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1. HEARING—CIVIL SERVICE COMMISSION—APPLIED FOR BY DEPARTMENT HEAD—JURISDICTION TO ALLOCATE CERTAIN JOBS AND POSITIONS—COMMISSION REQUIRED TO AFFORD REASONABLE OPPORTUNITY TO SUBMIT FACTS FOR CONSIDERATION—SECTION 486-7a G. C.
2. COMMISSION MAY EXERCISE DISCRETION IN PARTICULAR CASE—NOT BOUND BY LAW AS TO CONSIDERATION OF FACTS—THIRTY DAY PERIOD.
3. COMMISSION MAY HOLD SPECIAL HEARINGS—MAY ADJUST INEQUITIES—RECLASSIFICATION—DOWNWARD OR UPWARD.
4. WHERE REDETERMINATION MADE BY COMMISSION—ALLOCATION—ADJUSTMENTS TO NEW SALARY AND WAGE SCHEDULES REQUIRED BY LAW TO BECOME EFFECTIVE JANUARY 1, 1950—AM. SUB. H. B. 382, 98 GENERAL ASSEMBLY.
5. ADJUSTMENTS TO NEW SALARY AND WAGE SCHEDULES MADE SUBSEQUENT TO JANUARY 1, 1950, ARE EFFECTIVE RETROACTIVELY TO THAT DATE.

SYLLABUS:

1. Where a department head applies to the Civil Service Commission for a hearing on the propriety of the commission's action in allocating certain jobs and positions in such department to classifications provided in Section 486-7a, General Code, the commission is required to afford such department head a reasonable opportunity to submit facts for consideration by the commission.

2. The commission may, in its discretion, determine what constitutes such reasonable opportunity in a particular case; and the commission is not bound by law to limit its consideration of facts to those submitted within the thirty day period after notification of original allocations as in the case of appeals under Section 486-7a, General Code.

3. In affording a department head such reasonable opportunity to submit facts for consideration, the commission may, in its discretion, hold special hearings.

4. Where the evidence adduced in such special hearings, or the facts otherwise submitted to the commission for consideration, are such as to justify the conclusion that inequities exist in job or position classifications, the commission may lawfully adjust such inequities, either by reclassification downward of certain jobs or positions, the classification of which was previously determined by the commission on appeal, or by reclassification upward of certain jobs or positions the initial classification of which was not appealed by the incumbents.

5. Where a redetermination is made by the commission with respect to the allocation of a job or position to a classification provided by Section 486-7a, General Code, the adjustments of such job or position to the new salary and wage schedules provided by Amended Substitute House Bill No. 382, 98th General Assembly, are required by law to become effective on January 1, 1950.

6. Where such redetermination is made by the commission subsequent to January 1, 1950, the adjustments to the new salary and wage schedules, except the adjustments based on length of service, are effective retroactively to that date.

Columbus, Ohio, January 6, 1951

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

Dear Sir:

This will acknowledge your inquiries requesting an interpretation of the language of Section 486-7a, General Code. Your first request is as follows:

"On January 1, 1950, there were approximately 9300 employes in the State Department of Welfare. As of that date each of them had been classified and allocated into job classifications based upon specifications descriptive of the duties and responsibilities of each position, and in accordance with the provisions of Amended Substitute House Bill No. 382. Information relative to the duties and responsibilities was contained in questionnaires furnished by each employe and in written and oral

statements by the department head or his representatives. Both the department and the employes were notified in writing as to the allocation and classification in all cases.

“After January 1, 1950, approximately 1800 employes of the State Department of Welfare, mostly in the various state institutions, filed written appeals requesting reconsideration of their classification on the grounds that they had been incorrectly classified.

“Acting under the law the Commission designated hearing boards to hear these appeals. These boards heard 1292 appeals in 25 state institutions and reclassified 699 employes, who incidentally are among the lowest paid employes in the state service. Each employe had an individual hearing at which evidence was presented relative to his duties and responsibilities, which were evaluated upon the basis specified by law.

“Now Director Lamneck is asking that the decisions in all appeals, in fourteen institutions, in which reclassifications upwards was made, a total of 553 cases, be set aside and that all of these cases be reheard. Except in two instances he does not specify individual employes, and in no instance does he specify in what particular the reclassification is incorrect.

“Reclassification of these 553 employes will cost \$156,264, annually, an average monthly salary increase of \$23.50.

“Mr. Lamneck bases his request for rehearings upon the following reasons:

“First: ‘That as Director (he) had no notice of the time and place of the holding of the hearings on said appeals.’

