department of DNR by Edward D. Main

Petitioner takes the position that the change in location from Chicago to Hudson was a demotion, although it was not a change in his civil service classification or rate of pay. When notified that he was being moved to Hudson, petitioner objected because it was a demotion in his view. And he refused to report for work for the same expressed reason. Petitioner still contends that the new assignment was a demotion, not because of a change in civil service status or pay, but because he was being moved from what he considered a position of importance to a "roadside stand". The purpose of the move was to place an experienced man in a position to promote Wisconsin recreation facilities to the market in the metropolitan Minneapolis-St. Paul area. Hudson is but 18 miles from St. Paul and is conveniently connected by freeway. It is in effect a suburb of the twin cities. He would also have charge of the La Crosse and Prairie du Chien offices. He would have a private office in a new building.

The ordinary English meaning of demotion is a lowering in grade. Wis. Adm. Code, Pers. 17.01 defines it as follows: "A demotion is the movement of an employee with permanent status from a position in a class to a position in another class that has a lower salary range maximum." Petitioner accepts neither definition because he says they are inconsistent with Sec. 16.28, which reads: "(1)(a) An employee with permanent status in class may be x x x reduced in pay or position only for just cause." From this petitioner seeks to deduce that he was being reduced in position if he went to Hudson and hence it was a demotion. The respondent did not so view it, nor did the Department. Nor do we. 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. The statute, we think, requires that an employee be retained in his job classification and at his rate of pay, unless either is reduced for cause. It does not mean that he may not be moved from one office to another without any reduction in his civil service status or pay. Position, as the statute uses the word, means the kind of job, not the location of it. Since the work petitioner was to do at Hudson was of the kind he was doing in Chicago, promoting Wisconsin recreation and management of the office he was assigned to, there was no change of position. There was no change in civil service status or pay involved, so there was no demotion. Nor is the wording of Sec. 16.28 inconsistent with Wis. Adm. Code, Pers. 17.01, in our opinion.

Petitioner also relies upon Sec. 16.23 which permits transfers "from one position to another only if specifically authorized by the director." Here again we have the question of what is a "position". Does it mean a location of work or does it have to do with the character of the job? Assuming equal pay and equal (not the same) civil service classification, does it mean that the employee engaged in public relations work cannot be assigned to work as a game warden, an entirely different type of work? Or does it mean that an employee cannot be moved from one office to another to perform substantially the same kind of work? Without express authority of the director? Wis. Adm. Code Pers. 15.01 defines transfer "x x x from one position to a vacant position allocated to a class having the same pay rate or pay range maximum." This definition by the Department in its rules is reasonable and seems in accordance with the provisions of Secs. 16.01 and 16.07. The classifications of Sec. 16.07 are based upon similarity in authority, responsibility, and nature of the work. These classifications are for "positions" in the classified civil service. The important things are authority, responsibility and nature of the work, not the location of the work. Here it would seem that "position" relates to the job and its character and "substantial" similarity, not identity. We are satisfied that there has been no transfer in the sense that the word is intended and certainly as it is defined by the administrative code.

Petitioner claims that he was entitled to but did not receive a hearing by the director or his representative from a personnel decision which he alleges was illegal or an abuse of discretion, as provided in Sec. 16.03(4)(a). Reading Sec. 16.03 as a whole it appears the entire area of personnel management, which includes location of employees, resides in the director and in those to whom he delegated such function. It would seem that the decision to relocate petitioner was a personnel decision and is alleged by petitioner to be illegal and an abuse of discretion. We find no rules--Sec. 16.03(6)--specifically for the purpose of regulating appeals under Sec. 16.03(4). It would appear that petitioner was entitled to appeal to the director. But it would also appear that he must ask for it. Wis. Adm. Code, NR 2.03 provides that all petitions for hearings required by any statute shall be served on the secretary

in person or by mail. NR 2.01 provides that the rules apply in all proceedings and hearings.

The only demand for a hearing or appeal in the record that we find dated before the date petitioner was discharged on October 3, 1972, is the telegram of September 26, 1972 (Ex B 2) in which petitioner said: "I appeal this invalid action to the State Personnel Board from DNR x x". On September 29, 1972, petitioner telegraphed he was "not interested in demotion". We find no request on his part for any hearing before the director. He did have a conference with the director but petitioner's testimony about this is vague and full of his own conclusions rather than a recitation of what was said. In the absence of a petition for a hearing by the director or even a written request for one, we do not believe that petitioner was deprived of a hearing but that he waived the hearing. His failure to receive a hearing was the result of not asking for it.

Petitioner did get the hearing before the Personnel Board that he asked for. It was a full hearing covering not only his discharge but the issue of whether his relocation was valid. On the record made we cannot say that the findings of the Board are not supported by evidence or that the decision was arbitrary.

We may say that we agree that, while the relocation of petitioner was a proper exercise of the Department's discretion, the way it went about doing it on short notice deserves the comments the Board made regarding it.

We do not consider that moving petitioner to Hudson was a reorganization of the department. We do not consider the mere moving of personnel from one location to another a reorganization of the department or that it requires approval of the governor. The intent of Sec. 15.02(4), it seems to us, is not to require approval of every movement in personnel in each department, but rather the overall supervision of the general organization of the department. Sec. 15.04 vests in the department head the planning, direction, coordination and execution of the functions of his department. The assignment of petitioner to Hudson falls within the discretionary powers and functions of the department head and those to whom he delegated that duty.

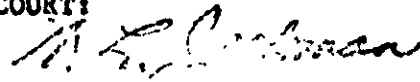
Petitioner complains that sending him to Hudson violates the policy of Sec. 16.12(2). This may well be, but it is a matter of policy and is not an infringement of any of petitioner's rights that it may seem poor policy to do what the department did.

We must conclude that while the Department acted without very much consideration for petitioner's personal convenience, the record does not show it was arbitrary or capricious, nor does it show that the Department was actuated by any intent to harm petitioner or compel him to leave his job. We must affirm.

It is therefore

ADJUDGED: That the findings, conclusions and order of the State Personnel Board dated May 24, 1973, be and the same are affirmed.

BY THE COURT:

  
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Judge