

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

KENNETH KLEINSCHMIDT, *

Appellant, *

v. *

Secretary, DEPARTMENT OF *

INDUSTRY, LABOR AND HUMAN *

RELATIONS, *

Respondent. *

Case No. 81-395-PC *

* * * * *

DECISION

AND

ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(c), stats. of a demotion in lieu of layoff.

FINDINGS OF FACT

1. At all relevant times the appellant has been employed in the classified civil service by the appellant in a position in the Administration Division, (renamed the Division of Administrative Services), Bureau of Financial Management, Accounting Section.

2. As a result of a reorganization, the Administrative Division was renamed as set forth above, and the Budget Section was removed from the Bureau of Financial Management and transferred to the newly-created Office of Management and Budget.

3. The removal of the Budget Section from the Bureau of Financial Management had the effect of reducing the duties and responsibilities of the bureau director position occupied by William H. McNier, Jr., and classified as Fiscal Administrative Officer 3 (Pay Range 1-18), as it removed one of the three sections under his supervision.

4. It was determined by the respondent that this diminution of the duties and responsibilities of the Bureau Director position had the effect of creating a new position (A "position" is defined as "... a group of duties and responsibilities...", §230.03(11), stats.)

5. The position which had been determined to have been created by the diminution of the duties and responsibilities of Mr. McNier's position was approved for classification as, and allocated to the classification of Fiscal Supervisor 3 by the administrator, division of personnel (hereinafter, administrator).

6. A further result of the diminution of the duties and responsibilities of the Bureau Director position was that there was more time available for the remaining duties and responsibilities, including the supervision of the appellant's position, classified as Fiscal Supervisor 3 (PR 1-17), and the appellant's position therefore was subject to more supervision.

7. It further was determined by the respondent that the availability of the additional supervision to appellant's position resulted in the reduction of the responsibilities of the appellant's position and had the effect of creating a new position.

8. The position which had been determined to have been created by the diminution of the duties and responsibilities of the appellant's position was approved for classification as, and allocated to the classification of Fiscal Supervisor 2 by the administrator.

9. The respondent determined that due to the elimination of Mr. McNier's position and the fact that he was the only employe in the "Southern" employing unit identified at the Fiscal Administrative Officer 3 level, he was subject to layoff.

10. Mr. McNier elected, on August 18, 1981, to be demoted to the newly-created Fiscal Supervisor 3 position in lieu of layoff, pursuant to §Pers 22.08(3), Wis. Adm. Code.

11. The respondent determined that due to the elimination of the appellant's position, either he or Mr. McNier, both identified as Fiscal Supervisor 3's, would be subject to layoff.

12. The respondent determined to exempt Mr. McNier, the least senior of the two, from layoff pursuant to §Pers 22.06(2), Wis. Adm. Code, because it was felt that it was necessary to do so to preserve their reporting relationship--i.e., to continue to have Mr. McNier supervise the appellant--inasmuch as otherwise Mr. McNier would have been identified for layoff as the least senior employe and might have demoted in lieu of layoff to the vacant Fiscal Supervisor 2 position while the appellant transferred to the Fiscal Supervisor 3 position.

13. The respondent then determined that since Mr. McNier was exempt from layoff, the appellant would be subject to layoff, and so notified him.

14. The appellant elected, on September 18, 1981, to be demoted to the newly-created Fiscal Supervisor 2 position in lieu of layoff, pursuant to §Pers 22.08(3), Wis. Adm. Code.

15. As a result of accepting this demotion in lieu of layoff, the appellant's salary was not reduced, in accordance with §Pers 29.03(8)(c), Wis. Adm. Code.

CONCLUSIONS OF LAW

1. This case is properly before the Commission pursuant to §230.44(1)(c), stats., as an appeal of a demotion in lieu of layoff.

2. The respondent has the burden of proof to show just cause, which requires that it show that he has acted in accordance with the administrative and statutory guidelines and the exercise of that authority has not been arbitrary and capricious. See Weaver v. Wisconsin Personnel Board, 71 Wis. 2d 46,52, 237 N.W. 2d 183 (1976).

3. The respondent has sustained his burden of proof.

4. The demotion in lieu of layoff was for just cause.

OPINION

The primary dispute raised by this appeal has to do with the proper characterization of the transaction which occurred. See, e.g., the post-hearing letter-brief dated March 5, 1982, submitted by appellant's attorney:

"... the employer did not prove its case because it is not possible to conclude, on this record, what the nature of the transaction actually was."

It is undisputed that this matter was handled by the appointing authority as a layoff situation, and that the appellant was offered and accepted a demotion in lieu of layoff, under the color of authority provided by §Pers 22.08(3), Wis. Adm. Code. The initial question is whether, under the facts here present, this approach was legally correct.

A layoff is defined as the:

... removal of an employe, in accordance with the procedure specified in this chapter, from a position in the class, class subtitle or progression series in which a reduction in force is to be accomplished. §Pers 23.02(1).

In this case, there was a reorganization which affected the Bureau of Financial Management by removing from it one of its three sections, the budget section. This reorganization affected the bureau director's (Mr. McNier's) position by removing one-third of its duties and responsi-

bilities. The reorganization consequentially affected the appellant's position, inasmuch as the diminution of the duties and responsibilities of Mr. McNier's position gave him more time to devote to his remaining duties and responsibilities, including supervision of the appellant's position.

