

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

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

### APPEAL OF:

Linda Burton (Docket #89-O-14)  
Christine Eaton (Docket #89-O-15)  
Susan Bailey (Docket #89-O-16)

Division of Elderly and Adult Services

May 17, 1990

The Personnel Appeals Board, (McNicholas, Cushman, and Johnson) heard the above-noted appeal at its meeting of Wednesday, January 10, 1990 at 1:30 p.m. in Room 401, State House Annex, Concord, New Hampshire. The hearing was conducted under the authority of RSA 21-I:58, and was limited to the sole issue of whether or not the Director of Personnel erred in refusing to accept Appellants' requests for review of their positions in the Division of Elderly and Adult Services. Subsequent to the initial filing, by letters dated November 8, 1989, Susan Bailey (Docket #89-O-16) and Linda Burton (Docket #89-O-14) requested that their appeals and that of Christine Eaton (Docket #89-O-15) be consolidated.

Appellants were represented at the hearing by Richard Chevrefils, Director of the Division of Elderly and Adult Services. The Division of Personnel was represented by its Director, Virginia A. Vogel

Director Chevrefils argues that functions performed by Social Workers in the Division of Elderly and Adult Services have changed substantially since they were last reviewed in 1983. He further argues that the Code of Administrative Rules, Per 306.01 defines the authority of the Director of Personnel to conduct reviews of positions, and that enactment of Chapter 408:105 (HB 764-FN-A) does not prohibit an evaluation appeal of any classified position.

The State, in its Memorandum of Law, contends that Laws of 1989, ch. 408:105 prohibits any consideration of "requests for reclassification or reallocation until July 1, 1990". The State further argues that the New Hampshire Supreme Court ruled in Petition of Crane, 564 A.2d 449 (N.H. 1989), that evaluation appeals are included in the broader definition of classification appeals. Therefore, the State concluded that enactment of HB 764-FN-A prohibited the Director of Personnel from conducting classification, allocation, or evaluation reviews until July 1, 1990.

The Board agrees that appeals related to "evaluation" and "allocation" should all be considered classification issues in the broader sense. The Board is not persuaded, however, that defining the instant appeal as a classification appeal has any real bearing upon the question of whether or not the Director of Personnel erred by refusing to accept Appellants' requests for review of their positions.

A superficial reading of ch. 408:105 (HB 764-FN-A) appears to preclude consideration of any requests for reclassification or reallocation until July 1, 1990, effectively instituting a moratorium on position reviews. A closer reading of the statutory provisions, however, leads the Board to believe that the actual prohibition relates only to requests for implementation of those recommendations made by the Director under:

"standards published in the technical assistance manual, classification chapter, which was distributed to state agencies on July 1, 1988, as part of the initial implementation process, and for which a final recommendation for classification was made by a letter signed and dated by the director."

Thus, it would appear that any prohibition for such reclassification refers only to those classification and allocation decisions made by the Director of Personnel within the framework of the proposed classification system and salary matrix contemplated by HB 250. It does not appear that the same prohibition exists for reclassifications or reallocations resulting from position review requests filed in accordance with the Rules of the Division of Personnel, within the framework of the existing Classification Plan contained in the current Evaluation Manual.

Had the legislature intended to impose a blanket moratorium on position reviews, it seems unlikely that the General Court would have defined "request for reclassification or reallocation" solely within the context of the July, 1988, Technical Assistance Manual.

This interpretation of legislative intent is further supported by the amendments to RSA 21-I:54, III, also found in HB 764-FN-A.

"III The director shall make a decision on any request for reclassification or reallocation from department heads or position incumbents within 45 days of receipt of a completed request for reclassification or reallocation as defined by rules adopted under RSA 21-I:43, II(u). No increases in salary shall be allowed for any request until a final decision is made by the director, or if the director's decision is appealed, by the personnel appeals board. Increases in salary due to reclassification or reallocation shall become effective at the beginning of the next pay period following the final decision of the director or the board."

The Board looked also to the amended analysis of HB 764-FN-A in attempting to determine if the General Court intended to impose a position review moratorium by enacting HB 764-FN-A. Insofar as the analysis contained no reference to a moratorium on position reviews or reclassifications, particularly when that action would have far-reaching implications for thousands of employees, the Board is hesitant to accept that a blanket moratorium on position reviews was contemplated by the legislature in its enactment of the bill.

