

HARRY PARMAN and
JOSEPH REIHBANDT,

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Appellants,

vs.

WILBUR J. SCHMIDT, SECRETARY
DEPARTMENT OF HEALTH AND
SOCIAL SERVICES, and
C. K. WETTENGEL, DIRECTOR
STATE BUREAU OF PERSONNEL,

Respondents.

#568

OFFICIAL

ORDER

The Board having previously entered and filed its Findings of Fact and Conclusions of Law enters the following Order.

1. That the respondent, Wilbur J. Schmidt, Secretary, Department of Health and Social Services, examined the available records of work performed at the security ward at the University Hospitals by all custodial officers assigned thereat after May 24, 1971, and reimburse such officers at the then going rate of nighttime differential pay in existence at the time of the performance of such services for all qualifying periods in excess of two hours between the hours of 6:00 p.m. and 6:00 a.m.

2. It is further ordered that based on such determination of the amounts to which each custodial officer is entitled, that he prepare a voucher for and reimburse each employe in such amounts that he finds he should be lawfully entitled.

Dated at Madison, Wisconsin this 11th day of June, 1973.

STATE PERSONNEL BOARD, By

William Ahrens
William Ahrens, Chairman

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HARRY PARMAN and
JOSEPH REIHBANDT,

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OFFICIAL

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Appellants,

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FINDINGS OF FACT

vs.

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AND

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CONCLUSIONS OF LAW

WILBUR J. SCHMIDT, SECRETARY
DEPARTMENT OF HEALTH AND
SOCIAL SERVICES, and
C. K. WETTENGEL, DIRECTOR
STATE BUREAU OF PERSONNEL,

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Respondents.

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Hearing was held before the State Personnel Board on January 23, 1973, Room 99A, Hill Farms State Office Building, Madison, Wisconsin, with the following Board members present: William Ahrens, Chairman; Percy L. Julian, Jr.; and Susan Steininger. The appellants appeared personally and by their attorney, Richard V. Graylow of the law offices of Lawton & Cates, 110 East Main Street, Madison, Wisconsin, and D. J. Sterlinske, Attorney, Department of Administration, appeared on behalf of the respondents, Wilbur J. Schmidt, Secretary, Department of Health and Social Services, and C. K. Wettengel, Director, State Bureau of Personnel. The Board having heard the evidence, examined the exhibits and the transcript of the testimony of the parties, makes and files the following:

FINDINGS OF FACT

1. That this is an appeal to the Wisconsin Personnel Board from the final step of the statewide grievance procedure as adopted by the State Department of Health and Social Services and approved by the Director of the State Bureau of Personnel.

2. That the State Department of Health and Social Services, Division of Corrections, maintains a hospital security ward at the University Hospitals located at Madison, Wisconsin for the purpose of the custodial confinement of inmates committed to the State penal institutions who require hospital care.

The Wisconsin State Prison is a penal institution located at Waupun, Wisconsin and is responsible for the providing of security coverage for the security hospital ward at the University Hospitals.

3. By informal agreement with the employe union and the warden of the Wisconsin State Prison, assignment of custodial officers to provide security coverage is limited to those officers regularly assigned as first shift utility officers. These officers are assigned for a period of time not to exceed 14 consecutive days to the detached post at the State Hospital with assignment of two officers who are charged with the responsibility of maintaining security coverage for the inmates assigned and transferred to the University Hospitals.

4. Assignment to this shift is made strictly on the basis of eligibility and seniority with the most senior officer who has not served in this post within the past 14 days considered as first eligible. Such officer may accept or decline the assignment with the next senior officer then eligible for assignment.

5. The prison officials reserve the right to designate any officer unable to physically perform this duty or who was assigned to this post within the previous 14-day period as ineligible for assignment.

6. Once an officer is offered this assignment and accepts, he may serve for a period of not more than 14 consecutive days, and thereafter he returns to regular duty at the prison and he becomes ineligible for consideration for assignment to this hospital shift for the ensuing 14 days. The officer when assigned reports for duty at the prison and is transported to the Madison hospital and remains there until he either requests return to the prison or has served for 14 consecutive days. Work time credit is given from the time he reports for initial duty, travel time and all time while on actual duty at the hospital.

7. While on hospital assignment, the affected officers are permitted to mutually arrange for and schedule their on-duty and off-duty hours so that between the two officers so assigned, continuous 24-hour security coverage of

the hospital post is provided. While on duty the officer is responsible for inmate security and he is required to remain awake and be at the security door at the hospital ward. When not on duty he is permitted to leave; however, he remains subject to call.

8. Each officer is required to keep a record of his duty time and files this with the prison personnel officer and is paid premium pay for all hours over 40 hours each week.

