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which involved a failure to give notice of an accident, and *Howard v. Early Chevrolet-Pontiac-Cadillac, Inc.*,[6] which involved a like failure but also included a claim by the insured against his own insurer. The decision in *West* was that the rights of a claimant become fixed at the time of the accident. Left open was the question of whether an insurer cast in judgment in favor of a claimant notwithstanding a failure to give notice might have a claim over against its insured. The instant decision indicates that this issue must be resolved by determining whether the insured's conduct was prejudicial to the insurer. This resolution is consistent with the treatment generally accorded representations, warranties, and conditions by statute and court decision. The good faith insured is protected against non-prejudicial violations of policy provisions.

A decision which seems to be clearly in keeping with the spirit of the law was rendered in the case of *Gray & Co. v. Stiles.*[7] Therein it was held that a policy of automobile liability insurance issued by a surplus line company was legal evidence of financial responsibility within the meaning of the Motor Vehicle Safety Responsibility Law although some ambiguity was found to exist in the applicable provisions of the mentioned law and the provisions of the Insurance Code. A contrary decision would have imposed a hardship which the court felt the legislature could not have intended on a motorist compelled to procure surplus line coverage because of his inability to get protection from an authorized insurer.

PUBLIC LAW

ADMINISTRATIVE PROCEDURE

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CIVIL SERVICE COMMISSION

In *Guillory v. State Dep't of Institutions*,[1] the First Circuit had occasion to examine the rulemaking powers and procedures of the Louisiana State Penitentiary and the Civil Service Commission. Under the statute the superintendent of the penitentiary

6. 150 So.2d 309 (La. App. 2d Cir. 1963).
7. 221 So.2d 832 (La. App. 1st Cir. 1969).

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1. 219 So.2d 282 (La. App. 1st Cir. 1969).

is given authority to "make all rules and regulations necessary for the government of the penitentiary and all its departments."[2] Pursuant to this rulemaking authority the superintendent had, in a prior case,[3] been upheld in a charge that sleeping while on duty constituted gross neglect of duty; the rule had not been formally promulgated but was in effect on the basis of its ad hoc announcement in the prior case.[4] Also pursuant to this rulemaking authority, and also without specific promulgation, the superintendent was alleged to have established a policy of accommodating disabled employees by reassignment to duties compatible with their physical infirmities.[5]

Guillory was discharged for sleeping on duty; in defense, he claimed discrimination in being assigned to night duty despite the knowledge of his employer that he was under medically prescribed sedation, the effects of which could be to induce involuntary sleep.[6]

The Civil Service Commission granted the superintendent's motion to dismiss on appeal from the discharge. In doing so, it proceeded under a rule of practice pursuant to which it could receive the employee's sworn testimony under direct and cross-examination and, on the basis thereof, could, without hearing other evidence which he might have to offer as to the existence or breadth of a reassignment rule for disabled employees, make a determination that he had no just or legal ground to support his appeal.[7]

The First Circuit upheld the commission and the superintendent in the application of the ad hoc rule that sleeping on duty was a cause for dismissal. Nonetheless it remanded the matter to the Civil Service Commission, holding that in refusing the employee an opportunity to prove the existence of a reassignment rule for disabled persons and the discriminatory withholding of its application to his case, the employee had been deprived of due process of law.[8] The reassignment rule for disabled per-

2. LA. R.S. 15:854 (1950).
3. Bonnette v. Louisiana State Penitentiary, 148 So.2d 92 (La. App. 1st Cir. 1962).
4. Guillory v. State Dep't of Institutions, 218 So.2d 282, 285 (La. App. 1st Cir. 1969).
5. *Id.* at 287.
6. *Id.* at 284.
7. *Id.* at 284-285.
8. *Id.* at 287.

sons, if it existed, had been deemed not applicable by the commission because the employee "knew of no one *on guard duty* who had been exempt from night shift because of physical infirmity," (emphasis added) a clear narrowing of the rule alleged by the employee to encompass *all* disabled employees of the penitentiary.[9] The employee was deemed by the First Circuit entitled to adduce evidence to prove the existence of the broader rule alleged and the discriminatory withholding of its application to him as a matter of due process of law. Refusal to permit proof of this was also deemed to abrogate the employee's right of appeal since he would not have been permitted to make a record on which to base an appeal in the event of an adverse holding by the Civil Service Commission.[10]

The civil service article of the Constitution provides that a position may be reallocated when "new positions are created or additional classes are established, or existing classes are divided, combined, altered or abolished."[11] *Perkins v. Director of Personnel*[12] draws in question the rights of an employee, under this provision, when his position on the basis of an initial job description has been classified by the commission, and at a later time, on the basis of a second job description, the position is reallocated to a lower classification. The first position was not abolished nor was the second position established except insofar as it resulted from the reallocation.[13] Was this permissible reallocation under the Constitution or a demotion to be made only after notice and on the basis of cause?

The First Circuit took the view that, while the efficient operation of an office may dictate abolition of a position and replacement of it by a position of a lower classification, the protective cloak of civil service will prevent achieving this by a mere redescription of the duties of an employee in order to bring him within such lower classification, leaving the higher position still available to be filled. Such a reallocation was deemed to be in fact a disguised demotion which would require notice and charges by the employer.[14]

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9. *Id.* at 285.
10. *Id.* at 286-287.
11. LA. CONST. art. XIV, § 15(I)(b).
12. 220 So.2d 253 (La. App. 1st Cir. 1969).
13. *Id.* at 256.
14. *Id.* at 255-56.

SCHOOL BOARDS

Rosenthal v. Orleans Parish School Bd.,[15] decided by the Fourth Circuit at last year's term of court, lays to rest an issue which might have become troublesome as the state makes the transition from a segregated to an integrated school system. *Rosenthal* itself is free from racial overtones; it involves, however, a contention by a tenured teacher that the school board was "removing her from office" without preferring charges and without affording her a hearing thereon in transferring her from a high school which required a minimum I.Q. and level of achievement to a high school open to all students.[16] The substance of her contention was that, although she was transferred to a similar position with the same salary at another high school, the position was not of equal rank and dignity since it was not a school for exceptional students.[17]

The Fourth Circuit determined that the statute conferring general powers of administration upon the school boards did not expressly cover the subject of transfer of teachers within a system but that power to transfer or reassign teachers was nonetheless a power which "[i]n the absence of constitutional or statutory limitations or restrictions, the employing school authorities usually have. . . ."[18] Finding no such restrictions, the court concluded that such transfers were discretionary with the employer; a transfer or reassignment from one school to another did not involve a demotion in rank or dignity merely because of a difference in the type of pupil being taught. Statements from educators were relied upon that it is "[not] valid, educationally, to rank the dignity of teaching positions by the I.Q. of the student being taught."[19] The law as thus announced will no doubt be frequently invoked by administrators as teachers are moved to resist transfers within an integrated system. So long as salary and rank are preserved, such transfers will not be deemed "demotions" and a teacher dissatisfied with her transfer will not be able to invoke the protective procedures of the Teachers' Tenure Act to avoid transfer to a school with a lower student I.Q. configuration.

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15. 214 So.2d 203 (La. App. 4th Cir. 1968).
16. *See* LA. R.S. 17:462 (1950).
17. Rosenthal v. Orleans Parish School Bd., 214 So.2d 203, 206 (La. App. 4th Cir. 1968).
18. *Id., quoting* 78 C.J.S. *Schools and School Districts*, § 198 (1952).
19. Rosenthal v. Orleans Parish School Bd., 214 So.2d 203, 208 (La. App. 4th Cir. 1968).