Finally, the Board considered the substance of Appellants' request in light of New Hampshire Supreme Court rulings in the appeals of Proulx, Slayton, Robinson, and Goulette. Historically, the Court has ruled that the State must be diligent in its efforts to insure equal pay for equal work. With that understanding, the Board does not believe that the legislature intended to prohibit review of positions in the current classification plan, and the proper allocation of those positions in the current salary matrix.

The Board concluded that the legislature specifically prohibited reclassification of any positions under the proposed classification plan, knowing that such reclassifications would be inconsistent with the existing evaluation factors and salary structure. The Board believes that the legislature, in its enactment of HB 764-FN-A, took into consideration the substantial differences between the job "attributes" defined and weighted in the Evaluation Manual, and the "class evaluation factors" described by the Technical Assistance Manual distributed to state agencies in 1988 for implementation of the "Performance Management System" proposed in HB 250. By differentiating between the proposed system and the existing system for position classifications, and by prohibiting review of positions under the standards of the proposed system, the legislature could ensure that all positions in the classified service would continue to be reviewed and classified by a consistent standard.

As to the issue of whether the Director of Personnel erred in refusing to accept requests for position reviews, the Board is hesitant to make such a finding. It is clear from the record before it that the Director of Personnel was acting under instructions from the Attorney General's Office when she refused to accept any requests for position review. However, upon review of the statutory language of HB 764-FN-A, the restrictive definition of reclassification or reallocation "[f]or the purposes of this paragraph", the simultaneous amendments to RSA 21-I:54 III, and the absence of any clearly defined intent to impose a blanket moratorium on position reviews in the amended analysis of the bill, the Board is inclined to believe that the Attorney General's instructions to impose such a moratorium were in error, and may have exceeded the General Court's intent.

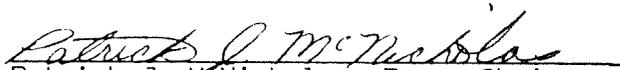
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In light of the its extremely limited staff and resources, the Board is unable to conduct additional research into the legislative history of HB 764-FN-A to determine if testimony and/or documentary evidence exists which might support the State's position in this appeal. In consideration of the foregoing, and with full understanding of the implications of a decision of this nature, the Board voted to delay the issuance of a final ruling until the parties have had further opportunity to submit additional evidence.

The Board will allow the State twenty days from the date of this order to file with the Board any documents submitted or testimony received during the 1989 legislative session which might support its conclusion that the legislature did, in fact, intend to impose a blanket moratorium on all position reviews, reclassifications or reallocations. The Board will also allow the State to submit a memorandum of law addressing its position in this matter in light of the New Hampshire Supreme Court's rulings in the petitions of Slayton, Robinson, and Goulette.

Appellants shall also be allowed twenty days in which to provide similar evidence or memorandum of law.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Esq., Chairman

  
George R. Cushman, Jr.

  
Robert J. Johnson

cc: Susan Bailey  
Linda Burton  
Christine Eaton  
Richard Chevrefils, Director, Division of Elderly and Adult Services  
M. Mary Mongan, Commissioner, Dept. of Health and Human Services  
Virginia A. Vogel, Director of Personnel  
David S. Peck, Assistant Attorney General

# State of New Hampshire



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
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Appeal of Susan Bailey (No. 89-O-16)  
Appeal of Linda Burton (No. 89-O-14)  
Appeal of Christine Eaton (No. 89-O-15)

### Decision of the Board

These consolidated appeals are before the Board for decision of the limited issue of whether or not the Director of Personnel erred in not accepting or processing the appellants' requests for review of their position classification/allocation.<sup>1</sup>

The essential facts pertinent to this appeal are as follows: On or about June 30, 1989, the Division of Personnel received position classification questionnaires from the appellant employees of the Division of Elderly and Adult Services, Department of Health and Human Services. The Director of Personnel notified the appellants that no action would be taken upon the questionnaires because of Chapter 408:105, Laws of 1989, which it is contended,

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<sup>1</sup> The pertinent procedural history of these appeals is set forth in the Board's Orders of May 17, 1990, and November 15, 1989. The factual background and the positions of the parties are more fully set forth in the Board's Order of May 17, 1990, the State's Memorandum of Law of January 10, 1990, and its Response to Order of May 17, 1990.

prohibited the Director from taking such action. The instant appeals resulted. Chapter 408:105 became effective on June 5, 1989.

