STATE OF WISCONSIN

BEFORE THE STATE BOARD OF PERSONNEL

William A. Berkan, Appellant,	
vs.	MEMORANDUM DECISION
Lester Newville, Chairman Adams County Department of Social Services, Respondent.	

#391

Local emotions have run high in this matter to the extent that it was probably the most important issue in the Adams County spring election. Adams County is not unusual for this Board has found the same deep concerns over the administration of public welfare in other areas where it has jurisdiction under the County Merit System Rules.

This case has been widely noticed by the state press which has reported the proceedings most fairly and objectively. We have read the news stories and particularly the reports in which experienced and realistic observers have noted that the real issue involved is a basic conflict of social idealogies between those who think as does the Respondent Director that welfare should be so generous that recipients can live in dignity and thereby be accorded a leverage to better themselves and move off of the relief roles, and those who think as do those who support the majority of the Respondent Social Services Board that welfare should be a conservative stop-gap type of assistance that should not be so attractive as to become a way of life to the people to whom it is extended.

It may well be that such is the real issue, but the case was not tried to this Board on these grounds, and this Board does not propose to decide any such issue.

Hence, the decision in this case may not be regarded as an endorsement of any social philosophy that anyone may entertain. This decision does not condone either a "give away the store" approach or a return to the "poor commissioner dole" of a past era. Neither does this decision suggest some intermediate posture that should be adopted. While the proponents of the parties might like such a decision if favorable to their point of view, this Board does not believe that the adversaries seek such a mandate. They know that they could not live with it. The only obligation that this Board has is to decide the instant case, and that we shall do without going beyond the record that has been made.

Many specific charges were made by the Respondent against the Appellant and much was said about them in two full days of hearing. The evidence to those charges did not impress the Board very much. The Board was left with the conclusion that if the Appellant were an autonomous operator that he did a most competent job. He created order out of the chaotic administration that he inherited; his programs were successfully conducted; in some of the cases that he has been criticized for, rehabilitation of the client was accomplished; he ran the department and conducted its affairs about as the State Department of Health and Social Services prefers.

The Board is impelled to make a few comments on the specific charges:

Much was said about the self declaration method of determining an applicant's eligibility. It was asserted that this is a bad way of determining eligibility; that it was installed without approval of the local board or that the necessity of installing such a method was misrepresented by the Appellant. This Board is not convinced by anything in the record that such a method of determination of eligibility is a reprehensible one; it may even be the better one. Then, too, it is entirely clear that it was accepted by a majority of

the welfare board that existed before the April election changes. It is not believed that the Board was greatly swayed by the fact that it was represented to be mandatory; they accepted it on its merits. In truth, if the Appellant represented it to be a necessity, he did so in good faith. Any reasonable person could have come to the same conclusion from the confusing and changing state and federal directives.

The opponents of the Appellant obviously have gone over all of the files of the County Welfare Department with a fine-toothed comb looking for wrongful acts of feasance or non-feasance by the Appellant. They came up with a few that had apparent wrongful connotations, but these tended to lose their clout under scrutiny.

A few clients did receive substantial amounts of money through basic aids and supplementary grants. These cases are highlighted in Adams County where many people get along on very little and still do not seek public assistance. However, there was no showing that these substantial payments were improper or more than was required to meet the recipients needs. Size of payments is not ipso facto bad.

Much was made of the fact that one Violet Premo who attended County Normal School at Wautoma received as reimbursement for transportation rather large sums several months after her schooling had been completed. No question was raised but that the payments were warranted had they been made as travel expense was incurred. Caseworker Ruth Kalms testified that the recipient had paid travel expense by letting other of her bills become delinquent. Record, page 308. This would seem to justify the after the fact payment that was made. This case is a poor one to quibble over, for by reason of the schooling she became qualified to teach, found a teaching position and took herself and four children off of the relief roles.

Three checks paid to relief recipient Elizabeth Adorjan and not recorded in her file were satisfactorily explained by reference to the file of her infant blind son, Timothy. The checks were made payable only to her as "protective payee", but for the benefit of Timothy who himself was entitled to the categorical aid to the blind.

This Board, as were many Adams County taxpayers, was concerned that in two cases, Paepke and Adorjan , supplemental payments for rent were not used by the recipient for that purpose. However, it does not seem to be the practice that the use of welfare payments be policed. As a matter of fact, the contrary appears to be the prevailing practice.

