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CORBIN NUNNELEE,

Appellant,

v.

VERNE KNOLL, Deputy Director,
State Bureau of Personnel,

Respondent.

Case No. 75-77

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OFFICIAL

INTERIM
OPINION AND ORDER

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

OPINION

A prehearing conference in this matter was held October 21, 1975. Appellant appeared by and with counsel. Her counsel stipulated with Respondent's counsel to the following statement of issues:

Whether or not the Appellant's lead worker duties are such that she should be reclassified to Cashier 2 from Cashier 1?

If the Appellant prevails with regard to the first issue, is she entitled to retroactive adjustment of her status to the date when she first began performing Cashier 2 duties, or is some other date appropriate such as the date of the Board's decision or the date the Appellant filed her appeal to the Personnel Board or six months after she began performing Cashier 2 duties?

In a letter dated October 22, 1975, Appellant's attorney indicated that "It has come to my attention that at the prehearing conference yesterday, we neglected to discuss an issue which Ms. Nunnelee feels is present in this case." He requested the addition of the following issues:

1. Whether or not the nature of the supervision of the Appellant is such that she should be reclassified to Cashier II from Cashier I.
2. Whether or not the combination of the Appellant's lead work duties, and the nature of the supervision of the Appellant is such that she should be reclassified to Cashier 2 from Cashier 1.

Respondent's counsel objected to the additional issues on the basis of the prior stipulation.

We conclude that a party may be relieved of the obligations of a stipulation in certain circumstances. See 73 AM JUR 2d Stipulations S. 14:

It is generally held that relief may be afforded from a stipulation which has been entered into as the result of inadvertance, improvidence, or excusable neglect, provided that the situation has not materially changed to the prejudice of the antagonist and that the one seeking relief has been reasonably diligent in doing so.

See also Schmidt v. Schmidt, 40 Wis. 2d 649, 654, 162 N.W. 2d 618 (1968):

The discretion of the trial court to relieve parties from stipulations when improvident or induced by fraud, misunderstanding or mistake, or rendered inequitable by the development of a new situation, is a legal discretion to be exercised in the promotion of justice and equity, and then must be a plain case of fraud, misunderstanding or mistake to justify relief.

The authorities further distinguish among different types of stipulations, being more ready to relieve a party of the obligations of a stipulation as to procedural matters than stipulations as to settlement: "It has been noted that more liberality in the granting of relief as to procedural matters is evident where no prejudice will result and the best interests and convenience of the parties, and expedition of the proceedings, will result." 73 AM JUR 2d Stipulations S. 15.

In this case we find that the request for a change in the stipulation is grounded on inadvertance, that it was presented promptly, and that during the period between the prehearing conference and the request for additional issues the situation did not change materially to the detriment of the Respondent. We conclude that under these circumstances the stipulation as to issues should be reopened. The Respondent shall have the opportunity to respond to the substantive correctness of Appellant's suggested issues. Within ten working days of entry of this order the Respondent shall serve and file any substantive objections he may have to Appellant's proposed additional issues set forth in her counsel's letter dated October 22, 1975.

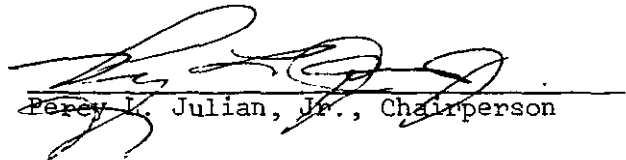
We are aware that the functional utility of stipulations generally is impaired if parties are given too ready leave to withdraw from them. On the other hand, it is a harsh result to restrict a

party's case in the manner and under the circumstances here presented. Furthermore, excessive strictness may also have the effect of discouraging stipulations as parties may become overly cautious about stipulating to anything. We believe that the criteria set forth by the foregoing authorities strike a good balance among these considerations. Stipulations should only be reopened, however, when these criteria clearly have been satisfied.

ORDER

IT IS HEREBY ORDERED that the stipulation as to issues entered into at the prehearing conference is reopened, and the Respondent may serve and file any objections to the suggested additional issues other than the objection that the same are outside the scope of the stipulation within ten working days of the date of entry of this order.

Dated March 22, 1976. STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson