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DAVID M. KUTER,

Appellant,

v.

VERNE H. KNOLL, Deputy Director,  
State Bureau of Personnel,

Respondent.

Case No. 75-179

\* \* \* \* \*

**OFFICIAL**

OPINION AND ORDER

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

NATURE OF THE CASE

This is an appeal of a reallocation.

FINDINGS OF FACT

The following notation appears on the second page of the prehearing conference report dated April 1, 1976:

The respondent requested that this matter be submitted for decision on the basis of the exhibits entered by the respondent and without an evidentiary hearing. The appellant indicated that he would abide by the discretion of the Personnel Board in this regard.

The following findings are based on the aforesaid exhibits, Respondents 1, 2, and 3, and on the stipulation of the parties as to the issue presented by this appeal. The Appellant's position was reallocated from Manpower Director 2 to Job Service Supervisor 4 effective October 26, 1975. This reallocation was preceded by a survey conducted by the State Bureau of Personnel of approximately 1200 positions in the Job Service Division, including that of Appellant's. The background of the survey and the Director's rationale for his recommendations to the Board for reallocation of the various positions, including the Appellant's, is set forth in the letter to the Chairperson of this Board from the Deputy Director dated August 14, 1975, and marked Respondent's Exhibit 1, which is incorporated by reference as if fully set forth and adopted as a finding as to the

action taken, the background of the survey, and the Director's rationale for the reallocation recommendation, all as they relate to the Appellant's position. We further find that while the Appellant did not lose any income as a result of the reallocation he did lose "status," and that he was not consulted before the reallocation action was taken.

CONCLUSIONS OF LAW

The parties stipulated to the following issue for decision by the Board:

Whether the reallocation of Appellant's position from Manpower Director 2 to Job Service Supervisor 4 effective October 26, 1975, was improper because it was in violation of any mandate of the Personnel Board arising out of Case Nos. 73-152 and 73-159, or was improper as a loss of status to the appellant or because the appellant was not consulted before the action was taken.

page one, conference report dated April 1, 1976.

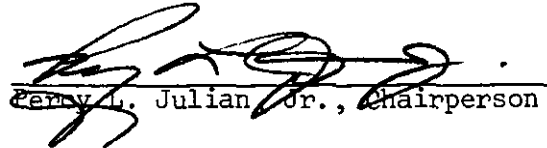
We conclude that the burden of proof is on the Appellant as to all issues. See 73 C.J.S. Public Administrative Bodies and Procedure, S. 124; Huber v. Knoll, Wis. Pers. Bd. 75-119 (May 24, 1976). We have taken official notice of case nos. 73-152 and 159, and we conclude that Appellant's reallocation as aforesaid is not improper as violating any provision of this Board's mandate arising out of that case. We further conclude that based on the record as submitted the reallocation was not improper as a "loss of status." The Director's rationale for the reallocation decision was not disputed by the Appellant and thus we must conclude that there was an adequate basis for the decision. The fact that Appellant suffered a loss of status as a result of the reallocation does not render the decision improper provided that there was an adequate basis for the decision. Finally, as to the failure of consultation with the Appellant prior to the reallocation, while such consultation is probably preferable we cannot conclude on this record that it is a required part of a survey process that involved approximately 1200 positions. We conclude that the failure of consultation prior to Appellant's reallocation does not render that reallocation improper.

ORDER

The action of the Director reallocating Appellant's position from Manpower Director 2 to Job Service Supervisor 4 effective October 26, 1975, is affirmed and this appeal is dismissed.

Dated July 28, 1976.

STATE PERSONNEL BOARD

  
Percy L. Julian, Jr., Chairperson