

NOTICE: This opinion is subject to motions for rehearing under Rule 22 as well as formal revision before publication in the New Hampshire Reports. Readers are requested to notify the Clerk/Reporter, Supreme Court of New Hampshire, Supreme Court Building, Concord, New Hampshire 03301, of any errors in order that corrections may be made before the opinion goes to press.

THE SUPREME COURT OF NEW HAMPSHIRE

Personnel Appeals Board
NO. 91-181

APPEAL OF LINDA TANCREDE & a.
(New Hampshire Personnel Appeals Board)

May 28, 1992

Michael C. Reynolds, of Concord, general counsel, State Employees' Association of New Hampshire, Inc., by brief and orally, for the appellants.

John P. Arnold, attorney general (William C. McCallum, attorney, on the brief and orally), for the State.

BATCHELDER, J. The appellants, Linda Tancrede and others, are members of the clerical staff at the New Hampshire Department of Corrections. The director of personnel did not act upon the appellants' requests for job reclassifications after the legislature enacted a moratorium, which the appellants claim denied them their fight to consideration of their requests. Because the appellants' questions are moot or not ripe for review, we dismiss the appeal.

On May 19, 1989, the appellants submitted a request for reclassification of their positions, pursuant to RSA 21-I:54, III, and the then applicable N.H. Admin. Rules, Per 303.04, which provide State employees a procedure for the reclassification of their positions. Effective June 5, 1989, however, Laws 1989, 408:105, I, took effect. This statute, enacted by the legislature in anticipation of a restructuring of the State employee classification system, provided that "the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1990." Laws 1989, 408:105, I. The legislature then enacted another moratorium making it expire on July 1, 1991, Laws 1990, 209:04.

The director of personnel took no action on the appellants' reclassification request prior to June 5, 1989, and on July 24, 1990, she informed the appellants that in light of the moratoria she

"will remain unable to review the classification" of the appellants' positions. The appellants appealed the decision to the personnel appeals board (PAB), which dismissed the appeal in February 1991. The PAB cited the moratorium then in effect until July 1, 1991, and quoted its earlier decision in another case, in which the PAB ordered the director of personnel "to consider the classification of the affected positions . . . as soon as she is lawfully and reasonably able" The appellants sought reconsideration of the PAB's dismissal on the grounds that Tancrede's case was distinguishable from the earlier case. The PAB disagreed and denied the motion for reconsideration, and this appeal followed.

The appellants ask this court to determine whether the PAB erred in ruling that the director of personnel, in the words of the appellants, "was permanently barred from considering the appellants' request for position reclassification." Contrary to the appellants' contention, the record reveals that neither the PAB nor the director of personnel ever considered themselves "permanently barred" from considering the request. Both the PAB and the director made it clear to the appellants that consideration was barred only as long as the moratoria were in effect.

The appellants argue that the PAB misconstrued or misapplied the moratoria statutes, and rely upon the New Hampshire Constitution, part I, article 23, which bars the application of retrospective laws. The appellants seek an "order that their classified reviews and upgrade requests go forward, retroactive to May 14, [sic] 1989; with appropriate retroactive pay and benefits."

We decline to address the appellants' request. First, the moratoria statutes have expired, and the PAB ordered the director of personnel "to consider the classification of the affected positions . . . as soon as she is lawfully and reasonably able" Because the only bar to review by the director that is alleged by the parties is the moratoria, their expiration renders the appellants' request to construe them moot. Absent any other bar, the appellants are now entitled to a review of their May 19, 1989 application. See Durell v. City of Dover, 130 N.H. 700, 546 A.2d 1072 (1988) (appeal dismissed for mootness where party entitled to records she sought). Second, the agency has not yet ruled on the appellants' request. Thus, we cannot tell whether the appellants will be granted any relief, nor whether the agency will act unlawfully. Therefore, the appellants' remaining claims are not ripe for review. See City of Portsmouth v. Association of Teachers, 134 N.H. , 597 A.2d 1063, 1068 (1991). Accordingly, the appeal is dismissed.

Appeal dismissed.

All concurred.

