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IN REFERENCE TO:

REQUEST FOR DECLARATORY
RULING.

Case No. 77-187

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DECISION

This is a request for a declaratory ruling, pursuant to Section 227.06, Wisconsin Statutes, filed by AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO. This petition is related to an appeal in the matter of Rich v. Carballo, Wis. Pers. Bd. No. 75-10. The petitioner relies solely by way of argument on a proposed decision that was issued in this case, but which was not finally adopted by the board. The board entered an order on June 13, 1977, dismissing the appeal for lack of subject matter jurisdiction. Thereafter, a petition for review was filed pursuant to Section 227.16, Wisconsin Statutes, and the Dane County Circuit Court entered a judgement in January, 1981, affirming the board's order.

The petition alleges, and it has not been disputed, that from time to time state employes represented by the union-petitioner "have been assigned job duties and responsibilities outside of and not reflected in their respective job specifications or position descriptions". The petition alleges, and asks that the Commission declare, that the assignment of such duties on a routine basis is illegal. As noted above, the petitioner relies solely on the reasoning of the proposed decision in Rich v. Carballo.

The proposed decision stated in part as follows:

"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."

The proposed decision went on to state that notwithstanding the specific provisions of §Pers 2.04(1), WAC, that:

"Position descriptions 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,"

that this provision:

". . . must be interpreted consistently with Section 16.04 (1)(b), Wisconsin Statutes: '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 the appointing authorities are required to observe 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."

The proposed decision went on to conclude that the assignment of routine housekeeping tasks to Institutional Aides 2 on a non-emergency, regular basis, was contrary to the language of §Pers 2.04(1), cited immediately above, and was contrary to the classification system set forth in subchapter II of Chapter 16 (now 230), and was also "arbitrary and capricious".

The Commission does not agree with the proposed decision in several particulars.

The proposed decision discerned a "legislative intent" behind a number of statutory provisions to group together positions that perform similar work "for classification and other purposes", and that this intent would be undermined if appointing authorities were permitted to assign ongoing work to positions outside the scope of their class specifications.

The Commission can conceive of situations where, hypothetically, such assignment of duties could lead to problematical results. See, e.g., Juech v. Weaver, Wis. Pers. Bd., 1/13/72, where the appointing authority relieved the employe, then classified as a Maintenance Operations Foreman, of all supervisory duties and assigned him the duties of a Maintenance Mechanic. His position subsequently was reclassified to Maintenance Mechanic 1, two pay ranges below his prior position. The board held that this transaction constituted a demotion, and reversed because the procedures for effecting a demotion had not been followed. In that case, the change in duties and responsibilities had been so substantial that the appointing authority, in effect, had created a new position, so that the reclassification to a lower pay range was, in effect, a demotion. However, this petition has not alleged this kind of wholesale change in duties and responsibilities.

Another potential problem in this area might be action by the appointing authority not involving a demotion which would have the effect of creating a new position, see §16.505, Wis. Stats., which sets forth who has the authority to create new positions. However, what arguably makes this, as well as the situation in Juech, illegal, are not any provisions in the statutes relating to classification. Rather, in the Juech case, the agency action ran afoul of the law pertaining to employe discipline, and, in the hypothetical concerning the creation of new positions, the agency action arguably violates a provision which is not contained in the civil service code (Subchapter II of Chapter 230) at all.

The Commission does not find in the statutes and rules relating to classification, any specific or implied prohibition or intent to prohibit

the power of appointing authorities to assign work. What the law on classification does is to provide a means by which positions can be reclassified in response to a number of factors, including changes in assigned duties and responsibilities.

