

Prior to filing the grievance, appellant had requested reclassification on one or more occasions but had not been reclassified. The grievance was denied at all three steps on the basis of "no contractual violation." The third step denial was appealed to the personnel board by a union representative "pursuant to Article XII of the Agreement." Appellant's Exhibit 4.

At the prehearing conference the appellant's counsel propounded the following statement of the issue presented to the board by this appeal:

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

At that point counsel for respondent stated that he did not feel he could take a position on the issue at that time. It was determined that in the event he did not submit a statement of position with regard to the issue propounded by appellant's counsel that the case would proceed to hearing on the basis of that issue, and he was requested to serve and file a statement of position concerning the issue. Appellant's counsel also stated at the prehearing that it was his position that the appellant was entitled to compensation as if on duty for his time spent in travel to and attendance at the prehearing, and for the time spent in consultation with counsel. It was agreed at the prehearing that a request for that compensation would be made to the agency and if it were denied, the appellant might then request the board to make a ruling on the request.

Thereafter, respondent's counsel filed a statement of position with the board in pertinent part as follows:

1. Lacking a complaint or petition, there is no concise facts to be admitted or denied (Ap. Ex. 4).

2. The proper classification of Walter G. Kolonick at the Wisconsin Veteran's Home is Social Worker II.

3. Appellant shows no statutory or contractual right to pay for time spent in pursuing this appeal, therefore the request is objected to.

In the alternative, we are willing to await the outcome of this appeal. Beauchaine v. Schmidt (October 18, 1973), Case No. 73-38 and sec. 16.05(5), Stats.

The respondent subsequently filed a motion to dismiss supported by an affidavit containing, in part, the following allegation:

2. That there is no reclassification request in existence upon which an action may be taken by the respondent - employer.

Findings Relating To The Substantive Issue Of Classification

At all relevant times the appellant has been employed at the Wisconsin Veteran's Home at King as a social worker 2. The Wisconsin Veteran's Home is residential facility with membership restricted by statute to veterans of certain periods of service who were discharged under honorable conditions or the spouses of certain veterans, who are, normally, 50 years of age or more and state residents, are permanently incapacitated due to physical disability or age from following any substantially gainful occupation, have not been convicted of a crime involving moral turpitude or, if so, have produced sufficient evidence of subsequent good conduct and reformation of character as to be satisfactory to the department, are not chronic alcoholics, drug addicts, psychotics or active tuberculosis cases, and who have assets under a specific ceiling. See s. 45.37, Wis. Stats. Despite the statutory prohibition on the admission of alcoholics, there are an appreciable number of residents with drinking problems of varying degrees of severity.

The appellant's duties and responsibilities include the performance of casework for the residents assigned to him. The appellant's primary assignment includes the residents assigned to Olsen Hall. The assignment or reassignment of residents to rooms in the various buildings comprising the home is done by

the appellant's immediate supervisor, LaVern Hanke. By assigning or reassigning residents to a particular building, Mr. Hanke in effect controls the assignment of cases to the social workers, who are involved primarily with the caseload for a particular building. Additionally, Mr. Hanke assigns from time to time particular cases to particular social workers and as a part of that facet of his supervision assigned the appellant to work with certain of the home's problem drinkers. The appellant receives general supervision. Mr. Hanke reviews on an ongoing basis all of appellant's written work, which includes social histories and letters. Mr. Hanke also reviews clinical charts and gets feedback concerning appellant's work from other department heads.

The appellant has responsibility for much of the home's social service program which is educational in nature, such as training new staff and providing advice to other staff. He has had responsibility for the development, implementation, and coordination of the institution's alcoholism program and other group work and group therapy activities. He assumes limited supervisory duties in the absence of Mr. Hanke, approximately two weeks per year. He does limited amounts of coordinative type work with personnel from outside the home such as clergy and students. He also performs other related work.

The class specifications for social worker 3 (appellant's exhibit 14) contain the following definition:

This is highly responsible, independent social casework. Employees in this class carry an independent total caseload responsibility for all types of clients including multi-disciplinary and inter-service complexities. Employees in this class speak and act with authority, independently representing the department in any situation involving their clients, utilizing their own professional judgment and are held individually responsible for their actions. The caseload is assumed without any pre-review selection or assignment by a supervisor. Consultation or supervision is not imposed, but is available at the request of the worker. The caseload is controlled only through administrative review on an "after the fact" basis.

The position standards for social services specialist 1 (appellant's exhibit 15) provides in part:

This is the first level of responsible program and/or consultative work above the level of senior caseworker. Positions allocated to this level may (1) provide consultative services at the district or community level or at the state level in a limited program area, or (2) act as an assistant to a central office consultant with statewide programs responsibility, or (3) carry responsibility for implementing and directing a specialized institutional or training program.