State of New Hampshire

WPPID724



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603)271-3261

Response to Appellant's Request for Reconsideration
APPEAL OF LINDA TANCREDE
Department of Corrections
Docket #91-0-3

April 3, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, April 3, 1991, to consider the March 11, 1991 Motion for Reconsideration filed by SEA Field Representative Stephen J. McCormack on behalf of Linda Tancrede, an employee of the Department of Corrections. In the Motion for Reconsideration, *Mr.* McCormack argued that "The appeal of Linda Tancrede et al is different from the appeal of Bailey, Burton and Eaton and contains a different fact pattern. Additionally, neither the State Employees' Association nor the appellants were notified of the intent by the Board to consolidate [with the appeals of Bailey, Burton and Eaton]; nor would either the appellants or the Association have agreed to consolidate the appeals."

First, Per-A 202.07 of the Rules of the Personnel Appeals Board specifically provides that:

"(a) The Board, upon its own motion or the motion of any party, may consolidate related cases.

"(b) The Board, upon its own motion or if it agrees with the motion of any party, may defer hearing related cases, whether or not consolidated, pending the decision and appeal of a test case selected by the Board."

Appeals need not be identical to be considered "related" for the purposes of consolidation and review as related cases. Further, in the August 2, 1990 appeal filed on Ms. Tancrede's behalf by the State Employees' Association, *Mr.* McCormack specifically noted the similarity between the appeal of Tancrede and the appeals of Bailey, Burton and Eaton.

"The State Employees' Association disputes the position taken by Ms. Vogel [that she is prohibited from reclassifying or reallocating positions, even classification requests that were 'properly filed' with the Director before June 5, 1989]. It is contended that the Director of Personnel is not prohibited from reviewing and possibly reclassifying or reallocating positions 'properly filed' with the Division of Personnel, State of New Hampshire, prior to June 5, 1989.

Response to Appellant's Request for Reconsideration
APPEAL OF LINDA TANCREDE
Docket #91-O-3

page 2

"A similar argument has been raised before the New Hampshire Personnel Appeals Board and is currently awaiting a decision. See Appeal of Linda Burton, Christine Eaton and Susan Bailey, Division of Elderly and Adult Services vs. Division of Personnel, State of New Hampshire, Docket #89-O-14, *89-O-15, and #89-O-16, January 10, 1990 " (emphasis theirs).

The appellant, in her Motion for Reconsideration, now argues that her appeal differs from the appeals of Bailey, Burton and Eaton in that her request for a position review was filed on May 19, 1989, prior to the effective date of HB-764-FN-A. The appellant stated, "The requested position reviews were properly submitted on May 19, 1989. There was, and has been more than sufficient time to review the cited positions and render a decision." This argument has already been addressed in the Board's order of February 14, 1991 in the matters of Bailey, Burton and Eaton:

"...[I]t is apparent from an examination of Chapter 209:4 of the laws of 1990, that the General Court wishes to see a moratorium or freeze on reallocation or reclassification 'considerations' or 'implementations' until, at least, July 1, 1991. It would further appear from the legislation referenced in this Decision, that these 'considerations' or 'implementations' should be aimed toward the, so called, 'new system,' and not the old system (See Chapter 269:5, Laws of 1988). It is not clear whether the General Court continues to seek progress toward that end.

"It appears, without deciding, that a reclassification or reallocation decision is not final or binding until all appeal options are exhausted, and that the retroactivity of any such decision may also apparently be limited by legislative intent. (Note, State's Response to Order of May 17, 1990, at Page 5; RSA 21-I:54).