The right of appointing authorities to reassign work outside of the class specifications is, in fact, explicitly recognized by §230.09(2)(c), Wis. Stats.:

"If anticipated changes in program or organization will significantly affect the assignment of duties or responsibilities to positions, the appointing authority shall whenever practicable, confer with the administrator within a reasonable amount of time prior to the reorganization or changes in program to formulate methods to fill positions which are newly established or modified to the extent that reclassification of the position is appropriate. In all cases, appointing authorities shall give written notice to the administrator and employe of changes in the assignment of duties or responsibilities to a position when the changes in assignment may affect the classification of a position."

Chapter Pers 3, WAC, provides for the reclassification and reallocation of positions on the basis of changed duties and responsibilities.

Furthermore, both this Commission and its predecessor agency, the Personnel Board, have recognized over a number of years, that in many cases the duties and responsibilities of a position do not fit completely within the parameters of the class specifications for a particular classification, and that a classification decision is sustainable if a majority of the duties and responsibilities of a position fall within the class specifications. See, e.g., Alsmo v. Wettengel, Wis Pers. Bd., No. 73-107 (7/3/75)

A substantial percentage of duties and responsibilities may be at different classification levels, or completely outside the particular classification series.

The effect of a prohibition on the assignment of work not found in the class specifications could be crippling. Conceivably, for example, professional employees could not be assigned to drive state cars in the course of their employment to attend out-of-town meetings or hearings or place telephone conference calls, because this work is associated with lower classifications.

Finally, while there is no specific provision in the civil service code prohibiting the assignment of duties outside the class specifications and position standard for a particular classification, and there are provisions which acknowledge the employer's authority in this regard, §Pers. 2.04(3), Wis. Adm. Code, specifically states that class specifications "shall not be construed to limit or modify the power of the appointing authority to assign tasks or direct or control the work of subordinate employees." The proposed decision pointed out that the next sentence in the rule provided that, "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 . . ." ¹ The proposed decision expressed the opinion that this language:

1. This rule was amended effective March 1, 1981, and now reads, "The use of specific examples of work in a class specification shall not be held to exclude the assignment of other work not mentioned which is of a similar level and kind . . ."

"clearly indicates that appointing authorities are required to observe the guidelines set forth by the class specifications . . . 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 . . .'"

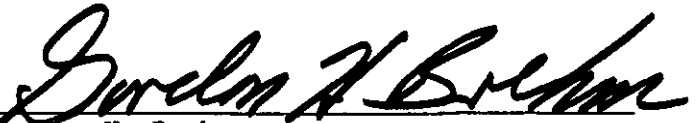
However, this interpretation creates a clear conflict with the preceding sentence in the rule. That sentence states that position standards shall not be construed to limit the power of the appointing authorities to "assign tasks". This is inconsistent with a provision that would provide that the "examples of work performed" listed in the position standards or class specifications would limit the power of appointing authorities to assign work to those tasks which are of a similar level and kind. In the opinion of the Commission, this language does not mean that the examples of work exclude the assignment of work not of a similar level or kind by the appointing authority, but rather, it means that in the classification process, reclassification decisions are not to turn on the fact that certain work performed by a position is not exactly equivalent to the examples of work performed. This interpretation prevents a direct conflict with the preceding sentence in the rule, is in keeping with the other provisions relating to classification set forth above, and comports with common sense. There is no way that classification specifications can be expected to include all possible examples of work performed.

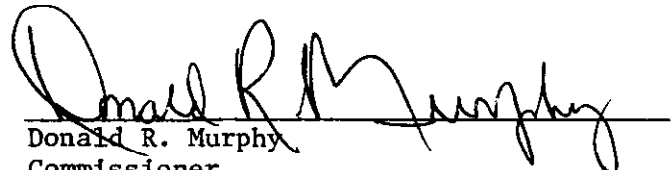
Therefore, while the Commission recognizes that in particular cases it may lead to problematical results, the Commission is not prepared to declare that the assignment of job duties and responsibilities on a routine basis outside of and not reflected in the class specifications and position description for a position is, per se, illegal.

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Dated: June 1, 1981

STATE PERSONNEL COMMISSION


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