

\* \* \* \* \*

DAVID L. WING, \*

Appellant, \*

v. \*

VERNE KNOLL, DIVISION OF \*  
PERSONNEL, \*

Respondent. \*

Case No. 77-63 \*

\* \* \* \* \*

PREHEARING  
ORDER

NATURE OF THE CASE

At the prehearing conference held on this appeal on September 26, 1978, the parties were unable to agree on a statement of issues, whether the University of Wisconsin System should be a party, and who had the burden of proof. The parties filed written arguments on these questions and copies of various documents relating to the transaction in question. The following findings of fact are limited to those deemed necessary at this stage of this proceeding and which appear to be undisputed based on the record to date. Additionally, certain factual contentions of the parties will be discussed in the opinion section of this decision.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed at University of Wisconsin-Stout with permanent status in the classified service.

2. As a result of a personnel management survey, the appellant received a reallocation notice signed by Verne H. Knoll, Deputy Director, Bureau of Personnel, informing the appellant of a reallocation form

Administrative Budget and Management Analyst 5 (Pay Range 1-08) to Budget and Management Analyst 4 (Pay Range 1-06). A copy of the reallocation notice is attached.

3. This transaction caused appellant's salary to be red-circled.

4. The appellant filed an appeal with the State Personnel Board on March 22, 1977, which stated in part:

"Please be advised that I have recently received a Reallocation Notice, Form AD - Pers-122, indicating that my classification has been changed from Administrative Budget and Management Analyst 5 to Budget and Management Analyst 4, effective November 8, 1976.

\*\*\*

I am appealing from this reclassification because I do not feel it is based on just cause and pursuant to the provisions of Wis. Adm. Code, Pres 26.03(2)."

#### CONCLUSIONS OF LAW

1. Pursuant to §129(5), chapter 196, laws of 1977, this appeal must be decided on the basis of the law as it existed prior to the effective date of chapter 196, laws of 1977.

2. The only issue presented by this appeal is the correctness of the Director's decision to reallocate the appellant's position based on the duties and responsibilities of that position immediately prior to the effective date of the decision.

2. The burden of proof is on the appellant. See Alderden v. Wettengel, Wis. Pers. Bd. 73-87 (6/2/75); Prissel v. Wettengel, Wis. Pers. Bd. 73-174 (6/16/75).

4. The decision under review being that of the Director of the Bureau of Personnel, the President of the UW-System is not an appropriate party.

OPINION

The appellant makes the following argument in his memo to the Commission (letter from Attorney Steans dated October 5, 1978);

"It is appellant's position that this appeal is both from a decision of the Division of Personnel in Madison and from a disciplinary action taken by the University of Wisconsin, through the Stout Administration, against Mr. Wing. Although the specific notice received on March 7, 1977, indicates a reallocation, it is appellant's position that this reallocation was greatly influenced by the UW-Stout Administrative Personnel, and that it was, in effect one of the series of steps taken by the University to effectively demote, for disciplinary reasons, the appellant."

The Commission is strictly limited by statute in the types of appeals it can hear. Since this appeal was filed prior to the effective date of chapter 196, laws of 1977, jurisdictional questions must be resolved by reference to prior law. See §129(5), chapter 196, laws 1977.

The Personnel Board did not have the authority under subchapter 2 of chapter 16 to hear appeals from all disciplinary actions taken by the employer. For example, an employe could not take a direct appeal of a letter of reprimand. The Board could only hear appeals:

"... from decisions of appointing authorities when such decisions relate to demotions, layoffs, suspensions, discharges or reductions in pay but only when it is alleged that such decision was not based on just cause." §16.05(1)(e), Wis. Stats, (1975).

In the opinion of the Commission, the transaction that was the subject of the notice set forth in finding # 2 cannot be characterized as any of the appealable matters set forth in this statutory provision. A reallocation is defined as "The assignment of a position to a different class by the Director...." §3.02(2), W.A.C. A demotion is defined as: "...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,"

§Pers 17.01, W.A.C., with the following proviso:

"The reduction in the classification of a position held by a employe with permanent status that does not involve movement of the employe to a different position is considered a reallocation."  
§Pres 17.02(3).