9. That grievant, Joseph Reihbandt, is a Custodial Officer 2, employed as a first shift utility officer in the Wisconsin State Prison and was eligible for assignment to the Wisconsin University Hospitals.

10. On May 24, 1971, appellant Reihbandt filed a grievance under the statewide grievance procedure as promulgated by his employing department. The subject matter of the grievance was his failure to receive nighttime differential pay for the qualifying hours working during nighttime hours while stationed at University Hospitals. This grievance was processed through usual channels and returned to him from Wilbur J. Schmidt, Secretary, Department of Health and Social Services, July 30, 1971. The third step answer denied entitlement to the payment of nighttime differential on the basis that such a work duty assignment was not regularly scheduled duty as required by the Wisconsin State Personnel Board rules in effect at that time.

11. Appellant Reihbandt received the third step determination on or about August 2, 1971, and thereafter, by letter August 9, 1971, received August 13, 1971, by the Personnel Board, indicated a desire to appeal such third step determination to the State Personnel Board as provided in the departmental grievance procedure.

12. Thereafter, on December 17, 1971, appellant, Harry Parman, submitted a first step grievance alleging that he was entitled to the payment of nighttime differential when assigned at University Hospitals and he was not

being paid this amount and requested a disposition thereon. This grievance was likewise processed through the three steps with denial of the relief requested at each step. He appealed this decision by letter to the Personnel Board, which was dated September 3, 1972, and received September 7, 1972, by the State Board of Personnel.

13. The subject of these two grievances was referred to C. K. Wettengel for investigation, evaluation, and recommendations and that he thereafter concurred in the final disposition made by Wilbur J. Schmidt, Secretary, Department of Health and Social Services.

14. The subject matter of the grievance was an interpretation of the Board Rule, and under the existing grievance procedures, the State Personnel Board has jurisdiction to hear the matter under the existing departmental rules.

15. The matter was initially set for hearing October 9, 1972, in Room 1100, Wilson Street State Office Building, wherein William Ahrens, Chairman, and Charles Brecher appeared. Board members Serpe and Julian were absent. After a discussion between the parties, the appellants requested that the matter be rescheduled for the reason that a quorum of the Board was not present and they would not consent to or agree to a hearing without a Board quorum. The matter was thereupon adjourned, subject to be rescheduled and was thereafter heard January 23, 1973.

16. The initial Board Rules and the succeeding Rules of the Director, as promulgated by law, provided for the payment of nighttime differential for work performed during regularly scheduled shift hours of two hours or more between 6:00 p.m. and 6:00 a.m. by permanent employes.

17. Regularly scheduled hours were defined by rule as work hours repetitively recurring on a standard, split, or rotating shift basis. Irregularly scheduled work hours were defined as hours not scheduled on a permanent and repetitive basis.

18. That the assignment of custodial officers by the Wisconsin State Prison at the security ward at the University Hospitals is a shift assignment for a 24-hour period.

19. That custodial officers, when assigned to hospital security coverage, are required to provide 24-hour coverage and during the time of such hospital security coverage, assignments are regularly scheduled for each successive 24-hour period.

20. The scheduling of officers for work periods not to exceed 14 consecutive days is a regularly scheduled shift assignment and an assignment thereat when eligibility is made on a recurring basis with eligibility determined on the basis of seniority.

21. That the recurring assignment of officers at the security ward at the University Hospitals is an assignment for regularly scheduled hours consecutively and repetitively recurring while so assigned on a 24-hour shift.

The Board having entered the foregoing Findings of Fact enters the following:

CONCLUSIONS OF LAW

1. That each custodial officer when assigned to hospital security coverage is entitled to the payment of nighttime differential compensation for those qualifying hours between 6:00 p.m. and 6:00 a.m. worked in excess of two hours.

2. That each custodial officer assigned to the University Hospitals security ward on or after May 24, 1971, was entitled to receive the payment of nighttime differential compensation for the qualifying hours so served and is entitled to pay therefor.

3. That the respondent, Wilbur J. Schmidt, Secretary, Department of Health and Social Services, shall determine, based on available records,

qualifying work hours performed after May 24, 1971, and prepare a supplementary voucher of each of the affected custodial officer's entitlement thereto.

4. That no custodial officer rendering service prior to that date shall be entitled to any payment for services performed prior to that date and that payment of such sums shall constitute backpay at a rate which was then in existence at the time of the rendering of the services involved and does not constitute retroactive pay as prohibited by law.

Dated at Madison, Wisconsin this 11th day of June, 1973.

STATE PERSONNEL BOARD, By

William Ahrens
William Ahrens, Chairman

Members Brecher and Serpe did not take part in the hearing nor decision.