A position is defined as "... a group of duties and responsibilities..." §230.03(11), stats. Implicit in this definition is the concept that different sets of duties and responsibilities constitute different positions. Therefore, when a group of duties and responsibilities are changed, a new position is created. If a new position is created, its classification must be determined--i.e., the administrator must allocate it to the appropriate classification. See §Pers 3.01(1), Wis. Adm. Code.

This is what occurred with respect to the appellant's position. A change in the nature or amount of supervision afforded to a position affects the position's degree of responsibility. A position which is more closely supervised will have less independence of action and decision-making than a position which is less closely supervised.

The personnel rules provide certain ways in which the duties and responsibilities of a position may be changed without the creation of a new position and its allocation to the appropriate classification. Under §Pers 3.01(2), a position can be assigned to a different classification by reallocation based upon:

(f) The redefinition of the duties and responsibilities of a vacant position; or

(g) A change in the level of accountability of a position such as that resulting from a reorganization when the change in level of accountability is the determinant factor for the change in classification.

Under §Pers 3.01(3) (a), a position can be assigned to a different classification by reclassification based upon:

A logical and gradual change to the duties
or responsibilities of a position.

Pursuant to §Pers 3.01(4), "regrade," the administrator may determine that the incumbent of a filled position which has been reallocated or reclassified should remain in the position.

With respect to the appellant's situation, §Pers 3.01 (f) does not apply because although there was a redefinition of the duties and responsibilities of the appellant's position, it was not vacant. §Pers 3.01(2) (g) does not apply because the reorganization did not create a change in the level of accountability of appellant's position--it is still accountable to a bureau director, although the nature or amount of supervision received has changed. Finally, §Pers 3.01(3) (a) does not apply because the changes in the position were not logical and gradual but rather followed a singular occurrence, the reorganization.

Thus what occurred under the civil service code was the abolishment of the positions held by Mr. McNier and the appellant, and their recreation at lower levels. Because of the changes in the bureau director position, the agency no longer had a need for a Fiscal Administrative Officer 3 and therefore proceeded with a reduction in force at that classification by presenting Mr. McNier with the option of being laid off or accepting a demotion in lieu of layoff to the newly-created Fiscal Supervisor 3 position. Mr. McNier elected the demotion.

Similarly, with respect to the appellant, his position was in legal effect abolished and recreated at the lower level of Fiscal Supervisor 2.

Once Mr. McNier demoted to the newly-created Fiscal Supervisor 3 vacancy, there was a surplus of employees being paid at that level, since both Mr. McNier and the appellant were in that category and there was only one such position. Thus the respondent had to effect a reduction in force at this level. Under §Pers 22.06(2), Wis. Adm. Code, the respondent was authorized to grant an exemption from layoff. If no exemption had been granted, presumably Mr. McNier would have been identified for layoff pursuant to §Pers 22.06(3), as the least senior employee. However, he could have elected to demote in lieu of layoff to the vacant Fiscal Supervisor 2 position created as a result of the changes in the duties and responsibilities of the appellant's prior position, while the appellant could have transferred into the vacant Fiscal Supervisor 3 position (the position created by the restructuring of Mr. McNier's old position). In the event this scenario had been played out, the pre-existing reporting relationship between Mr. McNier and the appellant would have been reversed.

In order to retain that reporting relationship, the division administrator elected to exempt Mr. McNier from layoff. This resulted in the appellant's decision to accept a demotion in lieu of layoff to the Fiscal Supervisor 2 position.

The appellant has argued that the respondent improperly dealt with these matters as layoff-related transactions, in part because there was no "reduction in force" as set forth in §Pers 23.02(1). The appellant argues in his post-hearing brief, in part, as follows:

The employer did not prove there was an 'impending reduction in work force.' To the contrary, it was undisputed that no reduction in force whatsoever was contemplated. Rather than reducing the force, it was the employer's clear intent and design to keep both McNier and Kleinschmidt on the state payroll doing the same work, but for less pay.

The statutes and rules do not define the term "reduction in force." In the absence of any language in the statutes or rules which would require it, there is no apparent reason to restrict its application in the manner implied by the appellant's argument. The framework provided by the layoff rules, with the determination of layoff group, exempted employes, alternatives in lieu of layoff, and seniority ranking to determine actual layoff, clearly contemplate that the employe finally selected for layoff may be far removed from the positions selected for the initial "reduction in force." In this case, there was an initial reduction in force in the bureau by the removal of the employes in the budget unit. This had the effect of diminishing the duties and responsibilities of other positions in the bureau and causing the reductions in force in the higher classifications as set forth above.

For these reasons, the Commission concludes that the respondent complied with the applicable statutory and regulatory requirements in connection with this demotion in lieu of layoff. Furthermore, inasmuch as there was a rational basis for the determination to exempt Mr. McNier from layoff, the respondent's exercise of authority was not arbitrary and capricious.

ORDER

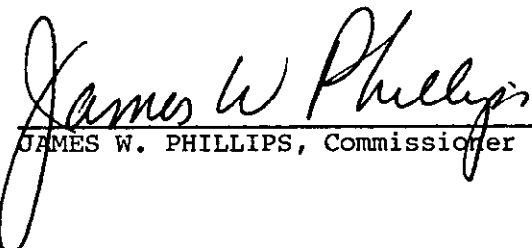
The action of the respondent is affirmed and this appeal is dismissed.

Dated: June 4, 1982 STATE PERSONNEL COMMISSION

AJT:jmf


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner


JAMES W. PHILLIPS, Commissioner

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