



The State of Wisconsin
Department of Justice
Madison
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June 19, 1981

RECEIVED

JUN 22 1981

Personnel
Commission

Anthony Theodore
Room 803, Personnel Board
131 West Wilson Street
Madison, Wisconsin 53702

Re: Kolonik v. State Pers. Brd.
Your File No. 75-35; Cir.
Ct. Case No. 162-178

Dear Mr. Theodore:

On your oral request I am enclosing a copy of Judge Jones' memorandum opinion of February 26, 1979, which affirms your Board's order.

I'm sure I prepared a formal judgment and sent your Board a signed copy, but since the record is now over at the archives, I cannot provide you with a copy.

If you need a copy of the judgment, I will have the record brought back and copy made for you.

Very truly yours,

Roy G. Mita
Assistant Attorney General

RGM/jaw
Enclosure

COPY

JUN 17 1981

NOT G. MIA

STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

#162-178

your file 75-35

WALTER G. KOLONICK, JR.,

Petitioner,

MEMORANDUM

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-vs-

DECISION

JUN 22 1981

STATE OF WISCONSIN
(Personnel Board),

162-178

Personnel
Commission

Respondent.

Petitioner seeks review of an order of the State Personnel Board dismissing his appeal of a denial of his reclassification request. Petitioner has a civil service classification as Social Worker II. He is employed at Wisconsin Veterans Home at King, Wisconsin. He sought reclassification as Social Worker III or Social Services Specialist I.

The social work staff at the Veterans Home consists of three persons: a supervisor and two Social Worker II's. The Home has approximately 700 residents who are elderly veterans and spouses in an essentially independent living situation. Each of the three social workers assumes responsibility for approximately 200 residents. Each acts with a certain degree of independence responding to the residents' needs as they arise. However, the supervisor has overall responsibility and authority to assign duties and review the work of the two social work employees.

The Board found that the proper test for its review of the failure to reclassify was whether that failure was "arbitrary and capricious" rather than the usual test of whether the failure to reclassify was correct or incorrect.¹ Petitioner does not challenge that standard on appeal.

Petitioner bases his appeal on an alleged misstatement by the Board of the issue. The Board defined it as follows:

"At and immediately prior to the time this appeal was perfected herein, what was the proper civil service classification of Walter Kononick with regard to Social Worker 3 or Social Services Specialist 1?"

Petitioner argues that the Board was required to select one or the other of the reclassification requests and could not look at Petitioner's Social Worker II status. I disagree. The issue in this case from the beginning was whether or not petitioner should be reclassified. It begs the question to suggest that the Board cannot consider whether or not Petitioner is now properly classified. By concluding that he is properly classified, the Board found that the failure to reclassify was not arbitrary and capricious action.

On review, I must affirm the Board order if it is supported by substantial evidence in view of the entire record as submitted. Berkan v. Personnel Board (1974), 61 Wis. 2d 644; Reinke v. Personnel Board (1971), 53 Wis. 2d 123.

¹ The matter arose as part of the grievance procedure of the collective bargaining agreement between the State and WSEU, AFL-CIO. See sec. 111.91(3) Stats.

The Board found that petitioner's duties and responsibilities are of a training or educational nature not sufficient to meet the Social Services Specialist I requirement of "responsibility for implementing and directing a specialized institutional or training program." Further, the Board found that petitioner did not meet the Social Worker III specification to "carry an independent total caseload responsibility for all types of clients including multi-disciplinary and inter-service complexities."

The Board also found that petitioner was supervised and that he only exercised supervisory authority in the absence of the supervisor.

The petitioner certainly engaged in some activities that would meet the specifications of both higher positions. However, his work also meets the specifications of a Social Worker II. Both Social Worker III and Social Service Specialist I positions are highly independent, supervisory or managerial positions. Social Worker II is essentially an on-the-line social worker working with clients in group counseling, referral and treatment planning and other case work duties. By petitioner's own exhibits only 4 percent of his work is supervisory and over 60 percent is direct case work and related client contact with a relatively homogeneous group of residents.

Although I might agree that petitioner could qualify as a Social Worker III, I must find that there is substantial evidence supporting the Board's finding that failure to reclassify was not arbitrary and capricious as "either so unreasonable as to be without a rational basis or the result of an unconsidered, wilful and irrational choice of conduct."

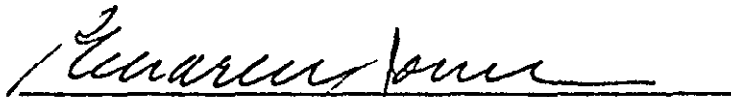
Jabs v. State Board of Personnel (1967), 34 Wis. 2d 245,
251.

The Board's order is therefore affirmed.

Counsel for Respondent may prepare the appropriate judgment submitting same to opposing counsel for his approval as to form and to me for my signature.

Dated: February 26, 1979.

BY THE COURT:



P. CHARLES JONES, CIRCUIT JUDGE
DANE COUNTY CIRCUIT COURT III