

\* \* \* \* \*  
 HARVEY HOEFT,  
                                 Appellant,  
  
 v.  
 VERNE KNOLL, Deputy Director,  
 State Bureau of Personnel,  
                                 Respondent.  
  
 Case No. 74-37  
 \* \* \* \* \*

\*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*  
 \*

OPINION  
AND  
ORDER

**OFFICIAL**

Before: Wilson, Warren and Hessert, Board Members

Nature of Case

This is an appeal of a grievance to the Board as the final step in the State's grievance procedure. Section 16.05(7), Wis. Stats. The Appellant as President of Prison Local 18, Wisconsin State Employees Union, represents the interests of three union members who are classified employes working for the Department of Health and Social Services. In an Interim Opinion and Order dated May 24, 1976, the Board held that this appeal was timely and that Appellant had standing to represent the interests of its Union members.

Findings of Fact

Frank Vilski, Duane Meuli and Bernard Almstedt were, at all times relevant to this appeal, classified employes with the Department of Health and Social Services. Since Bernard Almstedt functioned as the group's spokesperson in the presentation of their grievance and since the evidence presented at the hearing related almost exclusively to him, these findings necessarily focus on that individual.

Bernard Almstedt began work at Camp Flambeau as an Officer 3. His duties required him to spend a substantial portion of his time as a substitute parent providing counseling and leadership to the camp's thirty to forty juveniles. To a

lesser extent, his duties required him to work with the camp's six to ten adult inmates, but in a role more closely approximating that of a guard than a counselor. This mix of duties existed before and continued after the reallocation of his position.

In March of 1974, Camp Flambeau's Superintendent received a memorandum (Appellant's Exhibit 3) indicating that all Officer positions at the Camp would soon be changed to Youth Counselor positions. Any Officer 3 could retain his current status by signing a vacancy notice to transfer to Black River State Camp which had earlier been changed from a youth to an adult institution and consequently needed to fill Officer 3 positions. Bernard Almstedt received and rejected an opportunity to transfer to Black River State Camp as an Officer 3.

On May 24, 1974, Bernard Almstedt was notified that the State Bureau of Personnel had reallocated his position and had accordingly changed his classification to Youth Counselor 3. The notice justified the change as a "change in program concept" and informed Bernard Almstedt of his right to appeal the action. (Appellant's Exhibit 2) After the reallocation, no Officer 3 positions existed at Camp Flambeau.

The change in classification entailed no pay reduction but did result in the loss of protective occupation status with its attendant benefits.

#### Conclusions of Law

Section Pers. 3.04, Wis. Adm. Code provides:

"Notice of reallocation or reclassification. Whenever a position is reclassified or reallocated, the appointing authority shall be notified in writing. The appointing authority shall then notify the incumbent in writing."

The record indicates Bernard Almstedt received written notice of both the reallocation of his position and his change in classification. (Appellant's Exhibit 2) The Appellant views the reason (change of program concept) for the reallocation as

legally insufficient because that reason is not listed under the definition of reallocation. Section Pers. 3.02(2), Wis. Adm. Code defines a reallocation as follows:

"Reallocation. The assignment of a position to a different class by the director as provided in Section 16.07(2), Wis. Stats., based upon:

- (a) A change in concept of the class or series.
- (b) The creation of new classes.
- (c) The abolishment of existing classes.
- (d) The reappraisal of the level of the class in terms of the total service such as that resulting from personnel management surveys.
- (e) The correction of an error in the previous placement of a position.
- (f) The redefinition of the duties and responsibilities of a vacant position.
- (g) Reclassification as provided in subsection (4)."

Obviously, the notice does not, in the reason it provides, recite verbatim any of the bases for reallocation under this definitional section. That fact, of itself, is not dispositive of this appeal since no notice with reasons is explicitly required by the section.

Section 16.07(2), Wis. Stats., provides:

"After consultation with the appointing authorities, the director shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. He shall likewise reclassify or reallocate positions on the same basis whenever he finds such action warranted."

This statutory section imposes a mandatory duty on the Director of the Bureau of Personnel to reallocate positions on the basis of the position's duties, authority, responsibilities or other job related factors. The definition of reallocation under Section Pers. 3.02(2), Wis. Adm. Code is merely an administrative attempt to outline certain situations which fit within the limits of the statutory section.

