

CONCLUSIONS OF LAW

The class specifications for Institution Aid 2 contains the following language: "This is advanced therapeutic aid or specialized non-professional nursing care work performed under direct supervision at a state hospital or institution." There is no language in the specifications, either in the definition section or under the examples of work performed that would support a conclusion that routine, repetitive housecleaning chores consuming a substantial percentage of an employe's time and not performed on an emergency basis or as a nonrecurring adjunct to a patient work-therapy type of program would be included within the parameters of these specifications. We conclude that these housekeeping duties are not included within the class specifications.

We also conclude that the provisions of Subchapter II of Chapter 16 of the statutes require that appointing authorities assign duties that are included within the class specifications for a position. Section 16.04(1)(b), stats., provides:

"Each appointing authority shall:

Appoint persons to the classified service, designate their titles, assign their duties and fix their compensation, all subject to this subchapter and the rules of the director."
(emphasis supplied)

Section 16.07, stats., provides:

"(1)The director shall ascertain and record the duties, responsibilities and authorities of, and establish grade levels and classifications for, all positions in the classified service subject to the approval of the board. . . Each classification so established shall include positions which are substantially similar in respect to authority, responsibility and nature of work required.

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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." (emphasis supplied)

Section Pers 2.04(1), W.A.C., provides in part:

"Position standards are descriptive and not restrictive, and they shall not be construed to limit or modify the power of the appointing authority to assign tasks or direct or control the work of employes under his supervision. The use of particular examples of work performed shall not be held to exclude others not mentioned that are of a similar kind or level, nor is it implied that all those mentioned must be performed by all persons whose positions are so classified." (emphasis supplied)

These provisions must be read and interpreted together. The legislative intent behind the statutory provisions relating to the classification system is, at least in part, to group together positions that perform similar work for classification and other purposes. This purpose would be undermined if appointing authorities were permitted to assign ongoing work to positions that are not within the scope of the class specifications for that position. Section Pers 2.04(1), W.A.C., must also be read in the context of the overall statutory scheme. The language:

"Position standards are descriptive and not restrictive, and they shall not be construed to limit or modify the power of the appointing authority to assign tasks or direct or control the work of employes under his supervision."

must be interpreted consistently with Section 16.04(1)(b), stats: "Each appointing authority shall appoint persons to the classified service . . . assign their duties . . . all subject to this subchapter and the rules of the director." Furthermore, the next sentence of Section Pers 2.04(1) clearly indicates that appointing authorities are required to observe the guidelines set forth by the class specifications: "The use of particular examples of work performed shall not be held to exclude others not mentioned that are of a similar kind or level" (emphasis supplied). This language would have no meaning if it were held that appointing authorities could appropriately assign duties that were not "of a similar kind or level" of the examples in the class specifications. Taken as a whole, we interpret Section Pers 2.04(1), W.A.C., as a directive to avoid an overly restrictive or mechanical application of the class

specifications to interfere with the management perogatives of the appointing authority, such as assigning duties on a temporary or emergency basis or duties that are collateral to those set forth in the class specifications, while generally requiring the appointing authority to comply with the general guidelines set forth in the class specifications.

Section 111.91(3) provides the legal standard for review, or basis of adjudication: "'arbitrary and capricious.'" In Olson v. Rothwell, 28 Wis. 2d 233, 239 (1965), the supreme court held: "Arbitrary or capricious action on the part of an administrative agency occurs when it can be said that such action is unreasonable or does not have a rational basis." In this case we conclude that the agency action assigning routine housekeeping tasks to Institutional Aids 2 on a non-emergency, regular basis, was contrary to the requirements of Section Pers 2.04(1), W.A.C., that assigned work should be similar in kind or level to the examples of work performed, was contrary to the classification system set forth in subchapter II of Chapter 16, and was "arbitrary and capricious" in the sense discussed above. Inasmuch as these assignments were discontinued after the grievance was filed, there does not appear to be any basis for the provision of substantive relief on the substantive issue, but the appellant is entitled to the foregoing determination on his grievance. See Watkins v. DILHR, 69 Wis. 2d 782 (1975); Strickland v. Carballo, Wis. Pers. Bd. No. 75-132, 228 (2/23/76).

Collateral issues raised in this case involve the questions of whether the appellant is entitled to be reimbursed for time traveling to and from the pre-hearing conference and for attendant expenses, and whether two state employes who testified at the hearing should be allowed to keep witness fees and mileage expenses tendered them by the appellant. The respondent at the hearing objected to consideration of the questions relating to appellant's attendance at the pre-hearing on the grounds of lack of notice that this would be in issue at the

hearing. The hearing examiner permitted the appellant to introduce evidence on this issue subject to the objection. Following the hearing, the appellant's counsel submitted evidentiary documents relating to these issues and indicated that he intended to add these matters to the issues in the case and to brief them, which he did. The respondent did not respond to these communications and informed the examiner that he did not intend to file a brief prior to service of the proposed decision.

While the respondent did not reply to the post-hearing matters raised by appellant, he may have assumed that these matters were covered by the objection he made on the record at the hearing. We question whether notice in advance of the hearing is required for the resolution of questions collateral to the conduct of the hearing such as are presented here. However, to ensure a full airing of these matters, we will by this decision provide notice to the respondent that the board will consider the questions of whether the appellant is entitled to be reimbursed for time traveling to and from the prehearing conference and for attendant expenses, and whether the two state employee witnesses are entitled to keep the aforementioned checks. Respondent may serve and file his brief, including any evidentiary material or request for further hearing, within ten working days of the date of service of this decision.

ORDER

It is ordered that this grievance is decided in favor of the appellant with the questions related to the time and expenses of the appellant and the witnesses held open, all as set forth above.

Dated _____, 1977.

STATE PERSONNEL BOARD

Laurene DeWitt, Chairperson