“The fact is that the Superintendent, the appointing authority, of every state institution or his representative was notified of the time and place of every hearing so that he might be represented there.

“Second: that the ‘Director was given no opportunity to present any evidence in the hearings on said appeals, although he had requested the Commission, in writing on January 19, 1950, for the opportunity.’

“Hearings were conducted simultaneously in two or more state institutions but in every instance the Superintendent or his representative was notified far enough in advance of the hearing to permit full opportunity for the preparation and presentation of evidence.

“Third: ‘That it is the duty of the Director of the Department of Public Welfare to fix the number of employes to be employed in the Department, and to prescribe their titles and duties; that the action of the Commission in

sustaining said appeals has had the effect of creating new positions which the Director of the Department of Public Welfare or his predecessor in office did not fix or authorize.'

"The fact is that the Commission has not changed the number of employes in the State Department of Welfare or any of its divisions or institutions. The Commission has not created any new positions in the State Department of Public Welfare and has not changed the duties of any employe in the Department.

"The Commission, carrying out the provisions of Amended Substitute House Bill No. 382, has simply evaluated the duties and responsibilities of each employe as we found them and allocated the employe into the proper job classification and salary range as directed by law.

"Fourth: 'That most of the classifications fixed by said Commission on said appeals are not warranted by the facts and circumstances.'

"Several days ago Director Lamneck was invited to present evidence in individual cases to substantiate his assertions and he has not done so.

"Fifth: 'That the action of the Commission in changing the classifications of certain employes on said appeals has created discontent and discord among large groups of employes because such action of the Commission has resulted in giving a small group of employes a new and higher classification, while a larger number of employes having the same duties and responsibilities and who did not appeal will remain in a lower and proper classification.'

"The law gave every employe the right of appeal and specified how the appeal shall be heard. The Commission has simply fulfilled its responsibility under the law.

"I think it is important to point out, that in his letter of July 14, 1950, to which he attached his petitions asking for rehearings, Director Lamneck wrote: 'We want to make it clear that we are not taking exception to your findings because of any individual involved, or for any other reason except that at the institutions for which we have asked rehearings, the order of the Commission disrupts our table of organization for employes and because it makes a greater disparagement of uniformity than now exists.'

"Incidentally may I point out, also, that the 'table of organization for employes,' attached hereto, was AUTHORIZED BY EXECUTIVE ORDER OF THE DIRECTOR AS OF JULY 15, 1950, after the appeals had been heard and decided.

"The State Civil Service Commission respectfully requests the Opinion of the Attorney General as to whether, upon the

basis of the reasons presented by Director Lanneck in the attached communication, the Commission has the legal right to set aside the findings on the appeals referred to here-to-fore and grant a rehearing in all of these several hundred cases."

Your second request is as follows :

"Inquiry has been made by directors of some departments whether decisions by the State Civil Service Commission upon appeals by appointing authorities, as well as appeals by employes, from original classifications or job allocations effective January 1, 1950, as provided by Section 586-7a of the General Code. (Amended Substitute House Bill No. 382) shall be retroactive to January 1, 1950.

"All changes in the original January 1, 1950, classifications or job allocations made as the result of reconsideration or appeal, are retroactive to January 1, 1950."

Before considering the precise question raised in your first inquiry it is appropriate to observe that the purpose of this legislation, as indicated by the title of Amended Substitute House Bill No. 382, in which it was enacted, is "To provide for the standardization of positions, titles, classes, salaries and wages of employes in the state service and for that purpose to enact sections 154-10, * * *." From this, and from the several special provisions of the act it may readily be concluded that the objective of the legislature was to eliminate then existing inequities and injustices in the classification and pay within the state service and to prevent the recurrence of such inequities and injustices.

Section 486-7a, General Code, as it relates to the initial allocation of jobs and positions, appeals from such allocations, and reconsideration of such initial allocation by the commission reads as follows :

"* * * As soon as possible after the effective date of this act, and, in no event later than January 1, 1950, the state civil service commission shall prepare specifications descriptive of the duties, responsibilities and desirable qualifications of each of the above classifications and shall allocate each present position, office or employment, paid in whole or in part by the state of Ohio, to the appropriate class of positions, offices and employments among those set forth above on the basis of the duties, responsibilities, qualifications and requirements of such positions, offices or employments in conformity with the report of the public administration service. Every employe whose job or position is allocated as aforesaid and the head of the department in which he is employed, shall be notified in writing, within a

reasonable time after such allocation by the commission, of the official class title of his position. The head of any department, any employe, or the representative of any employe or group of employes desiring to submit facts for the consideration of the commission, shall be afforded reasonable opportunity to do so. Any employe or department head desiring a hearing, shall file a written request therefor with the commission within thirty days after receiving said written notification. Such hearing may be conducted by the commission or by a person or persons designated by the commission. After such hearing, the commission shall consider anew such assignment and then allocate the job or position to such class within such classifications as the facts warrant. * * *

