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1. FIREMEN, STATIONARY — RECLASSIFICATION — TWO CLASSIFICATIONS—STATIONARY FIREMEN LICENSED TO OPERATE HIGH-PRESSURE BOILERS—AUTOMATICALLY REASSIGNED TO HIGHER PAY RANGE—NOT A PROMOTION WITHIN PURVIEW OF FIRST SENTENCE OF SECOND PARAGRAPH, SECTION 143.10 (F) RC—SECTION 143.09, RC, AM. SUB. HB 484, 100 GA—SECTIONS 143.11 (C) RC, 4739. 12 RC.
2. “PROMOTED” HAS REFERENCE TO INCUMBENTS IN CLASSIFIED SERVICE WHO SEEK PROMOTION TO A HIGHER CLASS—SUBSEQUENTLY ACQUIRED QUALIFICATIONS—DISTINGUISHED FROM THOSE “ASSIGNED OR REASSIGNED” TO HIGHER PAY RANGE THROUGH EXISTING QUALIFICATIONS FOR RECLASSIFIED POSITIONS—SECTION 143.10 (F) RC.

SYLLABUS:

1. The reclassification of Stationary Firemen into two classifications, as provided by Section 143.09, as amended by Amended Substitute House Bill No. 484, 100 GA, effective October 23, 1953, and the reassignment by the Civil Service Commission of such positions as directed by Section 143.11 (C), Revised Code, as so amended, so that those stationary firemen licensed to operate high-pressure boilers,

as provided by Section 4739.12, Revised Code, are, in effect, automatically reassigned to a higher pay range is not a promotion within the purview of the first sentence of the second paragraph of Section 143.10 (F), Revised Code.

2. The word "promoted" in Section 143.10 (F) has reference to incumbents in the classified service who seek promotion to a higher class because of subsequently acquired qualifications as distinguished from those whom the statute requires "assigned or reassigned" to a higher pay range by reason of their existing qualifications for reclassified positions.

Columbus, Ohio, May 10, 1954

Hon. Carl W. Smith, Chairman, Civil Service Commission
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

"The 100th General Assembly amended Section 143.09 (A) Revised Code by adding new grades within existing classifications and assigned such new grades to appropriate pay ranges.

"Section 143.11 (C) Revised Code requires this Commission immediately to reassign the particular positions affected, without a public hearing.

"Section 143.10 (F) Revised Code provides the method this Commission is to follow in assigning the proper pay range and step of an employee whose classification is changed. The statute is clear in its application when an employee is *promoted* to a higher class, but does not define what constitutes a "promotion."

"In consequence of the above, the following situation is presented which is typical of several which require determination by this Commission :

"The classification 'Stationary Fireman P/R 18' formerly included all employees who fire and tend steam boilers generating steam for heat or power. The General Assembly deleted this classification and created 'Stationary Fireman I P/R 18' and 'Stationary Fireman II P/R 20'. The specifications prepared by this Commission for these new classifications allocated the employees formerly classified as 'Stationary Fireman' to the new classifications on the basis of boiler pressure limitations of the equipment *and* the state licenses required of the operator to fire low-pressure or high-pressure boilers.

"Your opinion is requested as to whether an employee who is assigned to a classification, having a higher pay range, as the result of the above, or similar circumstances, is thereby

'Promoted' and therefore entitled to a salary advancement above that he previously received."

Prior to the amendment of the Civil Service Law by the enactment of Amended Substitute House Bill No. 484, by the 100th General Assembly, effective October 23, 1953, Section 143.09, Revised Code, Section 486-7a, General Code, provided for a single classification of Stationary Fireman, under Classification No. 8410, such classification being assigned to pay range 18, by the terms of Section 143.11, Revised Code, Section 486-7c, General Code. Under such amendment two classifications of Fireman were established: Classification 8410, Stationary Fireman I, in pay range 18, and Classification 8411, Stationary Fireman II, in pay range 20.

Undoubtedly the establishment of the classifications of Stationary Fireman was predicated in part on the fact that Sections 4739.12 and 4739.13, Revised Code, provide for separate licenses for firemen operating boilers of over and under 15 pounds pressure where such boilers are of more than 30 horsepower.

Section 143.11 (C), Revised Code, as enacted by the General Assembly provides:

"Where new classifications, or new grades within existing classifications have been added by section 143.09 of the Revised Code, and pay ranges for new classifications or new grades have been assigned under section 143.11 of the Revised Code, the commission shall reassign immediately the particular positions affected, without a public hearing. Such reassignments of such positions shall be made in such a manner as to prevent any reduction in salary to affected employees, and the new salaries, following such reassignments, shall be computed so as to give the same salary benefits by way of increments and cost-of-living adjustments the affected employees would have received if no such new classifications or additional grades within classifications had been made.

"The new salaries of all employees affected by new classifications, additional grades within existing classifications, and the reassignment of classifications to different pay ranges, shall be effective as of July 1, 1953."

Pursuant to the legislative directive it appears that the commission has prepared specifications for the new classification of Stationary Engineer based upon the type of license held by the employee and the pres-

sure of the boiler being operated by him. In this process, all employees who qualify as Stationary Fireman II are advanced from pay range 18 to pay range 20. In the process of such advancement in classification, it is clear, under the provisions of Section 143.11 (c), supra, that there can be no reduction from the salary such employee "would have received if no new classification or additional grades within classifications had been made."

