State of New Hampshire

WPPID725

PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) **271-3261**

Response to Appellant's Motion for Reconsideration
APPEAL OF LOUISE BELANGER et al
Docket #91-0-9

date: April 3, 1991

The Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, April 3, 1991, to consider the March 8, 1991 Motion for Reconsideration filed by SEA Director of Operations, Thomas Hardiman, on the appellants' behalf. In support of his Motion, Mr. Hardiman reiterated his original argument that the appellants had not individually requested reclassification of their positions, having been informed by the agency that their positions would be upgraded onae they had received proper equipment and training to qualify the incumbents as Word Processor Operator I.

On March 14, 1991, the Department of Employment Security filed its objection to the appellants' Motion, and its request that the Board affirm its earlier decision to dismiss the appeal,

The appellants have failed to offer any grounds upon which to claim that the Board's February 23, 1991 decision was either unreasonable or unlawful. Accordingly, their Motion for Reconsideration is denied.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Joan N. Day, Human Resource Coordinator, Dept. of Employment Security
Thomas F. Hardiman, SEA Director of Field Operations
Civil Bureau, Attorney General's Office

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APPEAL OF LOUISE BELANGER
Docket #91-0-9

Department of Employment Security

February 28, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 13, 1991, to consider the above captioned appeal filed on the appellant's behalf by Thomas F. Hardiman, SEA Director of Field Operations. In his October 4, 1990 request for a hearing, Mr. Hardiman alleged that the appellant had been denied reclassification under the guise of a freeze on position reallocations. He argued that a review of the classification Secretary Stenographer I "was well into effect prior to any freeze and therefore the process was 'properly filed'".

Mr. Hardiman concluded that refusal to adjust their job titles and salary grades is a violation of Per 304.01:

> "No employee in the state classified service shall receive a salary greater than the maximum nor less than the minimum for the class established by the compensation plan."

On October 4, 1990, the Department of Employment Security filed a Motion to Dismiss Ms. Belanger's appeal, noting that the Department had timely filed two separate requests for reclassification of five secretarial positions located in the Dover, Portsmouth, Nashua, Manchester and Concord Offices in 1988, and that the incumbents in those positions had been reclassified to Word Processor Operator I. The Department concluded, "At no time were these positions in

question 'properly filed' or included in the above stated classification process due to the fact the offices did not receive the PC equipment until early 1990 and have just recently (October, 1990) completed training to enable them to develop proficiency in the use of word processing software. Receiving a PC and training does not automatically change a position."

RSA 21-I:58, which the appellants cite as the authority under which the Board might grant their appeal, specifically excludes appeals related to classification and allocation of positions:

> "Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board..." (Emphasis added)

Clearly, Ms. Belanger's appeal of the position title and salary grade at which her position is allocated is a classification decision within the meaning of RSA 21-I:57, which provides that "If the Board determines that an individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction." [1]

The Board's own rules related to classification and evaluation appeals require that:

> "Within twenty (20) days after filing his appeal, the appellant shall file with the Board an original and three (3) copies of any evidence (including all documents or affidavits) that he believes support his position together with any written argument that he wishes the Board to consider. This submission shall cover all aspects of the appeal." [Per-A 208.02(a) N.H.C.A.R.]

Appellant has failed, through competent evidence or affidavit, to prove that she had requested a review of her position prior to enactment of Chapter 209, laws of 1990, or that her position was included in either of the prior two position reviews completed prior to August 1988. The Department, arguing that it did not make such request on her behalf, has asked that her appeal be dismissed.

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1/ Chapter 209:4 of the Laws of 1990, provides that:

> Notwithstanding any other provision of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991.

Absent a completed request for reclassification received by the Director of Personnel prior to June 5, 1989, there is no authority for the Director of Personnel or the Personnel Appeals Board to grant the relief which the appellant has requested.

In consideration of the foregoing, the instant appeal is dismissed.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
John Ratoff, Commissioner, Dept. of Employment Security
Joan N. Day, Human Resource Coordinator, Dept. of Employment Security
Thomas F. Hardiman, SEA Director of Field Operations