It was intimated by the Respondents that welfare clients had practiced fraud on the county and that Appellant had done nothing about it.

When Shirley Pierce refused to answer questions by "taking" the fifth amendment, Respondents did not pursue the matter by other evidence. This Board, consequently cannot even surmise that there were fraud cases. If there were, Appellant should have sought criminal action. So should any other citizen in possession of the facts.

It is complained that Shirley Pierce gave false testimony before the Joint Committee on Finance of the Wisconsin Legislature as to what she had been receiving in public assistance. We believe that she did. The record, though, does not show that Appellant had even an indirect part in her appearance or was in any way responsible for her remarks.

Appellant is criticised for not refuting her remarks when he was advised of them. Probably he should have, but we do not know in what forum or by what media he might have done it. If he were culpable, he was not more so than any other citizen who was aware of the false statements, particularly the Deputy County Treasurer who testified to this point.

Appellant is also criticised for writing other county welfare directors urging them to suggest that their employes appear at the public hearing before the Legislature's Joint Committee on Finance and charge the time away from work against accumulated compensatory time off. Such public hearings are an accepted part of the "gamesmanship" of legislating. Anyone with an interest in pending legislation has also been welcomed by the legislators at the hearings even though he be biased or lack objectivity. That any sanctions be imposed upon people who appear at such hearings on their own time is unthinkable. What Appellant suggested is entirely proper.

Exception was taken to the fact that Appellant became involved in the issue of school facilities in the Adams-Friendship School District. He had every right to become so involved. When he came to Adams County as a local public employe he did not disenfranchise himself as a citizen. What Appellant did in this matter is not prohibited political activity under any construction thereof of which this Board has ever heard.

Appellant was accused of surreptitiously introducing a tape recorder into meetings of the social services board. Record, pages 19-20, 34-37. It may have been inconsiderate of Appellant to attempt to record the proceedings in a secretive manner. However, there is nothing bad about recording proceedings of a public body. The sessions were not executive or closed meetings. Had he advised the board in advance, they would have had no basis for denying him.

There is no doubt that Appellant on one occasion spoke in an obscene manner about the board and with language that belittled the members and their competence. Record, pages 49,50. This isolated incident, uncouth as it was, is trivia as an episode. It probably did, though, honestly

represent Appellant's underlying contempt for the welfare board.

This Board, though, is concerned with the attitudes and expressions of the Appellant in regard to the Adams County Social Services Board. This Board believes that it was and still is his position that the Board had policy control only over general welfare and had no policy control over the categorical aids. Member King testified,

> "Mr. Berkan made the statement at the very first meeting of the welfare board when he said you, and this would mean the board, may set policy on GR or general relief and I'll set the policy on the rest of all the programs in this department." Record, page 40.

Mrs. Hardin, a member of the board, testified as follows:

> "Q. All right, Mrs. Hardin. Issue No. 4 as framed by the board of personnel reads, 'Did Appellant on April 23, 1970 state that the county welfare board could make only policy on general relief and had no power to give guidance on other programs or control Appellant's work?' Did you hear that statement made?
>
> A. I did.
>
> Q. And was that statement made by Mr. Berkan?
>
> A. Yes.
>
> Q. Now is that an accurate quotation of what he said?
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> A. Yes, I would say so."

This Board believes Mr. King and Mrs. Hardin. Coroboration is found in the testimony of the Appellant, and that he said it and believes it is confirmed by his attitude and demeanor as a witness.

His statement to the new board that was constituted in April 1970 certainly meant that the categorical aids were none of its business and that he did not propose to discuss the matters with the board or permit it to have anything to say about them.

Obviously the County Welfare Board did not feel that it should be excluded from a part in the handling of such aids.

If the County Welfare Board was out to "get" the Appellant, it is very apparent that the Appellant was not reluctant to carry the fight to them.

To pass on this question, this Board will look to the statutes of this state.

"s. 4622(1). Every county having a population of less than 500,000 may by a vote of its county supervisors elect to be under s.46.21. In every county having a population of less than 500,000, that has not elected to be under s. 46.21 there is created a county department of public welfare. Such county welfare department shall consist of a county board of public welfare, a county director of public welfare and necessary personnel. . ." (emphasis is ours.)

"(2) The county board of public welfare shall consist of 3.5 or 7 residents of the county (as determined by the county board of supervisors) elected by the county board of supervisors or appointed by the chairman of said county board in accordance with the rules and regulations of said board. 'The members of the county board of public welfare shall be elected or appointed either from members of the county board of supervisors or from the county at large, or both, on the basis of knowledge or interest in public welfare and shall hold office for a term fixed by the county board of supervisors. . .'

'(b) Appoint a county director of public welfare subject to the provisions of s. 49.50(2) to (5) and the rules and regulations promulgated thereunder'

'(c) Supervise the working of the county department of public welfare and shall be a policy making body determining the broad outline and principles governing the administration of the functions, duties and powers assigned to said department under s. 46.22(4) and (5).' (Emphasis is ours.)

"(3) The county director of public welfare shall serve as the executive and administrative officer of the county department of public welfare.' (Emphasis ours)

'(4) The county department of public welfare shall have the following functions, duties and powers in accordance with the rules and regulations promulgated by the state department of public welfare and subject to the supervision of said state department of public welfare:

'(a) To administer aid to the needy blind under s. 49.18.
(b) To administer aid to families with dependent children under s. 49.19.
(c) To administer old age assistance under ss. 49.20 to 49.37.
(d) To administer aids to totally and permanently disabled persons under s. 49.61 ." (Emphasis is ours.)

The foregoing categories of aid are referred to as categorical aids.

While the parties to this hearing did not make a good record in this regard, it is our understanding that federal funds are available for categorical aids and are apportioned to the respective counties, that the state picks up a percentage of the costs that are not funded by federal monies, and that the county bears the balance of the costs. Hence, the county does have a fiscal interest in the administration of the categorical aids.

As this Board sees it, in the organizational set up of a county welfare board, neither the county welfare board nor the county welfare director is the department. The statutes set up the division of functions. True, the welfare board is not administrators or operating personnel; the board is policy making and supervisory. The director is the administrator and operator working under the broad outlines and principles established by the board and under its scrutiny.

It is evident that the Appellant has a firm conviction that the categorical aids are no business of the welfare board. Perhaps he feels that the rules and regulations in regard to such aids are so defined and delineated in the state rules and regulations that there is no policy to be made; perhaps he felt that he was so thoroughly and competently supervised by the state "experts" that further lay supervision was unnecessary.

Perhaps he has the attitude that a lay board can accomplish nothing constructive and is an archaic device that should be eliminated. If he does have this attitude, it does not set him apart from many "professionals" who share responsibility with a lay board. From a purely analytical approach, he may be right. However, the system that we have is more sociological than analytical.

The statutes of this state have placed the county welfare board in the picture. The statutes have made the county welfare board a component of the county welfare department with certain functions in the area of categorical aids. It is the province of the legislature alone to take the county welfare board out of the picture. It is unthinkable that any "professional" should attempt to accomplish an exclusion by administrative fiat. His good faith is not an extenuation.

Certainly there is policy to be made even if it is within prescribed boundaries. We suppose the board could even have the right to make bad policy if it is willing to suffer the sanctions and consequences thereof.

Certainly being clothed with the perogative of supervision the welfare board had every right to know what the director was doing with the categorical aids.

The legislative rationale for lay boards is to afford a balance against the activism of "professionals" and career people in any field. From recent experiences, we have found that the Legislature does not regard this as an outmoded concept.

It may be that from the very adversary position that he had been in for so long and which was aggravated by the April elections that Appellant was convinced that the new members of the welfare board were motivated only to the destruction of a good and appropriate welfare program. If so, that

is unfortunate, for at the hearing we saw and heard these people. They have our presumption that they are good citizens and would not do anything that would be contrary to law, rule or regulation or good conscience. We do think that this welfare board will find, though, that they have much less to say about the categorical aids than they expected they might.

With Adams County so disturbed over welfare administration as it has been, it is ever so important that there be a local official group such as the welfare board that would know what was going on and be knowledgable as to why it was going on. Only by such a device could the citizenry be assured that the "store was not being given away" by the "professional" social workers.

Appellant's attitude that the local welfare board has no concern with the categorical aids and his efforts to bar the board from involvement therein constitutes such misconduct on the part of Appellant as to constitute cause under the County Merit System Rules for his discharge.

Dated at Madison, Wisconsin
this 4 day of December, 1970.

STATE BOARD OF PERSONNEL

BY_____