

STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

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David B. Wiggins,

Appellant,

vs.

C. K. Wettengel, Director,  
State Bureau of Personnel and  
Charles M. Hill, Sr., Secretary  
Department of Local Affairs  
and Development.

Respondent.

MEMORANDUM DECISION

#388  
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Because of the nature of Appellant's Contentions, this appeal was considered as both a s. 16.05 and a s. 16.24 Wis. Stats. Appeal.

From approximately November 5, 1965 to the date of the Director's action complained of, Appellant had been employed by the Division of Economic Development in the Department of Local Affairs and Development as an Economic Development Specialist. This is a position in the state's classified civil service and is assigned to salary range 1-18.

Beginning in 1968 and continuing until July, 1970, the Bureau conducted a survey of executive positions (salary range 1-18 and above). In the course of the survey, Appellant's position was audited and as a result of the audit, the Director determined that the assigned duties of the Appellant were more closely identified by Administrative Officer 1 in salary range 1-16 than by Economic Development Specialist. Appellant's position was so reallocated effective August 2, 1970. Appellant was given written notice of the reallocation and from that action has taken this appeal.

The appeal contained contentions that there was no basis for the reallocation and that if there were, such was due to the fact that over the years there had been a diminution of the duties of the Appellant because of personal animosity toward him by his superiors and because of his criticism of division programs and activities. Appellant also alleged that the

Bureau of Personnel connived with the Department to accomplish the reallocation.

Because the issue had been raised, the Department of Local Affairs and Development was made a party to inquire as to whether or not the Appellant had been factually demoted.

While it is very involved, it seems important to attitudes and relationships to explore the structuring of the Division and where, from time to time, Appellant and others whose names appear in this record were placed in that structuring. Department's Exhibit 1.

Prior to 1960, the Division of Economic Development (hereafter called DED) was directly attached to the Governor's office. In 1960 DED became a part of the Department of Resource Development (hereafter called DRD).

In 1960, Appellant was employed in a newly created position, Economic Development Specialist, by DED. (This is the identical position he held when it was reallocated in 1970). At that time Carley was Commissioner of DRD, an unclassified position appointive at the pleasure of the Governor. Johnson was Director of DED, also an unclassified position appointive at the pleasure of the Governor. Schlimgen, an employe with civil service status was Assistant Director of DED.

In 1962, Ziedler was appointed to succeed Carley as Commissioner of DRD, and Appellant was appointed Director of DED. Schlimgen reverted to his civil service position of Administrative Officer and as Assistant Director of DED.

In 1964 Ziedler resigned and Appellant for a few months was Acting Commissioner of DRD.

Pratt was then appointed Commissioner of DRD. Appellant remained on as Director of DED until sometime in 1965 when Schlingen was appointed Director of DED to succeed him. At that time Appellant reverted to his civil service position as Economic Development Specialist where he remained.

On July 1, 1967 pursuant to reorganization DRD was abolished and the Department of Local Affairs and Development (hereafter called DLAD) was created. DED was made one of its divisions. Weiford was appointed Secretary of DLAD. Pratt who had been Commissioner of the now defunct DED was appointed Administrator (title change from Director) of DED. This "bumped" Schlingen who reverted to his permanent civil service position. Sundal became Assistant Administrator.

In 1968 McConnell was appointed to succeed Pratt as Administrator of DED. In February, 1970, McConnell resigned and Schlingen was again appointed Director of DED which position he now holds. Hill has succeeded Weiford as Secretary of DLAD.

In the decade of the '60s in this operation it is hard to tell who was on which base at any time. Schlingen lost his superiority over Appellant, regained it, lost it and again regained it.

Great leeway was given to the parties in the presentation of their cases because of the issues that had been created. This unfortunately has caused concern to many people.

While some of his superiors, past and present, have been most frank that Appellant never came up to his performance level, the record does not substantiate the charge that any of them bore him personal malice.

While Appellant has challenged the value of some of DED's program and the very usefulness of the Board or Council on Economic Development not only at this hearing but for some time before the reallocation of his position, the Board finds that such had no bearing on the reallocation or the duties the basis thereof. His attitude may well have had some bearing on his not being appointed Secretary of DLAD and the loss of his appointment as Director of DED.

Connivance between the Bureau of Personnel and DED resolved into no more than conversations between Knoll, Deputy Director of the Bureau of Personnel and Pratt, then Administrator of DED as they discussed the reorganization of DED that downwards reallocation of Appellant's position was inevitable unless more higher level duties were assigned to it. Mr. Knoll's predictions were accurate.

The Respondent Director of the Bureau of Personnel was right in reallocating Appellant's position to Administrative Officer 1 in salary range 1-16. At the time of the audit, he was basically a publications director for DED. Record, page 152. Other publication directors are in salary range 1-16 and similar positions drop down to range 13 and 14.

Reallocation must always be on the basis of duties and responsibilities at the time of the audit.

It certainly is true that there were extended periods during Appellant's tenure with DED that he was performing at a much higher level than he was at the time of the survey and reallocation. For several years

he was the Director of DED; for a few months he was the Acting Commissioner of DRD. However, these positions are unclassified appointive positions. The incumbent has no more vested right in the duties and responsibilities of those positions than he had to the positions. When the incumbent's appointment expired he was out.

When Appellant finished as Director of DED, he became what he was before 1962, an incumbent of a permanent civil service position. To determine whether or not his duties had been diminished, we look only at Appellant as an incumbent of that civil service position.

When Appellant entered the classified service in 1960, his duties were basically those of director of publications. The duties remained the same until he became Director of DED. When he reverted to his civil service position in 1965, his duties again became basically those of director of publications and have since remained essentially the same.

The Board concludes that Appellant's position was always allocated too high on the basis of duties and responsibilities. How could this be?

Perhaps the Respondent Director made an initial mistake. He has always freely admitted that he makes occasional mistakes, particularly with new positions in new programs. If there was such a mistake, the Respondent Director has not only the right, but as well the duty to rectify it. An incumbent of a position has no vested interest in his position being at any given salary range. The matter has been before this Board many times and it has been consistently held that in such instances the State is not saddled by the Director's mistakes.

Perhaps as is more probably the case, the Department head who promoted the position did not or was unable to utilize it to the full extent that he represented that he would. The Board does believe that when Appellant originally took the job of Economic Development Specialist he expected the job would be something considerably more than a director of publications.

The Board concludes that Appellant's position is now properly classified as Administrative Officer 1. The Board further concludes that as a classified civil service employe that there was no factual demotion of Appellant to his current level.

Counsel for the Respondents shall prepare Findings of Fact and Conclusions of Law consonant with this Memorandum.

Dated March 10, 1971.

STATE BOARD OF PERSONNEL

BY

*James H. Lusk*  
*William R. Lusk*  
*John Lusk*

Members Brecher and Serpe  
did not participate.