Let us illustrate the effect of this language as applied to a hypothetical case: As of July 1, 1954, "X" was a Stationary Fireman in Step 4 of pay range 18. Based on the cost of living increase computed by reference to the consumers price index as provided by Section 143.12, Revised Code, "X" was entitled as of July 1, 1954 to pay equal to Step 4 of pay range 20, or \$276 per month. Under the authority of Amended Substitute House Bill No. 484, he is now reclassified as Stationary Fireman II in pay range 20. In order to illustrate the relation between the ranges and steps under consideration, a portion of the table provided by Section 143.10 (A) is set out as follows:

" Pay Range					
Number	Step 1	Step 2	Step 3	Step 4	Step 5
18	220	230	240	252	264
19	230	240	252	264	276
20	240	252	264	276	288
21	252	264	276	288	300
22	264	276	288	300	315"

Continuing with our hypothetical case, since "X" is now in a new classification, in the absence of language otherwise providing, he would be in Step 1 of pay range 20. Under the automatic cost-of-living increase he would be entitled to an amount equal to that provided for pay range 22. This, however, would equal only \$264, and under his previous classification he was already receiving \$276. In order to comply with the requirement of Section 143.11 (C), that there be no reduction in salary, it then would be necessary for your commission to place him in Step 2 of pay range 20 where he would receive the amount provided in Step 2 of pay range 22, or \$276.

I now come to the question with which I believe you are concerned. Section 143.10 (F) provides in part as follows:

“* * * When an employee in the classified service is promoted to a higher class, his salary or wage shall be increased to that salary or wage step in the pay range for the new class which is next above the salary or wage he was receiving prior to such promotion. * * * In assigning or reassigning any employee to a classification or to a new pay range, other than as a promotion, the commission shall assign such employee to such appropriate step in the new pay range as the commission shall deem equitable.

“Such new salary or wage shall become effective on such date as the commission determines.”

Your question, therefore, is whether “X” has been “promoted to a higher classification” within the meaning of the first sentence set out above *requiring* your commission to provide for a pay increase, or whether he has been assigned or reassigned “other than as a promotion” within the meaning of the second sentence set out above, *permitting* you to adjust his pay within your discretion so long as it is not reduced. If his case is within the meaning of the first sentence, it follows that “X” would be entitled to another advancement from Step 2 to Step 3 of range 20, and to pay equal to that provided in Step 3 of range 22, or \$288. Furthermore, such new salary would be effective July 1, 1953 as provided in the last sentence of Section 143.12. It is important, I believe, to note that the language of the first sentence of Section 143.10 (F), *supra*, is identical to that contained therein prior to its amendment in 1953. The second sentence was added at the same time that the General Assembly enacted paragraph (C) of Section 143.11 directing the commission to reassign immediately the positions affected by the establishment of new classifications or new grades within existing classifications.

The Civil Service Act does not define the word “promotion,” and no definite standard is fixed by the statute as to when an employee in the classified service shall be deemed promoted. The only exception is the provision in Section 143.34 relating to policemen and firemen, that an “increase in salary beyond that fixed for the rank shall be deemed a promotion.” See *State ex rel. Wolcott v. Celebrezze*, 141 Ohio St., 627, where the principle that pay determines rank was affirmed by the Supreme Court in a case involving a member of the police department.

Section 143.24, Revised Code, appears to give the commission a rather broad discretion in determining whether a position in the classified service shall be filled by promotional examination or by original examina-

tion. By the terms of Rule X of the rules of the commission, written examinations may be dispensed with and promotions may be made based on length of service and effective performance. In either event, the commission, in case of such a promotion, is charged with the responsibility of approving or disapproving promotion based on the individual qualifications of the applicant. This, I believe, to be an essential part of a "promotion" within the meaning of the Civil Service Law.

Here, we are concerned with an entirely different situation. Under the specifications of Stationary Fireman II, a person holding a license for the operation of a high-pressure boiler and actually engaged in such work, in effect, automatically qualifies for such classification. He is not "promoted" to a higher classification; he is merely reassigned to such classification in recognition of the fact that the type work he performs, per se, entitles him to such classification. I believe that the first sentence of the quotation of Section 143.10 (F), supra, is not applicable to the factual situation here described, and that the second sentence of such quotation is applicable. Here, I believe, we have a case involving "assigning or reassigning any employee to a classification or to a new pay range, other than as a promotion."

In answer to your question, it is therefore my opinion that:

1. The reclassification of Stationary Fireman into two classifications, as provided by Section 143.09, as amended by Amended Substitute House Bill No. 484, 100 Ga, effective October 23, 1953, and the reassignment by the Civil Service Commission of such positions as directed by Section 143.11 (C), Revised Code, as so amended, so that those stationary firemen licensed to operate high-pressure boilers, as provided by Section 4739.12, Revised Code, are, in effect, automatically reassigned to a higher pay range is not a promotion within the purview of the first sentence of the second paragraph of Section 143.10 (F), Revised Code.

2. The word "promoted" in Section 143.10 (F) has reference to incumbents in the classified service who seek promotion to a higher class because of subsequently acquired qualifications as distinguished from those whom the statute requires "assigned or reassigned" to a higher pay range by reason of their existing qualifications for reclassified positions.

Respectfully,

C. WILLIAM O'NEILL

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