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CECILIA JANCZAK, et al.,

Appellants,

v.

VIRGINIA HART, Chairperson,
Department of Industry, Labor and
Human Relations, and

VERNE KNOLL, Deputy Director,
State Bureau of Personnel,

Respondents.

Case No. 73-164

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OFFICIAL
OPINION AND ORDER

Before: DEWITT, Chairperson, WILSON, WARREN, and MORGAN, Board Members.

NATURE OF THE CASE AND BACKGROUND

This is an appeal of a group grievance requesting reclassification. In an interim opinion and order entered January 23, 1976, we held that we had jurisdiction to order the Director to reclassify employees with his concurrence, and that since a survey of the positions in question had already been completed that it was unnecessary to reach the question of whether such a reclassification could be ordered without a prior review of the positions because by then a survey of the positions had been completed. We did not reach the question of the propriety of the Appellants' classifications, but requested that the parties submit further information regarding the positions and classifications in question.

Following this, the Director reported that the Appellants had all been reallocated to newly-created classifications effective October 26, 1975. The Appellants did not dispute the propriety of the new classifications but argued that they should have been effective retroactive to the date they

filed their appeals. The Respondents' position was that the Appellants were correctly classified under the previous class structure before the October 26, 1975, reallocations to the newly-created classifications. They argued against any earlier date for the Appellants' reallocation: "it is inappropriate to create interim classifications for specific positions when all positions in the organization are going through a change."

In a second interim opinion and order entered April 23, 1976, we held that the Director was entitled to complete the survey and then implement a reallocation without making the changes retroactive to specific dates for each employe:

"The Director's authority to utilize surveys as a reclassification tool is consistent with an interpretation of the statute to permit effectuation of the various reclassifications after the completion of the survey. It is normally only at this point that full comparability among the various positions surveyed is established. This interpretation is also consistent with the practical difficulties of reviewing a large series that has been subject to considerable and extended change in the duties and responsibilities of its positions. The Director must have a reasonable degree of flexibility in implementing the results of the survey. It would be an inordinate burden on the capabilities of a personnel management system to require that following the entire survey the employer make the various reallocations retroactive to precise dates determined on the basis of changes in duties and responsibilities when those changes may have been gradual and covered an extended period of time." pp. 3-4.

We also held that in such cases the survey must be completed and effectuated within a reasonable time, and directed a hearing on whether this was done in this case.

Based on the entire record in this appeal we make the following findings of fact and conclusions of law.

FINDINGS OF FACT

We reaffirm the findings contained in our interim opinion and order entered January 23, 1976. We also make additional findings as follows.

The Appellants in supervisory positions (Janczak, Kleist and Morton) were reallocated from Unemployment Compensation Supervisor 2 in pay range 1-03 to the new classification of Job Service Supervisor 3 in Pay Range 1-05, effective October 26, 1975. The non-supervisory Appellants who were still in relevant positions at the time (Lucht, Whitaker, Ghawi, Ethel Larson, Mrnik, Weckwerth, Kemp, Sobczak, Matyat, Jane Larson, Morris, Riviera (Santiago)), were reallocated from Unemployment Compensation Analyst 2, pay range 12-02, to the new classification of Job Service Specialist 3, pay range 12-03, effective October 26, 1975.

The background of the survey that lead to these reallocations is as follows. In the early part of 1973, certain employes of the Bureau of Personnel became involved in a "task force" in the Department of Administration connected with a projected reorganization of the Job Service, DILHR, to assist in the personnel management aspects of the reorganization. The need for a formal survey was recognized within DILHR in the latter part of 1973. This was based on changes in the duties and responsibilities of various positions because of changing legal requirements and changes in the organizational policies of the Employment Security Division as well as the impending reorganization. It was recognized that the existing class specifications were overly rigid and did not permit reclassification of certain positions regardless of the fact that some of the above-mentioned changes made the duties and responsibilities of those positions more complex. On February 13, 1974, the bureau advised the department what information it would require to proceed with the survey and what classifi-

cation transactions it would consider appropriate before the completion of the survey. See Respondents' Exhibit 7. The bureau was budgeted two and one-half positions to conduct surveys on a statewide basis. One of these positions was assigned to the Job Service survey.

Following this point there were a series of discussions and further correspondence between the two agencies relative to disagreements about the bureau's policy with regard to the survey and its role in it. This included specific disagreement about individual classification actions requested by the department and opposed by the bureau.

In the meantime, the department had not provided all of the information requested in the February 13, 1974, memo, Respondents' Exhibit 7, specifically organization charts for the Milwaukee office, which was in the process of development of a proposed organizational structure.¹ These charts were not forthcoming until sometime in September, 1974. However, prior to that time, in August and September, 1974, the bureau had received most of the other information requested with the exception of a large percentage of the position descriptions from the Milwaukee area and the Bureau of Manpower Programs.

