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 CECILIA JANCZAK, GERALD KLEIST, and *
 DOROTHE MORTON, *
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 Appellants, *
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 v. *
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 VIRGINIA HART, Chairperson, *
 Department of Industry, Labor and *
 Human Relations, and *
 VERNE KNOLL, Deputy Director, *
 State Bureau of Personnel, *
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 Respondents. *
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 Case No. 73-164 *
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SECOND INTERIM
 DECISION

OFFICIAL

Before: JULIAN, Chairperson, SERPE, WILSON and DEWITT, Board Members.

The background of this case was set forth in an Opinion and Order entered January 23, 1976, and will not be repeated here. The Respondents have submitted certain information and statements of position in response to that Opinion and Order and the Appellants have replied.

The Director stated in a letter dated February 23, 1976, that all the original Appellants who had remained eligible had been reallocated subsequent to the commencement of this appeal, and on October 26, 1975. Appellant Group A, previously Unemployment Compensation Supervisors 2, pay range 1-03, were reallocated to the newly created class of Job Service Supervisors 3, pay range 1-05. Appellant Group B, previously Unemployment Compensation Analysts 2, pay range 12-02, were reallocated to the newly created class of Job Service Specialists 3, pay range 12-03. The Director indicated that the primary change in duties and responsibilities as to Group B occurred about April 1, 1973, when the responsibility for eligibility (non-monetary) determinations was shifted to local offices in the Milwaukee area. The

Director took the position that there was a more gradual, continuing shift of duties and responsibilities with regard to Group A.

The Respondents stated that within the classification series existing prior to the October 25, 1976, reallocations all of the Appellants had been correctly classified as there had been no more appropriate classifications than the ones they occupied. The Respondents contend that, in essence, it would be improper to reclassify on an interim basis, where, as here, a series that has been subject to considerable change also has been subject to a comprehensive survey.

Briefly summarized, the Appellants contend that the effective date of their reallocation should be the date they filed their appeals. They argue that it is unfair to await the implementation of the survey, as the result is to penalize the affected employees because of administrative delay that is clearly outside their control.

We believe that the competing considerations presented by both parties carry considerable weight. The Respondents summarized their argument as follows:

"In state service, the actual work assignments of most positions are in continued state of change. Very few positions maintain the exact same duties and responsibilities for a prolonged period of time. This is particularly true when an agency is going through a number of organizational and program changes. As such, and in fairness to both employees and agency management, we feel that it is inappropriate to create interim classifications for specific positions when all positions in the organization are going through a change." Letter from Respondent Knoll dated February 23, 1976, p. 6.

On the other hand, there is the unfairness of retaining an employee in a given class and salary range when his or her duties and responsibilities have changed significantly. There is the further unfairness of delaying implementation of a survey and an employee's reallocation for administrative reasons which are beyond the control of the employee and which may or may not

be defensible.

In attempting to reconcile these considerations, we first look to some basic principles. The first is that the classification of employes is not an exact science. Within existing series, all employes cannot be expected to fit exactly within existing classifications. Similarly, at any given point in time, very few series are completely adequate for the included positions. Perhaps it would be ideal if classifications were tailor made for each position so that each employe had his or her own classification and salary range that changed on a daily basis to accommodate changes in duties and responsibilities. However, we suspect that such a system is beyond the scope of the current state resources if not the current state of the art in personnel management.

The statutory provision in this area is S. 16.07. Subsection (1) provides the basic principle of classification: "Each classification so established shall include positions which are substantially similar in respect to authority, responsibility, and nature of work performed." (Emphasis supplied.) The statute also provides for surveys such as was conducted in the instant case:

(2) After consultation with the appointing authorities, the Director shall allocate each position in the classified service to an appropriate class on the basis of its duties, authority, responsibilities or other factors recognized in the job evaluation process. He shall likewise reclassify or reallocate positions on the same basis whenever he finds such action warranted.

(a) The Director shall maintain and improve the classification plan to meet the needs of the service, using methods and techniques which may include personnel management surveys, individual position reviews, occupational group classification surveys, or other appropriate methods of position review. Such reviews may be initiated by the Director after taking into consideration the recommendations of the appointing authority, or at his own discretion. The Director shall establish, modify or abolish classifications as the needs of the service require, and subject to the approval of the Board."

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 completion of 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.

If an employer has the authority under the statute to await the conclusion of the survey before making the various reclassifications, then clearly the filing of an appeal with this Board of a denial of a reclassification request during the pendency of the survey does not require a different result. If an appellant could demonstrate that changes in the position had outmoded the classification and a new one were required, normally the Director is nonetheless entitled to complete the survey before taking such action. The employe/appellant should and does have protection against administrative abuse during this process. The Director is required to complete and effectuate the survey within a reasonable time. Obviously, the determination of what constitutes a reasonable time turns on the peculiar facts and circumstances of each case.

In Van Laanen v. Knoll, 74-17, March 19 and 23, 1976, we discussed some of the issues raised by the question of back pay for an employe whose request

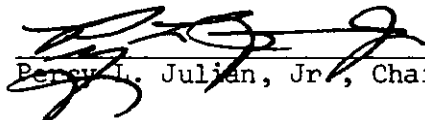
for reclassification has been denied. We discussed S. 16.38(4), Wis. Stats., which provides for back pay to the date of the erroneous transaction for persons who have been "removed, demoted, or reclassified" and subsequently reinstated by board or court order. It was concluded that this subsection did not include denials of reclassification but that S. 16.05(2), which requires that appeals be heard within 45 days, provided authority for requiring retroactive pay and benefits to a date 45 days after the date of receipt of an appeal of a reclassification denial.

In this case, the appellants challenge so much of the October 26, 1975, reallocation as relates to its effective date, as well as to the initial failure of reallocation. In the event that we were to determine that the Respondent had taken an unreasonable amount of time to complete and effectuate the survey in question, it may be that the back pay question would require the exploration of some uncharted ground. However, while we note the possibility, we do not reach the point at this time.

At the time of the hearing in this matter, the survey was still in progress and the hearing related solely to the question of the adequacy of Appellants' classification. In keeping with this decision, we will schedule another evidentiary hearing at which the sole issue will be whether the Respondent conducted the job service survey which preceded the reallocation of Appellants effective October 26, 1975, within a reasonable period of time. The burden of proceeding with the evidence will be on the Respondent and the burden of proof will be on the Appellant.

Dated April 23, 1976.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson