

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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APPEAL OF LOCAL OFFICE MANAGERS
DOCKET #98-C-3
DEPARTMENT OF EMPLOYMENT SECURITY

September 9, 1999

The New Hampshire Personnel Appeals Board (Wood, Rule and Johnson) met on Wednesday, August 4, 1999, under the authority of RSA 21-I:57, to hear the appeal of Local Office Managers of the Department of Employment Security. The appellants were represented by Commissioner John Ratoff. Virginia A. Lamberton appeared representing the Division of Personnel. The appeal arises from a decision of the Director denying Commissioner Ratoff's request to reclassify fourteen positions of Manager I, salary grade 23, to Manager II, salary grade 25 or, in the alternative, to increase the grade assigned to fourteen of those positions from salary grade 23 to salary grade 24.

The appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing, and documents described by the parties and admitted into evidence as follows:

State's Exhibits:

- A. Request for Reclassification, dated February 26, 1998
- B. Position Classification Questionnaires completed by the Office Managers
- C. Job specification for Manager class

- D. Supplemental Job Description
- E. Organizational Charts
- F. Decision of the Director of Personnel
- G. Requests for Reconsideration
- H. Response of the Director for Reconsideration
- I. Letter from Joan Day to Virginia Lamberton, dated 11/12/91
- J. Letter from Joan Day to Virginia Lamberton dated 1/24/92
- K. Position Classification Questionnaires completed in January 1992, by Office Managers
- L. Group supplemental job description designed by Managers
- M. Local Office Organizational Charts dated 1992
- N. Response of Director to request for reclassification dated 6/5/92
- O. Point Spreads for Office Manager

Appellant's Exhibits

- A. Request for Reclassification
- B. NH Division of Personnel, Director's Decision
- C. NH Employment Security's Request for Reconsideration
- D. Reconsideration of Personnel Director's Decision
- E. Comparables
- F. Supporting Documentation for Attachment A - Request for Reclassification
- G. Class Specification - Manager

Applicable Statutes

§ 21-I:42 Division of Personnel. – There is hereby established within the department of administrative services the division of personnel, under the supervision of an unclassified director of personnel appointed under RSA 21-I:2, who shall be responsible for the following functions in accordance with applicable laws: [including]

II. Preparing, maintaining and periodically revising a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably

applied to, all positions in the same classification. Any new position classification plan shall be based upon the recommendations of the personnel system task force and shall not be considered a rule subject to RSA 541-A.... [and]

III. Allocating the position of every employee in the classified service to one of the classifications in the classification plan.

§ 21-I:57 Allocation Review. – The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation. If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A. 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.

§ 21-I:46 Powers and Duties of Board.

...VIII-a. The board shall be limited to existing job titles within the classification plan when rendering decisions regarding appeals of denial of reclassification. The board is explicitly prohibited from creating new job classifications or job titles.

On February 26, 1998, Joan N. Day, Human Resources Administrator at the Department of Employment Security, submitted to the Director of Personnel a request for reclassification of fourteen Local Office Manager positions, salary grade 23, to a new title of Manager II, salary grade 25. The Division of Personnel conducted a review and field audit, responding to the request by letter dated May 6, 1998. The Director's decision stated, in part, "According to your supporting narrative your agency is requesting that the fourteen positions be reclassified to Manager II, at salary grade 25. The two remaining Manager positions, numbers 40594 and 41222 [formerly classified as Program Specialists], are assigned to your centralized Benefits Section, and would be re-titled to Manager I, remaining at salary grade 23." The Director denied the request, stating that there were not material changes in the scope of work or the complexity of duties assigned to the positions that would warrant their reallocation from salary grade 23 to salary grade 25.

On May 19, 1998, the Department of Employment Security requested reconsideration of that decision, arguing that the "Working Conditions" factor was improperly rated at the first level. In support of that argument, Ms. Day wrote that instead of seeing clients by appointment, the Manager incumbents had begun working with their clients "on demand," increasing security risks for the incumbents. She argued that the change warranted an increase in the "Working Conditions" factor from level 1 to level 2. Ms. Day also asserted that DES Office Managers had assumed increased responsibility for managing and overseeing some of the programs and activities of the Department of Health and Human Services and the New Hampshire Job Training Council, thereby increasing the job's complexity.

Director Lamberton replied by letter dated June 3, 1998, that she had reviewed the additional information and had reviewed the point assignments for the remaining evaluation factors. She wrote that although she would agree to increase the "Working Conditions" factor from the 1st to the 2nd level, upon review of the remaining classification factors, she had also decided to decrease the points allocated to the "Skill" factor from level 5 to level 4.

