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VIOLET LOCKETT et al.,

Appellants,

v.

VERNE KNOLL, Deputy Director,  
State Bureau of Personnel,

Respondent.

Case No. 75-154

\* \* \* \* \*

**OFFICIAL**

FINDINGS, CONCLUSIONS,  
OPINION AND ORDER

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

This is an opinion and order on a motion to dismiss for failure of prosecution that was made by the attorney for the respondent at the hearing conducted January 26, 1977, when the Appellants declined to proceed to put in any evidence in support of their case.

FINDINGS OF FACT

This joint appeal of certain reallocations was filed November 24, 1975. A series of prehearing conferences were conducted in August, 1976. On November 5, 1976, the appeal was noticed for hearing on January 26 and 27, 1977, by a letter from board legal counsel. On January 14, 1977, another letter from board legal counsel was mailed to the parties as a supplement to the original notice of hearing of November 5, 1976. The January 14th letter contained, among other things, a statement of issues and indicated that there would be a consolidated hearing as to all appellants except Lockett and Sadowski, who would have separate hearings following the conclusion of the consolidated hearing.

On January 26, 1977, the hearing was convened. The following appellants appeared: Tifft, Stoll, Ruano, Winter, Zola, Breseman, Sadowski,

Domoracki, Oliver, Champion, Sadler, Schoen, and Lockett. Also appearing was Mr. Emil Muelver, a union representative from Council 24, WSEU. He indicated that he was not an attorney and was not appearing as a representative of any of the appellants. Ms. Oliver stated that she would act as spokesperson for appellants Tifft, Neal, Winter, Zola, Breseman, Domoracki, Champion, Schoen, Kwiatkowski, Lockett, and herself. Attorney Edward Main appeared for the respondent. Board legal counsel acted as hearing examiner.

Ms. Oliver requested a postponement of the hearing. She stated that many of the appellants had not received the respondent's list of witnesses and copies of exhibits until the day before, that Ms. Neal was a prime witness but could not be in attendance because of a recent death in the family, and that the appellants needed more time to find an attorney to adequately represent them. Appellants Sadowski, Stoll, Sadler and Ruano stated that they concurred in this position. Mr. Main responded that as to the question of the exhibits and witnesses that he disputed the facts asserted by Ms. Oliver, that he believed these items constituted an exception to the board's rules on notice as rebuttal material, and in any event the appellants' point was premature at that time since he had offered no exhibits and called no witnesses and was not certain who or what he would utilize in the presentation of his case. He further argued that the appellants could proceed without Ms. Neal being present and that they had had ample notice of the hearing and time to retain counsel.

After further discussion the hearing examiner ruled that the request for continuance would be denied although the matter would be held open so that Ms. Neal could testify at a later date. He directed that the

appellants proceed with their case, Ms. Oliver stated, with the concurrence of all the appellants present, that the appellants believed that under the circumstances they did not believe they could receive a fair hearing and that they would not proceed at that time but would file an appeal. Mr. Main then moved for an order dismissing the appeal for failure of prosecution.

CONCLUSIONS OF LAW

Based on the foregoing, it is concluded that the appellants for whom Ms. Oliver acted as spokesperson or who concurred in her decision not to proceed failed to prosecute their case and are in default. Regardless of whether the respondent in fact complied with the requirement of Section P.B. 2.01, W.A.C., requiring advance submission of exhibits and witnesses, this is not grounds for a continuance or an appropriate basis for refusing to proceed with the hearing. The appellants had the burden of proof and the burden of going forward. Accordingly, they were required to proceed first, after which the respondent would have put his case in, and the appellants would then have had the opportunity for rebuttal. The appropriate time for appellants' objection on the grounds of failure of prior submission in accordance with Section P.B. 2.01, W.A.C., would have been when the respondent might have offered the particular exhibits as evidence or called the witnesses to testify. With respect to the absence of Ms. Neal, there is no adequate reason why the other appellants could not have proceeded. She would have been permitted to testify at a later date, if that had been necessary. Finally, with respect to the request for time in which to secure counsel, the appellants had had notice of the date of the hearing for over two months, and this case was pending for many months before that. The Personnel Board rules, Section P.B. 1.06, W.A.C., make it clear that at hearings, parties must either appear in person or by a person authorized to practice law. The appellants had adequate time prior to the hearing in which to determine whether to secure counsel

and to retain counsel of their choice.

ORDER

This appeal is dismissed as to appellants Tifft, Neal, Winter, Zola, Breseman, Domoracki, Champion, Schoen, Kwiatkowski, Lockett, Oliver, Sadowski, Stoll, Sadler, and Ruano. Appellants Kuchenbecker, Yancalcar, Falvey, and Bartels are directed to advise the board in writing within ten working days of receipt of this order whether they are actively pursuing this appeal, and, if so, the reasons for their non-attendance at the January 26, 1977, hearing.

Dated March 21, 1977.

STATE PERSONNEL BOARD

  
Laurene DeWitt, Chairperson