"Accordingly, it is reasonable to conclude that the legislature's intent has changed since 1989; i.e., that a transition in the types of classification appeals, and how they would be handled, was contemplated initially in order to implement the so-called 'new system'. However, this appears to have given way in light of recent (probably particularly, fiscal) developments to a view that no reclassification, reallocation or reevaluation appeals (without deciding what each of the foregoing indeed is), should be available, be heard by us, or considered by the Director of Personnel until at least July 1, 1991." [See: Appeal of Susan Bailey (No. 8900-16), Appeal of Linda Burton (No. 890-O-14) Appeal of Christine Eaton (No. 89-O-15) Decision of the Board, February 14, 1991]

Response to Appellant's Request for Reconsideration
APPEAL OF LINDA TANCREDE
Docket #91-0-3

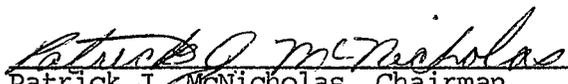
page 3

The appellant also argues that she is entitled to an evidentiary hearing. There are, however, no material facts in dispute, and the Board need not take testimony or receive additional evidence to establish the facts in this matter.¹ The Director received the appellant's request for review of her position at the Department of Corrections. The Director refused to conduct such review as requested:

"On July 3, 1989, I wrote to you regarding the reclassification moratorium mandated by HB 764-FN-A, Section 105. As my correspondence explained, that Bill included language which prohibited the Director of Personnel from reclassifying or reallocating positions until July 1, 1990. At my request, the Attorney General's Office further clarified my responsibilities, indicating that the Director of Personnel had no authority to approve any reclassification requests pending before the Director on June 5, 1989, the effective date of Chapter 408:105, I, notwithstanding that the requests were 'properly filed'." (Director's letter to Commission Ronald Powell, July 24, 1990)

In consideration of the foregoing, the Motion for Reconsideration is denied, and the Board's order of February 27, 1991, is affirmed.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

1/

"The Board does not believe that either side has an absolute right to an oral hearing. Where the facts are not in dispute, an oral hearing is not required. In the matter of Gary Blake and Donald LaPlante (November 3, 1986) aff'd without written opinion, Appeal of Blake et al (No. 86-493, October 1, 1987). The same principles apply when the well-pleaded facts are taken as true for the purposes of a Motion to Dismiss." [See: Appeal of Conservation Officer David Lovequist - Order on Motion for Rehearing, Personnel Appeals Board Decision, May 22, 1989]

Response to Appellant's Request for Reconsideration
APPEAL OF LINDA TANCREDE
Docket #91-0-3

page 4

cc: Virginia A. Vogel, Director of Personnel
Thomas K. Tarr, Director, Division of Field Services
Ronald Powell, Commissioner, Department of Corrections
Stephen J. McCormack, SEA Field Representative
Civil Bureau, Attorney General's Office

State of New Hampshire

WPPID697



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF LINDA TANCREDE ET AL Docket #91-0-3 Department of Corrections

February 27, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 13, 1991, to consider the above captioned appeal which was received by the Board on August 3, 1990. The matter had been held in abeyance pending a final order in the appeals of Susan Bailey (No. 89-0-16), Linda Burton (No. 89-0-14) and Christine Eaton (No. 89-0-15) relative to the refusal of the Director of Personnel to review their positions for possible reclassification or reallocation. Having found the instant appeal to also arise from the Personnel Director's refusal to accept the appellant's position review request, the Board, upon its own motion, voted to consolidate this appeal with the appeals of Bailey, Burton and Eaton. (Per-A 202.07 N.H.C.A.R.)

The Director of Personnel had determined that under the provisions of Chapter 408:105 effective June 5, 1989, no classification, allocation or evaluation reviews received on or after that date could lawfully be conducted; Chapter 209:4 of the Laws of 1990 clarified the General Court's ban on position reclassifications or reallocations:

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

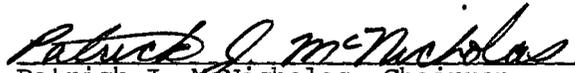
The Board's final order, dismissing the appeals of Bailey, Burton and Eaton, provides in pertinent part:

"The instant appeals are dismissed. The Director of Personnel is ordered to consider the classification of the affected positions under the then lawful system pertinent thereto as soon as she is lawfully and reasonably able to do so in accordance with said system. The Director may require that the appellants submit new position classification questionnaires at that time, or such other information as may be warranted for consideration under the then applicable system." (A copy of the full text of the Board's order is attached herewith.)

page 2

Appeal dismissed.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Stephen J. McCormack, SEA Field Representative
Thomas Tarr, Director, Field Services Division, Dept. of Corrections
Lisa Currier, Human Resource Coordinator, Department of Corrections

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF LINDA TANCREDE, ET AL Department of Corrections Docket #93 - C-6

(Department Clerical Staff Classification Review)

May 23, 1994

A quorum of the New Hampshire Personnel Appeals Board (Rule and Johnson) met Wednesday, October 13, 1993, to hear the classification appeal of clerical staff in the Department of Corrections/Division of Field Services. The appellants were represented at the hearing by SEA Field Representative Stephen J. McCormack. The Division of Personnel was represented by its Director, Virginia Lambertson.