In his oral argument before this Board, Commissioner Ratoff argued that program expansion in the department with the advent of "one-stop" career centers had significantly increased the complexity of the positions under appeal. He stated that the Department would be willing to forego its argument with respect to that factor until such time as a further review of the positions could be completed. He argued that there had been no change in the positions under appeal, however, that would warrant a reduction in the points assigned to the "Skill" factor. He argued that the Director had ordered the change simply as a way to keep the over-all points assigned to the position at a level that would not result in an increase in salary grade.

Ms. Lamberton argued that in the Evaluation Manual, the "Skill" factor describes "...the combination of preparation and learning through experience and training necessary to perform a specific job function. This factor measures the amount of time spent in practical preparation in

the same or related work." She stated that the various levels do over-lap in terms of years of experience required, and that the factor was designed that way in order to provide flexibility in the review and classification process. She argued that in comparison to positions inside and outside the agency, the positions under appeal were properly allocated at salary grade 23. She said that when the Department of Employment Security requested change in the points assigned to the "Working Conditions" factor that would result in a change in salary grade, the Division did consider all the other evaluation factors to determine if a basis existed for changing the classification and salary grade. She noted that the current qualifications for the position require an applicant to have a bachelor's degree and five years' experience, with provision for substitution of education and experience on a year-for-year basis.

After reviewing the materials submitted by the parties, and after considering their oral argument and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The minimum qualifications for certification as a Manager are as follows:

Education: Bachelor's degree from a recognized college or university. Each additional year of approved formal education may be substituted for one year of required work experience.

Experience: Five years' experience in the field of personnel, business management or public administration, including at least three (3) years with N.H. Employment Security at the level of Interviewer I or comparable organizational level, and at least one (1) year of supervisory experience. Those candidates lacking supervisory experience must be willing to attend and receive certification from the Certified Public Management program. This requirement will be agency-financed at the next available opening offered by the Division of Personnel. Each additional year of approved work experience may be substituted for one year of required formal education.

2. According to the Technical Assistance Manual, "Skill" level 4 requires an applicant to have three to six years of experience, while "Skill" level 5 requires four to eight years of experience.

3. The supplemental job description proposed by the agency during the classification review process would have increased the number of years of experience required for certification from 5 years to 6.
4. Under the classification plan, 6 years of experience could be rated at either level 4 or level 5 for "Skill."
5. According to the Evaluation Manual, level 5 for the "Skill" factor, "Requires skill in analyzing and interpreting data, policy, and procedures, OR in using equipment in order to arrive at logical conclusions or recommendations."
6. The approved Group Supplemental Job Description for the classification Manager does not include accountabilities involving policy, procedure or data analysis and interpretation. The duties and responsibilities do include requirements to develop procedures to implement existing policies and programs.
7. The Evaluation Manual describes "Working Conditions" as, "...the specific working environment and physical conditions to which an employee is exposed in performing required job duties and tasks. This factor measures the uncontrollable job elements which affect an employee's mental or physical capacity to complete job assignments in the normal course of work, including occupational hazards such as injury or disease. This factor does not include climate control problems that are typically not directly linked to the tasks the incumbent must perform."
8. The Technical Assistance Manual includes "Risk of assault" as a hazard that can be considered in determining a position's proper allocation for the factor "Working Conditions."
9. There was insufficient evidence of an increased risk of assault to support the agency's request or the Director's decision to approve an increase in the points assigned to the "Working Conditions" factor for all positions within the classification.

Rulings of Law

- A. "The director shall establish a formal written class specification covering each position in the classified system. The purpose of the class specification shall be to identify the job functions, distinguishing factors, examination requirements, and the minimum qualifications which apply to all positions in the same class." [Per 301.02 (a)]
- B. "The duties and work assignments for each position in the state classified service shall be defined by a supplemental job description established by this rule." [Per 301.03 (a)]
- C. The supplemental job description shall be developed and updated by the appointing authority or the supervisor assigned by the appointing authority to oversee the work assignments of the position." [Per 301.03 (b)]
- D. "Any work assignment which affects more than 10 percent of the total working time of the position shall be listed on the description by the appointing authority, designated supervisor or the employee of the position in accordance with this rule." [Per 301.03 (c)]
- E. An employee's supplemental job description must include, "A statement of the scope of work for the position, which shall be related to the basic purpose section of the class specification and shall specify how the broad purpose of the specification translates into a specific role within the goals and objectives of the agency." [Per 303.03 (d) (6)]
- F. "Allocation Review. – The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation. If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A. 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." [RSA 21-I:57]

