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 LEROY HERMAN and *
 WILLIAM BORDIHN, *
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 Appellants, *
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 v. *
 ZEL RICE, Secretary, *
 Department of Transportation, *
 VERNE KNOLL, Deputy Director, *
 State Bureau of Personnel, *
 *
 Respondents. *
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 Case No. 76-201 *
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PROPOSED
 OPINION
 AND
 ORDER

Before:

Nature of the Case

This appeal involves the question of whether a personnel transaction which resulted in the movement of appellants to positions in classifications with lower pay range maximums than they previously occupied should be characterized as demotions. The parties stipulated to the following issue at the prehearing conference:

"Should the action taken by the department be characterized as a demotion, reallocation, or reclassification?"

At the hearing the appellants raised a potential issue beyond that of the appropriate characterization of the transaction by making this statement:

"Therefore, we feel that the evidence indicates that the subject personnel transactions were reallocations. However, if these transactions are defined as demotions, then the proper procedures were not followed and we should be restored to our former classifications." Appellant's Exhibit 16.

However, they later withdrew the last sentence in the quoted part of the exhibit.

Findings of Fact

The appellants at all relevant times have been employed by the Department of Transportation, Division of Highways, District 9. Both appellants' positions were classified as Civil Engineer 6 - Transportation and were two of ten section heads reporting directly to the District Engineer. In 1976 the district was reorganized, largely due to a decrease in activity following the period of free-way expansion in the 50's and 60's.

As a result of the reorganization, the separate sections headed by appellants, material (Bordihn) and utilities (Herman) were eliminated and the various functions redistributed to other sections. The appellants no longer reported directly to the district engineer but rather through an intermediate supervisor. Appellant Herman became a unit supervisor in the design section with tasks approximately 45% in design, 35% in utilities, and 20% miscellaneous, as opposed to utilities almost 100% before the change. Appellant Bordihn's duties have not changed substantially but the reporting relationship has changed in the same manner as has Mr. Herman's. The change in the reporting relationships of appellants occurred a number of weeks prior to the official date for implementation of the reorganization but was not a logical and gradual change in the responsibilities of the position. The appellants' class changed to Civil Engineer 5 - Transportation, which carries a lower pay range maximum than the six level.

The evidence conflicts as to what was told the appellants about this transaction by the DOT personnel office prior to its affectuation. There is no disagreement that appellants initially objected to the proposed transaction because of the connotations carried by the term "demotion" and in response to those objections the transaction was characterized as a "reduction in classification."

The appellants then signed memoes voluntarily accepting this "reduction in classification." See Appellants' Exhibits 4 and 5, dated June 2 and 3, 1976. However, the agency personnel officer testified that although he said that the transaction could be called a voluntary reduction in classification if terminology was a problem, he also said that it would make no difference in the mechanics of the transaction, and that he never indicated that the transaction would be other than a demotion. The appellants do not acknowledge any use of the terminology "demotion" between the time agreement was reached on the wording of Appellants' Exhibits 4 and 5 and August 12, 1976, when they discovered that their pay was reduced.

There was considerable testimony and evidence about how the transaction was characterized by the appellants' supervisors both prior to and after the transaction in question. However, in light of the narrowness of the stipulated issue and the appellants' determination not to attempt to pursue the assertion that proper demotion procedures were not followed, this subject is not material and no findings will be made thereon.

Conclusions of Law

The Wisconsin Administrative Code, Section Pers. 1.02(8), defines "position" as follows:

"'Position' means a group of duties and responsibilities which require the services of an employe on a part-time or full-time basis."

Section Pers. 17.01 provides:

"A demotion is the movement of an employe with permanent status in one class to a position in another class that has a lower single rate or pay range maximum."

Section Pers. 3.02(4) provides:

"RECLASSIFICATION. The reallocation of a filled position to a different class and the subsequent regrading of the incumbent by the director as provided in section 16.07(2), Wis. Stats., based upon:

- (a) A logical and gradual change in the duties and responsibilities of a position.
- (b) Attainment of specified training and experience, and demonstrated performance by an incumbent in a position identified in a classification series where the class levels are differentiated on this basis."

Based on this record there is no question but that the personnel transaction involved a movement of the appellants from one position to another. A position is "a group of duties and responsibilities . . ." Each appellant's duties changed to a varying degree but the change in responsibility was marked and substantial. While the appellants previously, as section heads, reported and were answerable to the district engineer, they now report to intervening section heads. These section heads, with a smaller sphere of responsibility than the district engineer have responsibility for the appellants' work and must answer to the district engineer. This results in a decrease of appellants' level of responsibility by definition, regardless of how the positions may function in practice. For example, Mr. Bordihn's functions did not change substantially as a result of the reorganization. The record reflects that he was a competent and experienced employe, and the degree of independence with which he discharged his duties presumably remained substantially the same. However, the degree and level of accountability and liability is changed.

While level of responsibility may in practice be a somewhat nebulous concept, a classification system must be able to deal in and utilize abstract concepts as evaluative criteria. It is concluded that the transactions in question involved a change in "position" as defined in Section Pers. 1.02(8), W.A.C., and should be characterized as "demotions" pursuant to Section Pers. 17.01.

In passing, it is noted that the record reflects a great deal of confusion concerning the nature of these transactions within the agency prior to the appeal to the board, with conflicting characterizations in different conversations and correspondence and even within the same memo. As was noted in the findings, these communications are not really germane to the narrow legal issue of the correct characterization of these transactions, and were not made the subject of specific findings. However, without attempting in any way to determine responsibility for the confusion that existed in this case, the board notes the importance of communicating fully, clearly, and in detail personnel transactions to affected employees.

Order

The actions of the respondents are sustained and this appeal is dismissed.

Dated _____, 1977

STATE PERSONNEL BOARD

Laurene DeWitt, Chairperson