These provisions are relatively clear, and the Commission is unable to see any way that this transaction could be characterized as a demotion. The allegations made by the appellant that the employer influenced the decision to reallocate as part of an effort to discipline the appellant does not turn the transaction into a demotion.

The appellant cites Juech v. Weaver, Wis. Pers. Bd. 450, (1/13/72) for the proposition that a "reallocation" can actually be a demotion. However, that case involved the movement of the employe into an entirely different position in a lower classification.

While the appellant does not make this argument, the Commission also notes that the transaction cannot be construed as a "reduction in pay" because the appellant's pay was red-circled. See §Pers. 5.03(3), W.A.C.

A further difficulty with the approach advocated by the appellant is that §16.05(1)(e), Stats., refers to decisions of the appointing authority. Even if the transaction could be characterized as a demotion or reduction in pay, the decision is that of the Director and not that of the appointing authority.

Focusing on this appeal as an appeal of a reallocation action taken by the Director, the statutes provide guidance on the issues which are properly before the Commission. Section 16.07, Stats., provides in part:

"(1) The Director shall ascertain and record the duties, responsibilities, and authorities of and establish grade levels and classifications for all positions in the classified service....

\*\*\*

(2) After consultation with the appointing authorities, the Director shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. He shall likewise reclassify or reallocate positions on the same basis whenever he finds such action warranted."

The duties of appointing authorities are set forth in §16.04(1), Stats.:

(b) Appoint persons to the classified service, designate their titles, assign their duties, and fix their compensation, all subject to this subchapter and the rules of the Director.

(c) Provide the Director with current information relative to the assignment of duties to permanent classified positions in his department." (emphasis added)

It is clear from these statutes that the framework for the Civil Service provided by the legislature calls for appointing authorities to assign duties and the Director to make classification decisions based on an evaluation of those duties. The appellant alleges that certain duties were removed from his position by the appointing authority as part of an effort by that authority to discipline him. The Commission on this appeal is reviewing a decision of the Director regarding the appropriate classification of a position based, in large part, on the duties and responsibilities assigned to that position. It is not appropriate for either the Director or the Commission, on review of the Director's decision, to delve into the soundness or motivation of the decisions that were made by the appointing authority to assign or reassign duties. Such an inquiry would be inconsistent with the statutory framework discussed above.

It may be that an employe would have had the right to appeal action by the appointing authority reassigning the duties of his or her position to §16.03(4)(a), Wis. Stats., (1975):

"The Director or his designated representative shall hear appeals of employes from personnel decisions made by appointing authorities when such decisions are alleged to be illegal or an abuse of discretion and such decisions are not subject for consideration under the grievance procedure, collective bargaining, or hearing by the Board."

Alternatively, such matters might be grievable under the non-contractual employe grievance procedure. However, such inquiry need not detain us because these questions are not presented by this appeal. The point is that if action by the appointing authority assigning or re-assigning duties is reviewable, it would be reviewable in that manner and not in the context of this appeal of a classification decision of the Director who acts on the basis of the clear statutory delineation of authority set forth above.

ORDER

The appropriate issue for hearing is whether the reallocation by the Director of appellant's position was reallocated by the Director from Administrative Budget and Management Analyst 5 to Budget and Management Analyst 4 was correct or incorrect on the basis of the duties and responsibility of that position immediately prior to the effective date of the reallocation (November 8, 1976). The burden of proof is on the appellant. The U.W. - System is not an appropriate party respondent.

Dated: 11/17, 1978

Edward D. Durkin  
Edward D. Durkin  
Commissioner

Dated: Oct. 27, 1978

Charlotte M. Higbee  
Charlotte M. Higbee  
Commissioner

Dated: Oct 27, 1978

Joseph W. Wiley  
Joseph W. Wiley  
Chairperson