With respect to the Director's statement that he received no actual notice of the time and place of the hearings held by the commission on appeals made by employes in his department, it is to be noted that the law does not specifically require that he be so notified; and it is further to be noted that he did have constructive notice when the several heads of institutions under his supervision were notified.

The statute, as quoted above, however, not only provides for a hearing within thirty days after notice of allocation to the department head and the employe concerned, but provides also that "The head of any department, or any employe or group of employes desiring to submit facts for the consideration of the commission, shall be afforded reasonable opportunity to do so." Obviously, the thirty day limitation on the right to a hearing would not be applicable to this provision. I conclude, therefore, that the commission may, in its discretion, receive and consider such facts, either from a department head or from an employe, within such period of time as the commission shall deem to constitute a "reasonable opportunity to do so." I conclude also that the commission, in its discretion, may receive such facts in a special hearing or in such other manner as it shall deem reasonable and proper.

Your first communication specifically inquires whether "upon the basis of the reasons presented by Director Lamneck in the attached communication, the Commission has the legal right to set aside the findings on the appeals referred to heretofore and grant a rehearing in all of these several hundred cases." The "attached communication" is a letter dated July 14, 1950, addressed to you by the Director which in pertinent part, reads as follows:

"We want to make it clear that we are not taking exceptions to your findings because of any individual involved, or for any other reason except that at the institutions for which we have

asked rehearings, the order of the Commission disrupts our table of organization for employes, and because it makes a greater disparagement of uniformity than now exists."

Any inconsistencies between the department's table of organization and the job and position allocations made by your commission do not, of course, constitute a compelling reason for granting the Director's request in this instance. The reasons for this are explained in my opinion No. 2527 addressed to you under date of November 21, 1950.

The Director's communication to you does, however, quite clearly state his opinion that a serious lack of uniformity of job classification exists within his department and in his application for rehearing, quoted in part in your first inquiry above, he definitely states that "discontent and discord among large groups of employes" has resulted from the position and salary classifications heretofore made by the commission.

Having in mind the purpose of the legislation here involved, and considering the seriousness of the Director's statement, I must conclude that the purpose of the legislation would be served by receiving and considering, in such manner, including special hearings, as the commission may deem reasonable and proper, evidence of alleged improper allocation of jobs and positions within the Department of Public Welfare; and that the commission may not only legally do this but may thereafter legally take such corrective action by way of re-allocation of jobs and positions as the evidence so received and considered shall warrant.

I deem it proper to point out, however, that the evidence so received and considered may possibly show that the presently existing lack of uniformity, if any, in job and position allocations in the Department of Welfare is the result, not of the favorable action by the commission heretofore taken on appeals heard by it, but in part, at least, by the failure of certain employes to appeal the initial job allocations assigned by the commission. Here again, I must conclude that the purpose of the statute would be served by a uniformity attained, not necessarily by adjusting downward the job allocations of the successful appellants in appeals already determined by the commission, but, in appropriate cases, by adjusting upward the job allocations of other employes where the evidence justifies it; and I specifically conclude that the commission is legally authorized to take such action despite the fact that such employes failed to appeal as of right within the thirty day period following notice to them of the commission's action in making the original job allocations.

Your second question, relating to the effective date, for pay purposes, of re-allocation of jobs and positions following appeals, requires a consideration of the following provisions of Section 486-7a:

"As soon as the positions, offices and employments are allocated as aforesaid, the salaries and wages of the employes holding said positions, offices and employments shall be adjusted to the salary and wage ranges set forth in General Code section 486-7b, and the civil service commission in adjusting the salaries and wages in conformity with this act shall use as a basis, the gross salary or wage paid to the employes on July 31, 1948, or on the date of his employment if employed thereafter, and subject to the provisions set forth in paragraphs (a), (b) and (c) of this section. The new salary and wage schedules herein provided for shall become effective on January 1, 1950.