The proper standard, when contesting the Director's reallocation action, must look to Section 16.05(2), Wis. Stats., for a violation of the duty imposed by that section on the Director. Since Section 16.07(2), Wis. Stats., requires the Director to reallocate a position on the basis of its "duties, authority, responsibilities or other factors recognized in the job evaluation process", Appellant must show that Bernard Almstedt's position is incorrectly classified on the basis of those same factors. Class specifications are designed to distinguish and allocate positions to the proper classification on exactly these criteria. Section 16.07(2), Wis. Stats., and Section Pers. 3.02(1), Wis. Adm. Code. The class specifications are thus the proper basis on which to test the Director's reallocation action - a fact made explicit by Section Pers. 3.05 which provides:

"Classification appeals. If the employe believes the classification action of the director or his designated representative to be incorrect . . . on the basis of the class specifications, the employe . . . shall, upon written request be entitled to appeal such action as provided in Wis. Adm. Code Chapter Pers. 26." (emphasis added)

Appellant has not discharged his burden of proof under this standard. He has not shown that according to the class specifications, Bernard Almstedt's position was improperly classified as a Youth Counselor 3 position.

Bernard Almstedt testified that the duties of his position required the supervision of juveniles and adults during work, recreation, and outside community based activities; and that the primary responsibility of his position was the operation of Camp Flambeau's recreation program. Accordingly, he functioned as coach of the camp's baseball and basketball teams and assisted in the organization of the camp's other recreational activities.

The class specifications for a Youth Counselor 3 (Respondent's Exhibit 2) provides the following examples of work performed:

"Plans, organizes and conducts recreational or leisure time cottage centered activities including hobbies and handicrafts for boys and girls."

"Assists in planning and carrying out inmate work or recreational programs."

Since Bernard Almstedt testified that at least half of his time in performing these duties was spent working with juveniles, the duties of his position fit squarely within these examples of Youth Counselor 3 work. We cannot, therefore, conclude that the Director's action in reallocating these positions was incorrect.

#### Notice

Appellant argues that the notice was inadequate unless the reallocation is justified solely on the basis of a "change in program concept" as indicated in the notice. The provisions of Section 16.06(2), Wis. Stats., do not require that the employe be given notice when the Director reallocates a position. Section Pers. 3.04, Wis. Adm. Code does require notice but, it does not on its face require notice with the Director's reasons for the reallocation, a significant omission since other statutory and code sections dealing with employe rights explicitly require notice with reasons for an action. See for example Section 16.28(1)(b), Wis. Stats., and Section Pers. 23.01, Wis. Adm. Code. Appellant has offered no authority to dispute this reading of Section Pers. 3.04, Wis. Adm. Code other than that due process requires sufficient notice to make Appellant's right to a hearing meaningful. Adequate notice for that purpose requires sufficient notice to alert the Appellant to what he must prove in order to enable him to prepare adequately for his appeal. Bernard Almstedt's notice was quite explicit in this point.

"If you believe the new classification does not adequately reflect the duties and responsibilities of your position, you may file a written notice of appeal within 15 calendar days after receipt of this notice." (emphasis added)  
(Appellant's Exhibit 2)

Since the class specifications distinguish positions on the basis of each position's duties and responsibilities, we conclude that the Appellant received adequate notice.

Equal Protection

Appellant insists that the individuals in this appeal should be given the option of continuing under the provisions of the Protective Occupation Retirement Law, Chapter 41, Wis. Stats. The argument is that Black River State Camp employes received protective occupation status and equal protection requires the same treatment for these employes. The situations at Black River State Camp and Camp Flambeau are not the same. At Black River State Camp, the positions were changed to Officer positions which are covered by Chapter 41, Wis. Stats. At Camp Flambeau, the positions were changed to Youth Counselor positions which are not covered by Chapter 41, Wis. Stats. The record contains no evidence that the duties of Officer positions at Black River State Camp are the same duties performed by Youth Counselors at Camp Flambeau. Thus, since the situations are dissimilar, there is no disparate treatment of similarly situated individuals and therefore no basis for an argument of denial of equal protection.

Further, these individuals received the option of retaining their protective occupation by transferring to Black River State Camp. None chose to exercise that option.

Order

IT IS HEREBY ORDERED that the action of the Respondent appealed from is affirmed and this appeal is dismissed.

Dated August 1, 1977 STATE PERSONNEL BOARD

  
Laurene Dewitt, Chairperson