At the time the bureau began the actual work on the survey in August, 1974, the personnel specialist assigned to the survey projected that the bureau would be able to have the proposed allocation patterns to the department by January 1, 1975. She was unable to meet this deadline because of the absence of the above-mentioned position descriptions. In February, 1975, she received the position descriptions and submitted proposed allocation patterns to the department on February 18, 1975. See Respondents' Exhibit 14. Then followed further meetings, discussions, and correspondence between

1. This delay set back the final implementation date of the survey one to two months at the most.

the agencies concerning the proposed allocation patterns. While these proceedings were going on, the bureau began the process of job analysis, or the determination of required skills, knowledges, and abilities for particular positions, which in turn was a necessary prerequisite to the development of qualifications for the position standards.

Agreement on the allocation patterns was achieved in May or June of 1975. The bureau then submitted proposed class specifications or position standards to the department in July, 1975. There were further discussions between the agencies and agreement was reached on the position standards in time for submission to the Personnel Board in August, 1975. Between this time and final implementation on October 26, 1975, the bureau worked on individual position allocations. This process also involved discussions and negotiations between the agencies on matters relating to these allocations prior to the October Personnel Board meeting.

During the course of the survey the bureau reviewed the Appellants' positions. It determined that these positions were more appropriately classified at a higher level. However, because of the rigidity of the class specifications existent before the new ones which were developed as a result of the survey, there were no then existing classifications to which Appellants' positions appropriately could have been reclassified.

The chief of the classification—compensation survey section of the bureau who has held that position for 10 years testified, and we find, that the survey was conducted at an average pace.

CONCLUSIONS OF LAW

As was noted in the introductory section of this decision, the sole issue at the second hearing of this appeal was the question of whether the agencies involved conducted the survey within a reasonable amount of time. The evidence presented by the only witnesses, two bureau employes involved in the appeal, supports a conclusion that there was appreciable delay on the part of DILHR in supplying needed information to the bureau and in responding to bureau proposals. However, there is nothing in the record to support a conclusion that the delay was unreasonable. Considering the number of positions involved in the survey and the changes in the department and in some of that agency's functions and policies, we could not conclude that the delay was unreasonable in the absence of any supporting evidence to that end, even if the Respondents had the burden of proof, which they did not.

We feel it is appropriate to add a cautionary note here. Our conclusion that the time utilized in the survey was not unreasonable, made on a record that included no evidence produced by the Appellants, should not be considered as precedent on the issue.

We also believe it is appropriate to offer some commentary on certain aspects of this case that particularly seemed to concern the Appellants. The bureau took a relatively consistent position that the Appellants' previous classification levels were inappropriate because of changes in their duties and responsibilities. They also took the position that given the strictures of the class specifications existing before the implementation of the new specifications after the survey, there were no more appropriate classifications to which to reclassify them. Therefore, the bureau felt that reallocation to new classifications was appropriate, but that this should not

take place until after the completion of the survey so that it could make meaningful comparisons among the positions in working out the mechanics of the reallocations.

In their responses submitted after the first interim opinion in this case, the Appellants did not challenge the correctness of the classifications to which they were reallocated. They did challenge the effective date of the reallocation, alleging that it should have been much earlier. As we noted in the second interim decision entered April 23, 1976, there is some inequity to employes whose duties and responsibilities change but who cannot be reclassified because of restrictions in current class specifications and are required to wait until the completion and effectuation of a survey before they can be reallocated to new classifications more appropriate to their changed duties and responsibilities. However, we also noted that the Director was authorized by statute to utilize surveys as reclassification tools, and that it was reasonable to infer from this that the Director may await the results of the survey and the availability of the information it generates before effectuating the reallocations. We also concluded that there is no legal requirement that the reallocations be retroactive to specific dates marking the changes in the duties and responsibilities, but that it was required that the survey be completed within a reasonable period of time. Placing the burden of proof on the issue of the reasonableness of the time taken to complete the survey on Appellants was in accordance with well-established principles of administrative law. See 2 Am. Jur. 2d Administrative Law S. 391, 73 C.J.S. Public Administrative Bodies and Procedure S. 124. Since they failed to sustain that burden, we can only conclude that the actions and decisions of the Respondents must be affirmed.

ORDER

The actions and decisions of the Respondents are affirmed and this appeal is dismissed.

Dated February 23, _____, 1977.

STATE PERSONNEL BOARD

A handwritten signature in cursive script, reading "Laurene DeWitt". The signature is written in black ink and is positioned above a horizontal line.

Laurene DeWitt, Chairperson