Decision and Order

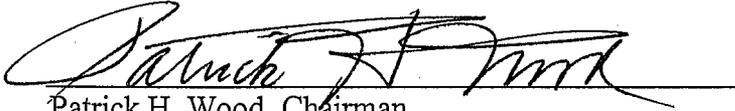
The appellants failed to persuade the Board that their positions were not properly classified in accordance with the classification plan or the Director's rules. While the Board is sympathetic to the appellants' complaints about the timing of the Director's decision to amend the Skill factor, they did not persuade the Board that the Director was precluded in any way from reviewing each and every one of the evaluation factors before issuing a final decision on the classification of their positions.¹

The Board appreciates the concerns shared by all employees who have daily contact with the public. However, the appellants failed to persuade the Board that they are at any greater risk than the majority of State employees who work in offices open to the public, or that "on-demand" visits with clients have changed the character of the work performed by DES Office Managers sufficiently to warrant an increase in the "Working Conditions" factor for all positions within the classification.

The appellants failed to persuade the Board that their positions were not properly classified in accordance with the classification plan or the Director's rules. Therefore, on the evidence, argument, and offers of proof, the Board voted to DENY the appeal.

¹ At the hearing, Commissioner Ratoff and Personnel Administrator Joan Day mentioned changes currently taking place within the agency as a result of state and federal initiatives affecting the management of "one-stop career centers." While none of that information is germane to the question of whether or not the Director of Personnel correctly classified positions of Manager in 1998, it would be relevant to a further review of those positions once those programs and initiatives are in place. Should the Department of Employment Security elect to request a further review of these positions, the Board would recommend that its submissions to the Division of Personnel address each of the evaluation factors, indicating why the existing or proposed allocation is appropriate to the classification.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman


Lisa A. Rule, Commissioner


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Commissioner John Ratoff, Dept. of Employment Security, 32 S. Main St., Concord, NH
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DEPARTMENT OF EMPLOYMENT SECURITY
DOCKET #98-C-3

February 24, 1999

The New Hampshire Personnel Appeals Board recently began a review of all outstanding reclassification and reallocation appeals for the purpose of scheduling those appeals for hearing. In reviewing the appellant's preliminary pleadings in the above-titled appeal, the Board found the following:

1. On Friday, June 19, 1998, the Board received a letter dated June 18, 1998, from Commissioner John Ratoff, appealing the Director's June 3, 1998, decision denying reconsideration of an earlier, unidentified decision regarding the classification of fourteen Employment Security Local Office Manager positions.
2. Per-A 101.05 of the Rules of the Personnel Appeals Board provides that, "Days' means calendar day." Per-4202.01 (a) provides that, "Any notice of appeal shall be filed in writing within fifteen (15) days of the action giving rise to the appeal."
3. The appellants assert that the action giving rise to the appeal is a June 3, 1998, reconsideration decision. In order to be timely filed, an appeal of that decision must have been received by the Board on or before June 18, 1998.
4. On July 7, 1998, the Board received an original and three copies of documents supporting the appeal.
5. Per-A 206.02 (c) of the Rules of the Personnel Appeals Board provides that, "Copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person

acting for him on all other parties to the case. Service on a party represented by another shall be made on such representative."

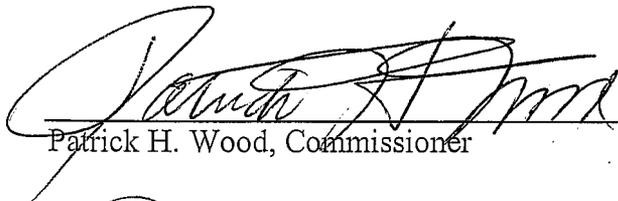
6. There is no indication that a copy of the July 7, 1998, submission was provided to the Director of Personnel.

For the reasons set forth above, the Board voted to dismiss the appeal unless, within ten calendar days of the date of this order, the appellants can show good cause why their appeal and supporting documents were not properly filed in accordance with Per-A 202.01 (a) and Per-A 206.02 (c) of the Rules of the Personnel Appeals Board.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Patrick H. Wood, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
John Ratoff, Commissioner, Department of Employment Security, 32 S. Main Street,
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