"(a) The salary or wage of any employe whose gross salary or wage on July 31, 1948 is less than the minimum of his new range, shall be increased to the new minimum;

"(b) The salary or wage of any employe whose gross salary or wage on July 31, 1948 falls between the steps of his new range, shall be increased to the next higher step of that range;

"(c) Any employe whose gross salary or wage on July 31, 1948 is as much as the maximum of his new range, shall continue to receive the maximum, but any employe whose then gross salary or wage is more than the maximum of his new range shall be reduced to such maximum. After the above adjustments have been made in all cases, the commission, within the available appropriations, shall assign employes to higher salary steps within their respective pay-range in recognition of length of service on the basis of formulae to be adopted by the commission after a public hearing. Such adjustments shall take effect on a date to be determined by the commission and shall not be retroactive. * * *

Of primary importance is the provision in this section that "The new salary and wage schedules herein provided for shall become effective on January 1, 1950."

It is obvious that the General Assembly envisioned that final action, including that on appeals, by your commission in allocating the several existing jobs and positions to the "appropriate class," and adjustment to the appropriate salary and wage ranges set forth in Section 486-7b, General Code, would be completed prior to January 1, 1950. It is common knowledge that this task proved too great for the available personnel and facilities of the commission, and that certain appeals have been finally determined only in recent weeks.

In this situation it is clear that there can have been no legislative intent that the job allocations and adjustments to proper wage and salary ranges were to be effective at some date to be determined with relation to the time of the commission's final action. The legislative intent plainly was that such allocations and adjustments were to "become effective on January 1, 1950."

On this point I am not unmindful of the final sentence in subparagraph (c) of Section 486-7a, General Code, in the quotation above. I consider it significant that this subsection provides that "after the above adjustments have been made," the commission is authorized to make yet a further adjustment of wages and salaries on a length-of-service formula. It is evident that the "above adjustments" referred to in this provision relate to those specified in subparagraphs (a) and (b) and in the opening sentence in subparagraph (c) of Section 486-7a, General Code; and it is equally evident that the prohibition of "such adjustments" being made to take effect retroactively is directed to the length-of-service adjustments and not to the "above adjustments." Indeed, any other notion would be wholly untenable in view of the positive statutory provision that the "new salary and wage schedules herein provided for shall become effective on January 1, 1950." For these reasons I conclude that any job allocations and salary adjustments determined by your commission, whether made in the original allocations, as the result of an appeal or reconsideration of an appeal, or as the result of consideration of facts submitted to the commission under the "reasonable opportunity" clause in Section 486-7a, where the final action by your commission is taken subsequent to January 1, 1950, are retroactive to that date.

It should be understood, of course, that this conclusion is based on the assumption that any such redetermination by the commission is made after consideration of the same factual situation previously considered, i.e., that there has been no change in the duties, responsibilities and desirable qualifications of the job or position concerned from those which obtained at the time of the original determination. The assignment, to an individual employe, after initial classification of his job or position, of such additional duties or greater responsibilities as would require a new classification is a case substantially different from that which is here under consideration and is one to which other statutory provisions apply.

Accordingly, in specific answer to your inquiries, it is my opinion that :

1. Where a department head applies to the Civil Service Commission for a hearing on the propriety of the commission's action in allocating certain jobs and positions in such department to classifications provided in Section 486-7a, General Code, the commission is required to afford such department head a reasonable opportunity to submit facts for consideration by the commission.

2. The commission may, in its discretion, determine what constitutes such reasonable opportunity in a particular case; and the commission is not bound by law to limit its consideration of facts to those submitted within the thirty day period after notification of original allocations as in the case of appeals under Section 486-7a, General Code.

3. In affording a department head such reasonable opportunity to submit facts for consideration, the commission may, in its discretion, hold special hearings.

4. Where the evidence adduced in such special hearings, or the facts otherwise submitted to the commission for consideration, are such as to justify the conclusion that inequities exist in job or position classifications, the commission may lawfully adjust such inequities, either by reclassification downward of certain jobs or positions, the classification of which was previously determined by the commission on appeal, or by reclassification upward of certain jobs or positions the initial classification of which was not appealed by the incumbents.

5. Where a redetermination is made by the commission with respect to the allocation of a job or position to a classification provided by Section 486-7a, General Code, the adjustments of such job or position to the new salary and wage schedules provided by Amended Substitute House Bill No. 382, 98th General Assembly, are required by law to become effective on January 1, 1950.

6. Where such redetermination is made by the commission subsequent to January 1, 1950, the adjustments to the new salary and wage schedules, except the adjustments based on length of service, are effective retroactively to that date.

Respectfully,

HERBERT S. DUFFY,
Attorney General.