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WHERE THE STATE PERSONNEL BOARD OF REVIEW ORDERS THE DIRECTOR OF STATE PERSONNEL TO RECLASSIFY A STATE EMPLOYEE, SUCH ORDER APPLIES TO THAT EMPLOYEE ONLY AND DOES NOT OPERATE TO CHANGE THE CLASSIFICATION OF A SECOND EMPLOYEE —§§143.09 (F), 143.09-143.10, R.C.

SYLLABUS:

1. Under division (F) of Section 143.09, Revised Code, where the state personnel board of review orders the director of state personnel to reclassify a state employee, such order applies to that employee only and does not operate to change the classification of a second employee who replaced the original employee before the decision of the board was rendered, such original employee having resigned from the state service.
2. Where such second employee is performing duties which would entitle him to a higher classification, the director may under Sections 143.09 and 143.10, Revised Code, assign him to such higher classification at a higher salary, such salary to be effective on such date as the director determines.

Columbus, Ohio, August 18, 1960

Hon. James T. Welsh, Director
Department of Personnel, Columbus, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

"This Department has received results of hearings conducted by the Board of Review on appeals of positions reclassified under House Bill No. 591. In a number of cases the person holding the position at the time the appeal was filed have left the state service or are in another position. Employees presently occupying these positions were often hired prior to the findings of the Board of Review. The question arises as to whether the present incumbents hired after January 1, 1960 and prior to the findings of the Board of Review are entitled to an increase retroactive to the date of their appointment in those cases where the position was upgraded, or should they be treated as a promotion to be made effective at a future date. To illustrate:

"The department appeals a position classified as a Clerk I under House Bill No. 591 on January 1, 1960. The incumbent resigns March 31, 1960. Another person is hired as a Clerk I, pay range 14, Step 1, at \$210.00 per month. On June 1, 1960, the Board of Review notifies this department that this position is reclassified as a Clerk II. If the employee is retained in this position, it seems that there are two alternatives—one is to enter a change in classification to a Clerk II, pay range 17, Step 1, at \$240.00 per month, retroactive to April 1, the other method would be to promote the present incumbent, effective June 16, 1960, or some other future date designated by this department."

In your example you state that the "department appeals a position classified as a Clerk I under House Bill No. 591 on January 1, 1960." In this regard I might note that Amended Substitute House Bill No. 591 of the 103rd General Assembly did not classify any particular employees, but merely revised the categories in which employees might be placed. Under division (B) of Section 143.09, Revised Code, as contained in the bill, however, the director of state personnel is given authority to:

"* * * prepare and may amend from time to time, specifications descriptive of duties, responsibilities, requirements and desirable qualifications of the classifications set forth in this section, may allocate and reallocate any position, office or employment to the appropriate class among those set forth in this section on the

basis of the duties, responsibilities, requirements and qualifications of such positions, offices or employments, may assign and reassign employees to the appropriate classifications on the basis of the actual duties being performed, and may require appointing authorities to furnish the director with such information with respect to personnel actions, including data pertinent to position control, as the director may deem necessary and upon such forms as the director may prescribe.

“Upon assigning or reassigning an employee to a new classification, the director shall notify in writing such employee and his appointing authority.”

Your request is concerned with a hypothetical case where the director assigned an employee to a certain job classification and the appointing authority of such employee requested a hearing of the state personnel board of review under division (F) of Section 143.09, *supra*, reading:

“Where the director proposes to reclassify *any employee*, he shall give to the *employee affected*, and to his appointing authority, a notice in writing setting forth the proposed new classification, pay range and salary. An employee or appointing authority desiring a hearing shall file a written request therefor with the state personnel board of review within thirty days after receiving said written notification; whereupon the board of review shall set the matter for a hearing and notify said employee and the appointing authority of the time and place of said hearing. Such hearing may be conducted by the board of review or by the person or persons designated by the board. The employee, or the appointing authority, or the authorized representative of any employee, desiring to submit facts for the consideration of the board, shall be afforded reasonable opportunity to do so. After such hearing the board shall consider anew such reclassification and then may order the director of state personnel *to reclassify the employee and assign him to such appropriate classification as the facts and evidence warrant*. The board shall disallow any reclassification or reassignment classification of any employee where it finds that changes have been made in the duties and responsibilities of any particular employee for political, religious or other unjust reasons.” (Emphasis added)

While said appeal was pending, the employee concerned resigned (March 31, 1960) and he was replaced with another employee. On June 1, 1960, the board of review held that the *original employee* should have been reclassified in a higher classification.

It will be noted that under division (F) of Section 143.09, *supra*, the appeal to the board concerns the particular employee involved, not

the position. Thus, the board's order in the present hypothetical case does not apply to the second employee and such employee is not entitled to an automatic change in classification.

Since the second employee is and has been performing duties that should entitle him to be placed in a higher classification, it would appear equitable that he be so classified. In this regard, division (F) of Section 143.10, Revised Code, reads in part:

“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. When an employee in the unclassified service changes from one state position to another, or is appointed to a position in the classified service, or if an employee in the classified service is appointed to a position in the unclassified service, his salary or wage in the new position shall be determined in the same manner as if he were an employee in the classified service. In assigning or reassigning any employee to a classification or to a new pay range, other than as a promotion, the director of state personnel shall assign such employee to such appropriate step in the new pay range as the director shall deem equitable.

“Such new salary or wage shall become effective on such date as the director of state personnel determines.” (Emphasis added)

Under this provision, therefore, the director may classify the second employee a Clerk II as of the date of his entering the state service or at some later date, as the director may deem most equitable.

In conclusion, it is my opinion and you are advised:

1. Under division (F) of Section 143.09, Revised Code, where the state personnel board of review orders the director of state personnel to reclassify a state employee, such order applies to that employee only and does not operate to change the classification of a second employee who replaced the original employee before the decision of the board was rendered, such original employee having resigned from the state service.

2. Where such second employee is performing duties which would entitle him to a higher classification, the director may under Sections 143.09 and 143.10, Revised Code, assign him to such higher classification

at a higher salary, such salary to be effective on such date as the director determines.

Respectfully,

MARK McELROY

Attorney General