

STATE OF WISCONSIN

BEFORE THE PERSONNEL BOARD

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Virginia L. Hagengruber,

Appellant,

vs.

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John C. Weaver, President,  
University of Wisconsin,

Respondent.

MEMORANDUM DECISION

The Appellant was a Nursing Assistant 1, employed at University Hospitals in Madison. She entered state service as such in October, 1969 and after six months became a permanent employee.

From the beginning of her employment, she was assigned to the outpatient orthopedic clinic which appears to be a small unit with a full-time registered nurse in charge, a part-time registered nurse, a nursing assistant and a receptionist.

The position of Nursing Assistant 1 is a trainee position; after a year of service, the incumbent, if in the opinion of management it is appropriate, advances through reclassification to a Nursing Assistant 2, which is the journeyman level.

The duties of a Nursing Assistant 1 are quite basic, entail doing assigned tasks in a particular way and following instructions as given. The work calls for no individual initiative and is far from para-professional. The job, though, despite its low level, is extremely sensitive for the nursing assistant provides support services to the professional - the Doctors of Medicine and the Registered Nurses. If the assistant is not immediately available, fouls up on assignments or does not do what she is supposed to do, she is of no value. The professional, then, has to do it himself, which is

delaying and disruptive in a clinical type operation. An adequate nursing assistant should blend into the background and her actions and speech should be hardly noticeable to the patients.

The evidence that Appellant did or did not do the things that were set forth in the specifications for her termination as of March 26, 1971 is found in the testimony of Sandra R. Eckert, the Registered Nurse in charge of the clinic to which Appellant was assigned. Miss Eckert was Appellant's superior from the time Appellant entered service.

Miss Eckert's testimony is not spectacular as an indictment of Appellant's performance. This is not surprising for incompetence in a person who does not produce a work product on his own that can be objectively analyzed cannot be too definitive. Such incompetence usually can be shown only by a cumulation of small incidents which, if fully covered, would unduly burden the record.

Miss Eckert did testify to a few specific incidents: Record, page 29, relates to a problem of contaminated medical instruments; Record, pages 29 and 30 references two instances of Appellant's lack of sensitivity in handling patients.

Miss Eckert gave this testimony, Record, page 29,:

- " Q. How do you feel Virginia viewed her job? Did she view her job in a different light and take on more or less responsibility?
- A. No, she seemed to try to take on more responsibility and never could stick to her assigned duties of just preparing patients for examination for one doctor. She would go off and try to do the work of other nurses, getting their patients ready, calling them in out of order and creating, you know, an unfavorable atmosphere. It was a confused atmosphere. "

That the above evaluation is accurate is substantiated by Appellant's own testimony that she wanted to act in other than a primary elementary training job. Record, page 79. Her Contentions, Board's Exhibit 4, also indicates that she desired a transfer to an area where she could have broader functions in the nursing field.

The Board is of the opinion that great credence for incompetency of a nursing assistant must be given to the reactions of the professionals involved to that assistant. In the absence of a showing that these professionals are martinet or prima donnas, their evaluation is important.

Miss Echart testified, Record, page 34, as follows:

Q. In your professional opinion as a RN, the person who supervises this clinic, does or would or could Virginia Hagengruber meet the qualifications to work there?

A. No.

Miss Echart also testified, Record, page 30,

Q. Did she get along with these doctors?

A. She did not. It created ill feelings between the doctors and nurses because they had known that I had assigned Virginia to work with their particular patients because of the disruptiveness that she created.

Q. Now, was this a general concept, or was it one or two particular doctors who just didn't like Virginia?

A. No, it was a general concept of staff men, residents, as well as the cardiovascular staff men, residents and surgical co-ordinates who worked with them.

Dr. H. W. Wirka, Professor and Chairman of the Department of  
opedic Surgery wrote this letter on behalf of Appellant: Record, page 75:

"I would think this person could be placed somewhere in the hospital where she would not have contact with patients and not be required to do any real responsibility activity. I did not have much contact with her but I understand from everybody else that she was not competent. However, if she could be used somewhere I do not think she would be harmful to anyone."

