

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-402
	:	
of	:	<u>June 24, 1980</u>
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SUBJECT: RIGHT TO ELECT “DEMOTION”—A state employee, subject to layoff pursuant to Government Code section 19535, may elect ‘demotion’ to a previously held class with the same or higher, but not substantially higher, salary than the class of layoff.

The Honorable Ronald M. Kurtz, Executive Officer, State Personnel Board, has requested an opinion on the following question:

May a state employee, subject to layoff pursuant to Government Code section 19535, elect “demotion” to a previously held class with the same or higher, but not substantially higher, salary than the class of layoff?

CONCLUSION

A state employee, subject to layoff pursuant to Government Code section 19535, may elect “demotion” to a previously held class with the same or higher, but not substantially higher, salary than the class of layoff.

ANALYSIS

Government Code section 19530¹ provides that whenever it is necessary because of lack of work or funds or whenever it is advisable in the interests of economy to reduce the staff of any state agency, the appointing power may lay off employees in the manner prescribed by law. Layoffs are made in accordance with the relative seniority of the employees in the class of layoff, except that for professional, scientific, administrative, management, and executive classes layoffs are made according to a combined standard of seniority and efficiency. (Gov. Code, § 19533.) Section 19535 provides as follows:

“In lieu of being laid off an employee may elect demotion to: (a) any class with substantially the same or lower maximum salary in which he had served under permanent or probationary status, or (b) a class in the same line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the board. Whenever such a demotion requires a layoff in the elected class, the seniority score for the demoted employee shall be recomputed in that class. The appointing power shall inform the employee in the notice of layoff of the classes to which he has the right to demote. To be considered for demotion in lieu of layoff an employee must notify his appointing power in writing of his election not later than five calendar days after receiving notice of layoff.

“Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by the provisions of this article and shall be made within the subdivisions approved by the board for this purpose. Such subdivisions need not -be the same as those used to determine the area of layoff under section 19532.

“ ”²

The present inquiry is whether a state employee, subject to layoff pursuant to section 19535, providing that in lieu of being laid off an employee may elect demotion to any class with “substantially the same or a lower maximum salary” in which he had served under permanent or probationary status, may elect demotion to any class with “substantially the

¹ Hereinafter, all section references are to the Government Code.

² Section 19532, subdivision (a) provides:

“With the approval of the board, only the employers of a designated geographical, Organizational or functional subdivision of a State agency need be considered for layoff, and reemployment lists shall be established for such subdivision. Such lists take priority over the departmental and other reemployment or employment lists.”

same or a lower maximum salary” tially higher, salary than the class of layoff. Specifically, the issue is whether the term “substantially the same” would include an insubstantial increase.

Section 19536, subdivision (a) provides:

“Any employee replaced by such demotion has the same option of demotion afforded by Section 19535 as if his position had been abolished or discontinued.

“Except as authorized by the board under the provisions of Section 18860, any employee demoted pursuant to this article shall receive the maximum of the salary range of the class to which he is demoted; provided, that such salary is not greater than the salary he received at the time of demotion.”

This section provides that the employee shall receive the maximum salary of the elected class where ‘such maximum salary does not exceed the salary which such employee received in the class of layoff. The question remains, however, whether an employee may elect demotion to a previously held class, the maximum salary of which does exceed, although not substantially, the salary of the class of layoff.

We return to section 19535 which, as added by the Statutes of 1945, chapter 123, section 1, provided:

“When an employee has previously served the State with permanent status in any class below that of the class under consideration or its equivalent in any previous classification, in lieu of being laid off he has the option of being demoted to that lower class to replace the employee having the lowest score for efficiency and seniority in that class if such score is lower than that of the employee being demoted.” (Emphasis added.)

In 1951, the statute was amended (Stats. 1951, ch. 989, § 6) to provide:

“In lieu of being laid off an employee may elect demotion to: (a) any class with *the same or a lower maximum salary* in which he had served under permanent or probationary status, or (b) a class in the same line of work as the class of layoff, but of lesser responsibility, if such a class is designated by the board. Whenever such a demotion requires a layoff in the *lower class*, the seniority score for the demoted employee shall be recomputed in the *lower class*. To be considered for demotion in lieu of layoff an employee

must notify his appointing power in writing of such election not later than 10 calendar days after receiving notice of layoff.

“Demotions in lieu of layoff, and layoffs resulting therefrom, shall be governed by the provisions of this article and shall be made within the subdivisions approved by the board for this purpose.” (Emphasis added.)

In 1967, the statute was further amended (Stats. 1967, ch. 160, § 2, and ch. 1253, § 2) to read as hereinabove initially set forth.³ Comparative analysis of the statute as amended in 1967 with the 1951 version reveals the legislative intent. In the first sentence, the words “the same or a lower” were amended to “substantially the same or a lower” maximum salary. In the second sentence, the two references to the “lower class” were amended to the “elected class” and “that class” respectively.

The term “demote,” as it appeared in the 1945 statute referring exclusively to transfers downward, was used in its technically accurate sense. The term has not been amended, apparently in recognition of the fact that a previously held class is, in light of common experience, generally a lower classification. That the term “demotion,” in the context of the 1951 and 1967 amendments, may no longer be interpreted strictly, appears from the unequivocal allowance of lateral movement to “the same,” and presently to “substantially the same” maximum salary.

The import of the 1967 amendment, deleting the specific references to lower classes and adding the word *substantially* in connections with equivalent maximum salaries, is, in our view, to permit a transfer to a previously held class with the same or higher, but not substantially higher, maximum salary. Indeed, the insertion of the word “substantially” can have no other significance than to allow a transfer upward, since any other movement would be to the same or lower salary as theretofore provided. In this regard, the term “substantially the same salary range,” in other contexts pertaining to the compensation of state employees, has been understood and defined by the State Personnel Board as “a salary range with the maximum salary rate the same as or less than two steps higher or lower than the maximum salary rate of another salary range.” (Tit. 2, Cal. Admin. Code, § 91, subd. (e); emphasis added; q. §§ 98.1, 98.4, 98.5, 98.6.)

It is concluded that a state employee, subject to layoff pursuant to section 19535, may elect “demotion” to a previously held class with the same or higher, but not substantially higher, salary than the class of layoff.

³ The final paragraph of section 19535 as it presently appears, added by Statutes of 1978, chapter 776, section 117, is not pertinent to this analysis.