This matter was originally scheduled for hearing on Wednesday, July 7, 1993. Prior to the hearing, by letter dated July 1, 1993, the Director of Personnel informed the State Employees' Association that she intended to offer several exhibits at the hearing on the merits. At that scheduled hearing, Mr. McCormack objected to the submission of those materials, arguing that the Board's procedural rules required the Director to respond to the appellant within 20 days of receipt of the appeal and supporting documents, and that the Director had failed to do so. The Board (McNicholas, Bennett and Johnson) ruled that the Director was not required to submit any response, and that previously the Board had not required the Director to pre-submit materials. With regard to the instant appeal, the Board voted to continue the hearing, to be rescheduled at a later date. The Director was allowed 20 days in which to submit the materials she had originally intended to submit. The Board then advised the appellants that they would be allowed ten days in which to respond. The hearing was then rescheduled for October 13, 1993.

For the purposes of clarifying the scope of this appeal, and the standard for review of the Director's decision, the Board notes that the original request for reclassification appeared in a request dated May 18, 1989 from the appellants for review of their positions. In the letter from Ms. Tancrede on behalf of the remaining appellants, she noted that the Department was not formally requesting the upgrading, but that under the existing Rules of the Division of Personnel, she was requesting an upgrading on behalf of all the clerical staff in the Division of Field Services.

On July 3, 1989, the Director of Personnel notified Corrections Commissioner Ronald Powell that because of a recently imposed legislative moratorium on position classifications, no action could be taken on the position reviews pending on July 5, 1989, the effective date of the legislation. That moratorium remained in effect for two years. The Director suggested that when the moratorium was lifted (effective July 1, 1991) the incumbents would want to submit

new questionnaires updating any changes which might have occurred in job function or organizational structure. The incumbents did not submit new questionnaires.

An appeal to the Board was filed in August, 1990, requesting that the Director of Personnel be ordered to complete the review of the positions and issue a decision. The Board dismissed the matter in light of the position reclassification moratorium, and later denied the appellants' request for reconsideration. The appellants' subsequent appeal to the New Hampshire Supreme Court was also unsuccessful, resulting in a May 28, 1992 order dismissing the appeal, stating that "the appellants are now entitled to a review of their 1989 application..."

The 1989 position review materials were again reviewed by the Division of Personnel in August, 1992. On August 14, 1992, the Director issued a decision stating that based upon the information outlined in the position classification questionnaires submitted in 1989, the Division found their positions to be properly allocated. It is that decision, dated August 14, 1992, which is currently under appeal. Because the incumbents failed to submit new classification questionnaires reflecting any possible changes in their duties and responsibilities subsequent to 1988, the only information which was available to the Division when it made its decision was that information applicable to the positions when the questionnaires were submitted. As a result, the Board must look at the positions only as they existed at the time the position reviews were originally requested.

The appellants were appealing the Division of Personnel's decision denying their request for upgrading. In Sylvia Metivier's classification request which was submitted as support for upgrading positions classified as Account Clerk III (Appellant's Exhibit 4), the position upgrading was requested as follows:

Administrative Assistant I (Level 15)

This position applies to the field secretary solely responsible for the managing of all clerical aspects of the district office, whether or not they have subordinate clerical staff to supervise. The reason being is that the secretary who is alone in the office has as many responsibilities as those with one or two girls to delegate work to.

NOTE: This has been discussed at the secretaries' meeting and is agreeable to all secretaries.