These statements of Nurse Echart and Dr. Wirka are hardly hearsay, because they are part of the work experience of these people in a management situation.

Appellant has contended that her discharge was retribution for her filing a grievance in regard to not being reclassified to Nursing Assistant 2. It is true that Appellant did file a grievance and pursue it through two steps. There is no evidence that anyone in the hospital hierarchy bore her any ill will on that account. As a matter of fact Personnel regarded the grievance process as a rightful prerogative of the employee which should be encouraged.

The Board believes that Appellant, in view of her previous experience as a nursing assistant at the Veterans Hospital in Madison, was properly indoctrinated for her work at University Hospitals; the Board further believes that the record indicates Appellant was advised of her deficiencies and counseled about them. The Board believes that reasonable efforts were made by the hospital to assist Appellant in defining her role and improving her performance. The latter is evidenced by the assigned efforts of Mrs. Betty Mubry, an inservice instructor, as late as March 1 and 2, 1971. Record, pages 10 and 41.

The Board has given weight to the testimony of Nurse Echart that after Appellant was replaced by a temporary employee that many of the problems which had existed in the operation of the clinic ceased to arise. Record, page 31.

The Board concludes that there is sufficient supporting evidence in the record for the specifications against the Appellant and that her discharge was for just cause.

This appeal brought up an interesting matter on which the Board will comment on by way of Obiter Dictum.

Over the past several years the Director of the State Bureau of Personnel, with the concurrence of this Board, has created a series of progression classes. The Nursing Assistant series as well as the Institution Officer series and the Trooper series are examples. In each case the "1" position is an entry "trainee" position. The "2" position is the "journeyman" and the "3" and above positions are the "super journeyman". In the concept of the series it was expected that all the "1s" after a year of training would progress, if management deemed it proper, to "2s". It was anticipated that many "2s" would progress to a higher level. This progression would be an automatic reclassification.

The question existed then, and it exists now, as to what to do with the "1s" who have acted adequately as "1s", but who in the judgment of management do not have the capability to become "2s". After six months, if the "1" passed probation, he became, technically, a permanent employe who could be terminated only for just cause with rights to appeal under s. 16.24 Stats. to this Board.

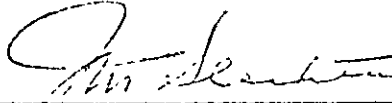

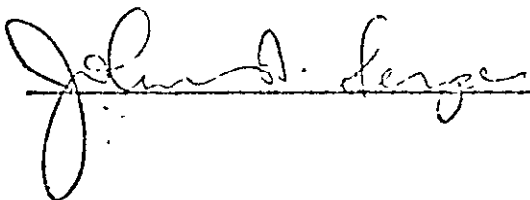
We suspect that many "1s" who could not make it to "2s" have been terminated. We suspect further that many such "1s" have been and are retained as "1s" far beyond any reasonable training period. If so, this has defeated the Board's concept of a trainee class. We certainly never envisioned an employe being either a permanent or perpetual trainee even if he adequately performed the useful functions assigned to that class.

What we are saying is that a trainee is always on what is tantamount to probation. Even though he is technically a permanent employe by virtue of having survived for six months, he should be terminated after a reasonable training period, if he cannot be allowed to progress. Such a termination should not be appealable to this Board as it is a management prerogative to make the progression decision, based not entirely on performance as a "1", but more on an evaluation of potential to be a "2". Additionally, such a termination could not be construed as a discipline. An employe in such a "1" class might resort to the grievance procedure available to him, if he were not reclassified to a "2" after the appropriate training period.

Counsel for the Respondent shall prepare Findings of Fact and Conclusions of Law consonant with this decision.

STATE PERSONNEL BOARD

BY

Members Shiels and Ahrens did not participate in this matter.