CONCLUSIONS OF LAW

Jurisdiction

It is concluded that the board has jurisdiction over this appeal pursuant to ss. 16.05(1)(h) and 111.91(3), Stats. The appellant pursued a contractual grievance requesting the appointment of an impartial hearing examiner, and perfected an appeal to the board pursuant to Art. XII of the contract, which provides for the appointment of an impartial hearing examiner to hear appeals from actions taken by the employer under s. 111.91(2)(b)1 and 2, Stats. Whether or not a formal reclassification request was made and denied is immaterial to the question of whether the board has subject matter jurisdiction since the request for "a job audit for purposes of reclassification," appellant's exhibit 3, falls within the subjects upon which bargaining is prohibited, s. 111.91(2)(b)2. While appellant has argued that there is jurisdiction on the alternative bases of the contractual and noncontractual grievance procedures, there is no basis for a conclusion that this appeal is before the board as a noncontractual grievance when it clearly has been identified and processed as a contractual grievance and its subject matter is appropriate to that procedure.

Classification

It is concluded that the classification issue before the board on this appeal is the issue propounded by the appellant at the prehearing conference:

At and immediately prior to the time this appeal was perfected herein, what was the proper civil service classification of Walter Kolonick

with regard to Social Worker 3 or Social Services Specialist 1.*

Since the appeal was taken pursuant to Article XII of the contract, the standard of review is as set forth in s. 111.91(3):

Nothing in this subsection shall empower the hearing officer to expand the basis of adjudication beyond the test of "arbitrary and capricious" action. . . .

Therefore, although the question or issue is the appropriateness of the classification, the legal standard or test is whether the action or inaction of the respondent with respect to the classification matter was "arbitrary and capricious." This is in contrast to the normal standard applied in the case of appeals of classification decisions pursuant to s. 16.05(1)(f), Stats., which is whether the decision is correct or incorrect. Compare, Jallings and McKay v. Smith, Wis. Pers. Bd. No. 75-44, 45 (8/23/76).

The term "arbitrary and capricious" has been defined by the supreme court 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, 34 Wis. 2d 245, 251 (1967). Measured against this standard the respondent's action or inaction in refusing or failing to reclassify or effect the reclassification of appellant can not be concluded to be arbitrary and capricious.

With respect to social services specialist 1, the only function which appellant might possibly fulfill is that of "responsibility for implementing and directing a specialized institutional or training program." See appellant's exhibit 15. It cannot be concluded that it was or would have been arbitrary and capricious for respondent to have determined that appellant's duties and responsibilities which are of a training or educational nature are not of sufficient dimension to fulfill this requirement.

* This issue subsumes respondent's position that the appellant's position is

With respect to social worker 3, the specifications (appellant's exhibit 14), require, among other things, that the employe "carry an independent total caseload responsibility for all types of clients including multi-disciplinary and inter-service complexities." The population at the Wisconsin Veteran's Home is limited as to age and as to other significant characteristics. Even though the prohibition on alcoholics has not prevented the presence of alcohol related problems in the population, there are prohibitions against persons who are drug addicts or psychotics or who have been convicted of crimes involving moral turpitude unless they can show evidence of rehabilitation.

The specifications also provide:

The caseload is assumed without any pre-review, selection or assignment by a supervisor. Consultation or supervision is not imposed, but is available at the request of the worker.

As noted in the findings, there is some degree of control over or assignment of the caseload by Mr. Hanke. He also provides ongoing supervision by review of all written work and other means of review.

While some of appellant's work falls within the parameters of the social worker 3 specifications, it cannot be concluded that it was or would have been arbitrary and capricious for respondent to have determined that appellant's duties and responsibilities did not meet the social worker 3 requirements as set forth in the preceding two paragraphs.

Appellant's Pay Status In Connection With
Attendance At The Prehearing Conference

For the reasons expressed in Sheda v. Carballo, Wis. Pers. Bd. No. 76-91, 114 (6/13/77), citing 36 OAG, 90 (1947), it is concluded that the appellant is entitled to be carried in pay status for his period of attendance at and travel to the prehearing conference.* The board discerns no authority for a conclusion that appellant is entitled to be paid for time consulting with counsel.

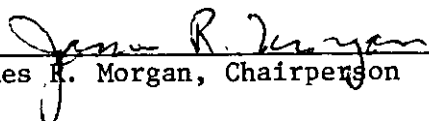
* The record did not contain support for a finding as to the amount of time involved in these activities.

Kolonick v. DVA
Case No. 75-35
Page Eight

ORDER

The actions or inactions of the respondent are sustained and this appeal is dismissed.

Dated: 2-20, 1978. STATE PERSONNEL BOARD


James R. Morgan, Chairperson