BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PAUL VILJA, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	Case No. RULE-99-0007 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this matter came on for a hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held in the Personnel Appeals Board Hearing Room, Olympia, Washington, on September 12, 2000. GERALD L. MORGEN, Vice Chair, reviewed the record and participated in the decision in this matter. LEANA D. LAMB, Member, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Paul Vilja was present and represented himself *pro se*. Respondent Department of Social and Health Services was represented by Richard Bever, Employee Relations Manager.

1.3 **Nature of Appeal.** This is a rule violation appeal in which Appellant contends that Respondent violated WAC 356-30-300 by initiating a new procedure for utilizing the Employee Development and Performance Plan (EDPP).

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1.4 **Citations Discussed.** WAC 358-30-170, WAC 356-05-397, and WAC 356-30-300.

II. FINDINGS OF FACT

2.1 Appellant Paul Vilja is a Registered Nurse (RN) 3 and permanent employee for Respondent Department of Social and Health Services (DSHS) at Western State Hospital (WSH). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 19, 1999.

2.2 Prior to June 1998, state agencies utilized form S.F. 9128, entitled Employee Performance Evaluation, to conduct performance evaluations for general service state employees. The instructions for the form stated that the employee's supervisor was responsible for completion of the evaluation. This form had been the tool used to evaluate employees since September 1978. The supervisor's signature line on the form is entitled, "Evaluating Supervisor's Signature."

2.3 Effective August 1, 1986, the Personnel Resources Board (PRB) (formerly the Personnel Board) adopted WAC 356-05-397. The WAC defines the term shift charge and provides that a shift charge is responsible for resident/patient care and service delivery on a specified shift of a ward, cottage, or other designated living unit or treatment area which includes, in part, initiating and participating in performance evaluations. PRB's action of adopting this rule had the effect of modifying the instructions to the evaluation form.

2.4 The class specification for Licensed Practical Nurse 4s indicates that they act as shift charges and participate in staff evaluations.

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2.5 In June 1998, the Washington State Department of Personnel implemented the use of a new performance evaluation tool. The new tool, entitled the Employee Development and Performance Plan (EDPP), is to be used by state agencies to evaluate general service employees. The instructions for the form indicate that an employee's supervisor is responsible for completion of the evaluation but the supervisor's signature line on the form is entitled, "Evaluator's Signature."

2.6 By letter dated January 6, 1999, Alice Alfano, Area Personnel Manager for WSH, notified all WSH supervisors and shift charges about the process for the EDPP. She stated that the EDPP process was very similar to the old evaluation process. She also stated that the supervisor and the employee were to complete the form, that the employee was to use the form to give feedback to his/her supervisor and that the employee's second-line supervisor could be called upon to be the mediator of the process if necessary. The process also included a review of the employee's Classification Questionnaire (CQ).

2.7 Prior to the initiation of the EDPP, the practice at WSH was for shift charges to conduct employee evaluations and review CQs, even though shift charges were not supervisors. WSH intended that this practice continue. WSH expected that after a shift charge conducted the evaluation process, the shift charge would complete and attach a Performance Evaluation Addendum form to the EDPP and would forward the EDPP and the employee's CQ to the employee's supervisor. The employee's supervisor was expected to review the documents, sign off on the CQ, and attach a Supervisor's Performance Addendum form to the EDPP. In some areas of WSH, this process for evaluating employees had been followed since June 1986. The credible testimony establishes that this process was not consistently followed in all areas at WSH.

2.8 WAC 356-30-300 sets forth the requirement for employee evaluations. The rule requires that annual evaluations be conducted using the standardized employee performance evaluation

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procedures and forms prescribed by the director of personnel and are designed to aid in communications between supervisors and subordinates. The rule also provides, in part, that with the approval of the director of personnel, an agency may supplement the process with special performance factors peculiar to the specific organizational needs.

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that the intent of the merit system rules and the new EDPP process is for supervisors to conduct performance evaluations. Appellant contends that shift charges are not supervisors and therefore, should not conduct evaluations. Appellant speculates that the current process could cause problems in the future if discipline becomes necessary due to poor performance because the evaluation could be invalidated. As a remedy to his appeal, Appellant asks the Board to order DSHS to comply with the merit system rules and mandate that first-line supervisors initiate and complete the evaluation processes.

3.2 Respondent argues that by definition, shift charges can conduct and complete performance evaluations. Respondent asserts that the process used for the EDPP is unchanged from the process used for the prior evaluation tool. Respondent acknowledges that more training on the evaluation process may be required for its employees. However, Respondent contends that the agency is complying with the intent of the merit system rules and asks that the appeal be denied.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-170).

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4.3 Appellant has failed to prove that Respondent violated WAC 356-30-300. The adoption of a new evaluation tool by the Department of Personnel did not invalidate WAC 356-05-397, modify the class specification for LPN 4, or change the purpose of performance evaluations. In State Personnel Board Case No. 92 ARB-10 (1992), the board ruled on facts similar to the facts presented here. In that case, the board concluded that a shift charge is more familiar with an employee's work and that the DSHS performance evaluation procedure was appropriate. Appellant has failed to provide any evidence that would persuade us to issue a ruling to the contrary.

4.4 Under the proven facts and circumstances presented here, the evaluation procedure utilized by Respondent at WSH complies with the requirements of the merit system rules and evaluation procedures and the appeal should be denied. However, we recommend that Respondent take steps to ensure that the appropriate evaluator sign the EDPP. The EDPP should be signed by the evaluator who actually participates in completing the form.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Paul Vilja is denied.

DATED this _____ day of _____, 2000.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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