

ROBERT C. STELLICK, JR.

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Petitioner,

FEB -4 1982

vs.

OPINION

Personnel

PERSONNEL COMMISSION,

Case No. 81-CV-4398 Commission

Respondent.

Petitioner was an Attorney 13 who was entitled on July 1, 1979, to have his wages regraded from point A to point B under the Classification and Compensation Pay Plan. Under the 1978-1979 schedule, his regrade point B wage would be \$10.664 per hour. Under the 1979-1980 plan the wage under point B would be \$11.405 per hour. (Ex A-9) Petitioner's salary was changed on July 1, 1979, by moving him to the 1978-1979 schedule at \$10.664 per hour. The 1979-1980 increase was a negotiated one and is acknowledged by Exhibit 1, Instructions for Processing the 1979-1980 Negotiated Adjustments for Represented, Classified Attorneys. A note states that "...the pay increase for represented attorneys is effective July 1, 1979...."

The 1979-1980 compensation plan was effective July 1, 1979, and thus took the place of the prior plan, which on Ex. A-11 clearly states that it "is effective for the fiscal period through June, 1979." Since the 1978-1979 plan was not effective on July 1, 1979, there was no plan effective until the 1979-1980 plan was created effective July 1, 1979. Under the 1979-1980 plan the regrade point B called for a wage of \$11.405 per hour. We fail to see how respondent could contend that on July 1, 1979, the regrade provided for in the 1978-1979 plan could be applied as of July 1, 1979. The respondent expressly and correctly found (Finding 3) that July 1, 1979, was the date petitioner was entitled to be regraded to point B and this was also the date the 1979-1980 compensation plan took effect. If this is true as of July 1, 1979, petitioner was entitled to a base wage of \$11.405 per hour. The conclusion that as of July 1, 1979, petitioner's wage was \$10.664 was clearly in error and to so determine was arbitrary and capricious.

There is no contention that whatever the base wage was on July 1, 1979, there should be added to it a 7% general economic adjustment. Respondent added the 7% to the 1978-1979 plan pay schedule of \$10.664 per hour. The respondent's error lies in the adoption of the 1978-1979 wage plan as effective on July 1, 1979.

As noted on Respondent's Exhibits 1 and 2, pay adjustments are made in the following order: "(b) regrade" and "(c) economic pay adjustments." So the addition of the economic pay adjustment to the regrade pay after that is computed is clearly correct.

The respondent seeks to justify its position on the theory that the wage in regrade point B in the 1979-1980 plan includes the 7% economic pay adjustment. Even if that be so, it does not justify the result reached by the Commission. The increase in the 1979-1980 plan provides for an increase which does not equal 7% of the 1978-1979 plan, but equals somewhat more than the \$11.405 provided in the regrade point B of the 1979-1980 plan. This contention of the respondent is specious. It may make good economics for holding petitioner's increase down in an effort to save money, but it is not fair to petitioner on the basis of the respondent's own terms.

We therefore set aside the order of respondent dated July 27, 1981, and remand the record to the Commission with directions to compute petitioner's wages on the basis that as of July 1, 1979, he was entitled to a base wage of \$11.405 per hour to which is to be added 7% of \$11.45 per hour and to make the petitioner whole back to July 1, 1979, for the deficiency in his pay that was not paid.

The petitioner will draft an order in accordance with the foregoing, submit it to opposing counsel for approval as to form and present it to the court for signature.

Dated January 23, 1982

By the Court:

A handwritten signature in cursive script, appearing to read "J. L. ...", is written above a horizontal line. Below the line, the word "Judge" is printed.

cc: Robert C. Stellick, Jr.  
Mr. Robert J. Vergeront