Administrative Secretary (Level 13)

This position would apply to the subordinate clerical staff directly under supervision of the Administrative assistant, knowledgeable and capable of completing all phases of the district office workload.

The appellants argued that the review of their positions had been only a "paper review", and that none of the appellants had been visited at the job site for the purpose of reviewing their request. They argued that an on-site visit would have given them a better opportunity to demonstrate the complexity of their assignments and the administrative nature of the work they perform. The appellants also argued that the Director's review had concentrated only on changes which occurred between the 1984 review and the submission of classification questionnaires in 1989, and that the Board should now consider the increasing scope of their responsibilities. Again, the Board's review and decision will be limited to the propriety of the Director's decision in light of the information which was made available to her.

In their September 15, 1992 letter to the Board, the appellants argued that those positions currently classified as Account Clerk III (salary grade 8) are better described by the class

specifications for Executive Secretary (salary grade 10), Word Processor Operator II (salary grade 11) or Administrative Secretary/Supervisor (salary grade 13). They argued the classification of Account Clerk III describes "generally routine work maintaining a set of books or financial records in a small administrative unit, or ...responsible for a special function in a large accounting unit assisting with the maintenance of a large complicated accounting system; does related work as required." The Account Clerk III incumbents all described their position responsibility as

"Assisting the Probation/Parole Officer in managing, directing and completing all clerical aspects of the field office (including possible supervision of subordinate clerical staff) with emphasis on client information to assure all data is exact and performed in conformity with all policies and procedures of the Department of Corrections." (See Appellants' Exhibit 4)

In describing how the work is performed, the Account Clerk III incumbents described it as follows:

When opening a case, record checks are obtained and pertinent information is gathered from proper authorities for set up of file. Once the Probation/Parole Officer has initiated contact with the client, either a presentence investigation is completed or the case is opened for the grant of probation, parole, bail supervision and/or court ordered collections. In either case, computer entry through word processing as well as on-line computing into the Central computer is necessary. All information is compiled and then entered into the computer in the form of client/offense profiles, assessments, collections and fees. Extensive typing of numerous forms is required in the maintenance of client information involving, but not limited to, Violation Reports reassessments, changes of client information, supplemental reports; all to further insure the accurate detailing of each client's individual case for Statewide use in the compilation of statistical information as well as necessary data utilized by the Probation/Parole officers.

In describing what the incumbents were trying to accomplish in performing the work, they answered:

Accomplishment of the accurate accounting of all client-related information for Statewide correctional data information base as well as the correct compilation of data within the district office for use by the Probation/Parole Officer.

While the above descriptions may not be reflective of the typical duties of an Account Clerk classification, the Board does not consider them to be consistent with the type of responsible office management, supervisory, administrative and training functions associated with any of the suggested alternative classifications of Administrative Secretary/Supervisor, Word Processor Operator II or Executive Secretary. The appellants' duties as described in the sample position classification questionnaires submitted as Appellants' Exhibit 4 are clearly secretarial, rather than administrative in nature.

Prior to the advent of word processing, the Account Clerk III would perhaps best have been classified at the level of Secretary/Typist II, salary grade 7. Upon review of the record, however, it appears that the positions were assigned to the classification of Account Clerk III, salary grade 8, in part because of the financial records they maintain on clients, and in recognition of their limited supervisory and/or training responsibilities. Although the appellants have suggested that both the Division of Personnel and the Department of

Corrections agreed the classification of Account Clerk was not an accurate representation of the duties performed, the Division of Personnel refused to create a new job classification to address the duties and responsibilities of the position. Although the Department of Corrections did recommend the creation of a new classification of Corrections Technician, the record contains no notice of a formal request, only a notation in the Classification Analyst's February 24, 1984 position review report:

"Mr. Pishon said he had mentioned to Mrs. Bastion (the former Personnel Director) in passing that he would like to have a new title established of Corrections Technician, or similar title at salary grade 7 or 8 that would lead from someone who had basic clerical, account clerk and/or typing experience who could, with little additional training, do the work required in the district and state offices. He said he would like two levels of the positions to allow for higher levels in larger offices and create chances for career advancement." (Division of Personnel Exhibit 5)

The original classification decision (Division of Personnel Exhibit 7) affecting the subject positions was issued on April 16, 1984 by former Personnel Director Judy **Bastian**. That position stated, in pertinent part:

"For the clerical support staff in the single position offices this Department recommends that such positions be classified as Secretary Typists II, salary grade 7. Because of the use of dictation equipment, the need for shorthand skill has decreased to such a point that to continue any positions in a stenographer series places an artificial barrier for job applicants interested in such positions. Based upon your comments, we have considered the bookkeeping involved in the field offices and the directive prepared by you which indicates that the clerical support positions will now be responsible for all collection cases processed through each office. Although bookkeeping and related work take up a portion of each incumbent's working day, we are of the opinion that these assignments can be learned on the job and require no formal bookkeeping training. It is noted that on the job specification for Secretary Typist II one of the examples of work states that an incumbent may prepare a variety of statistical, financial and cost reports where no technical knowledge is required but where frequent procedural problems arise. This, in our opinion, is descriptive of the work required in a Probation field office staffed by a single clerical support position.

"In the two largest field offices; namely Exeter and Manchester, where the incumbents have supervision over other clerical staff, we recommend that the positions be classified as Executive Secretary, Salary Grade 10. We are not totally convinced that Salary Grade 10 is appropriate, however, based upon the fact that we believe the shorthand skill is no longer a requirement and since we have no other clerical support positions at Salary Grade 9, we have no alternative but to recommend that the top level clerical support positions in both Exeter and Manchester be classified as Executive Secretary, Salary Grade 10. This recommendation, in our opinion, can be supported based upon the incumbents' supervisorv duties and the complexity of the work assignments in these two largest offices. We recommend that the other clerical support positions in Manchester and Exeter be classified as Secretary Typist I, salary grade 5."

On April 25, 1984, John A. King, then Director of the Division of Field Services, wrote to the Director requesting reconsideration of her decision. He stated that while he agreed with the assignment of salary grade 10 to the positions in the largest offices, he would request that the other secretarial positions in those offices be assigned at Secretary Typist II, salary grade 7.

He stated "These two positions will be carrying a similar workload as the two Executive Secretaries but with no supervision responsibility involved. These two will be involved in collection duties and also service an administration caseload in addition to other varied and complex office duties."

With regard to the remaining ten clerical support positions in single-position offices, Mr. King asked the Director to consider reallocating those positions to Account Clerk III, salary grade 8, rather than the Secretary Typist II classification, salary grade 7, which the Personnel director had originally recommended. As justification for that request, Mr. King stated the following:

"In seeking reconsideration I think more emphasis should be placed on the Administrative Caseload that has been assigned to all our field clerical staff. The Administrative Caseload is from court orders assigning collection only to be paid through the Department of Corrections, Division of field Services. Once this case is set up the secretary monitors the activity and keeps a chronological [log] of the activity involved."

"The secretaries in these single secretarial offices have to have an overall understanding of the whole operation and must have the ability to make decisions that will promote efficiency and a good image of the Department." (Division of Personnel Exhibit #8)

On May 18, 1984, the Director granted the request for reconsideration, agreeing to reclassify secretaries in the single-person offices to Account Clerk III, salary grade 8.

The Board found there was sufficient justification in the 1984 review and the subsequent 1989 request for reclassification to warrant classifying those positions in the Account Clerk series. Given the addition of Word Processing, however, and the fact that typing and transcribing information appears to take at least 50% of the incumbents' work time, it would appear appropriate to consider reclassifying their positions to Word Processor Operator I, salary grade.

There is insufficient evidence of substantial or material changes in the duties and responsibilities of the appellants to support the proposition that they now "perform responsible office management, to include performing highly complex clerical work" as suggested in the appellants' September 15, 1992 letter. Based upon a review of the information provided by both parties to this appeal, the Board found that the appellants are performing substantially the same duties at the time of their 1989 reclassification request that they were performing when the positions were reviewed in 1984.

The real basis for the appeal appears to be best outlined in the memo written by Donald Parrish and Michael Dunfey, DOC Regional Administrators, on December 13, 1988 (Appellants' Exhibit #8):

"It is our conclusion that there are several reasons for the [request for reclassification] to be pursued:

"(1) The position is currently not accurately classified. The majority of our secretarial positions are classified as Account Clerk III's with the exception of one Account Steno II, two Executive Secretaries and several temporary secretary typists. Duties have changed substantially with the installation of computer systems, increased collections, enforcement orientation of the department as well as other changes.

"(2) Competitively the Division is finding it to become more and more difficult to recruit the most qualified candidates for secretarial positions. Salaries often times are not competitive with those of private industry in less responsible positions.

"(3) One area that requires careful and full consideration is the offices that are staffed by one secretary and how they relate to the responsibilities of offices that are staffed by more than one secretary. We have discussed this issue from every approach that one can think of and consider the following as the over-riding considerations;

"A. The responsibility of the agency and the complexity of the tasks to be performed by an office manager is no more or no less in one office than it is in another office. Granted there is staff supervision that occurs in the multiple secretary office, however, the single secretary office must have the same task orientation and motivation and quality control skills that the senior secretary in a multiple secretary office must have...

"B. Another important consideration that must be made is that there are offices that are currently staffed by one secretary that have sufficient workloads and volumes of work to justify additional clerical staff. Obviously the ability to hire those additional staff is constrained and limited by the budget resources. ...

"C. There are substantial hidden duties that the single secretary and the small office secretary have that need to be considered. It is more often than not that due to the skills and abilities that are mentioned in B, those are now the same secretaries who are called upon to train new staff: to work on special projects and to give a hand in helping someone out who is short handed due to a vacancy or an illness or whatever.

"D. Finally, the four northern region single secretary offices are staffed by the highest caliber of employee. These four are also employees who have become veterans in the Department and who possess the skills and ability to keep the single person offices operating as smoothly as possible."

RSA 21-I:46 specifically excludes, and considers invalid, classification decisions of the director when the reasons for appeal are based on any of the following:

The personal qualifications of an employee exceed the minimum requirements for the position in question.

The employee has held the position for a long period of time.

Any positions previously held by the employee or any examinations passed by the employee which are not required for the position in question.

The employee has reached the maximum of the assigned salary grade.

The cost of living or related economic factors.

Clearly, the rationale for supporting reclassification of the clerical support staff in the Division of Field Services, is based largely on matters which are improper bases for appeal.

The Division of Field Services clearly wished to reward "veteran employees" of the "highest caliber". They wanted the positions to be more attractive to the incumbents as well as any potential appointees because of competition at the time from the private sector, and they apparently hoped to compensate the incumbents for increasing workload and work volume when the budget would not allow them to more adequately staff busy offices. While all of those reasons are compelling in their own right, they have no real bearing on the appropriateness of the classification decision, nor are they indicative of substantial or material change in the essential duties and responsibilities of the positions in question.

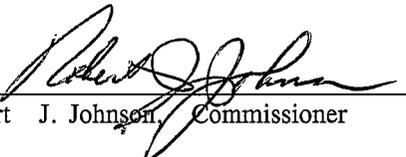
The only apparent change in position content involves the implementation of data processing systems within the Division of Field Services. However, that change has affected most office systems in both the private and public sectors. Employees must acquire new skills to use those systems to their maximum advantage. However, the work performed on those systems is essentially the same work which was previously performed using atypewriter, calculator or set of accounting records. Generally, computers have made it possible to produce more work with fewer errors in a shorter period of time. The underlying tasks, however, remain unchanged.

On the record before it, the Board voted to deny the appeal, finding that the Director of Personnel correctly found that there was insufficient evidence of substantial or material change in the duties and responsibilities of the positions to warrant reclassifying them as requested. To the extent that the Personnel Director's Requests for Findings Fo Fact and Rulings of Law are consistent with the decision above, they are granted, otherwise they are denied.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chairman



Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Stephen J. McCormack, SEA Field Representative
Michael K. Brown, Director, Division of Field Services
Lisa A. Currier, Human Resources Administrator, Dept. of Corrections