In its Order of May 17, 1990, the Board reviewed the parties' contentions and legislation contended to be pertinent to the instant appeal, and concluded that it was appropriate to delay the issuance of a final ruling in this matter until the parties were afforded an opportunity to submit additional evidence and legal argument. All parties were afforded twenty (20) days for that purpose. The State submitted a document entitled, "State's Response to Order of May 17, 1990," on June 6, 1990, containing further legal argument and providing copies of pertinent legislative history contained in the Senate Journal. No other submissions were received by the Board.

We would ordinarily turn to the State's Response to the Board's Order of May 17, 1990, and that Order itself in deciding the instant appeal; however, that becomes unnecessary in light of supervening events. We decide this appeal on narrow grounds without comment upon the merits, or lack thereof, of the parties' positions.

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.

We do not, nor do we need to, more fully consider issues of retroactivity, or timing in connection with pending appeals, or our jurisdiction pursuant to RSA 21-I, the rules of the Department of Personnel and those of the Board, except as follows:

First, it is apparent from an examination of Chapter 408:105, I (and II) of the Laws of 1989, and Chapter 209:4 of the Laws of 1990, and related enactments, that the General Court appears to wish to see a transition from the "present system" of classification to the, so-called, "new system" of classification contained in the standards published in the Technical Assistance Manual, classification chapter, which was distributed to state agencies on July 1, 1988, as part of the initial implementation process. (See, inter alia, Chapter 408:105, Laws of 1989, in its entirety).

Second, it 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).

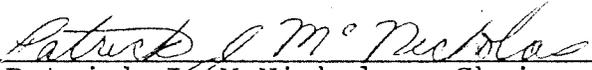
Accordingly, it is reasonable to conclude that the legislature's intent has changed since 1989; i.e., that a transition in the types of classification appeals, and how they would be handled, was contemplated initially in order to implement the so-called "new system." However, this appears to have given 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.

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.

Appeal dismissed.

14 February 1991

The Personnel Appeals Board

  
\_\_\_\_\_  
Patrick J. McNicholas, Chairman

  
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Robert J. Johnson, Jr.

  
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Mark J. Bennett

cc: Susan Bailey  
Linda Burton  
Christine Eaton  
Director, Division of Elderly and Adult Services  
Dr. Harry Bird, Commissioner, Dept. of Health and Human Services  
Virginia A. Vogel, Director of Personnel  
David S. Peck, Assistant Attorney General

# State of New Hampshire

WPPID794



## PERSONNEL APPEALS BOARD

State House Annex  
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### RESPONSE TO REQUEST FOR DECLARATORY RULING Docket No. 89-O-14, 15 and 16 Division of Elderly & Adult Services

August 14, 1991

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, August 14, 1991, to consider the above-captioned request for declaratory ruling relative to the Board's order of February 14, 1991 in the appeals of Bailey, Burton and Eaton.

Upon consideration of the correspondence submitted, the Board voted unanimously to deny the request for the following reasons:

1. The Board did not find the alleged delay in the processing of the petitioners' requests for review and reclassification of their positions to be unreasonable.
2. The petitioners have offered no competent evidence to support a finding that their position classification questionnaires were submitted on July 5, 1991, that they were complete, or that they conformed to the "then lawful system" for reclassification of positions to which the Board referred in its February 14, 1991 order.
3. The Board's order did not require that the Director of Personnel correspond personally with any of the appellants.
4. The Board's order did not specify that "representative" questionnaires for all positions similarly classified within the agency be accepted by the Director.
5. The request as filed does not satisfy any of the procedural requirements for the filing of a petition for declaratory ruling as set forth in Per-A 102.2 of the Rules of the Personnel Appeals Board.

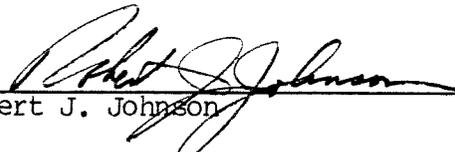
RESPONSE TO REQUEST FOR DECLARATORY RULING  
Docket No. 89-O-14, 15 and 16  
Division of Elderly & Adult Services

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Accordingly, the request is denied.

THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Mark J. Bennett

  
\_\_\_\_\_  
Robert J. Johnson

  
\_\_\_\_\_  
Lisa A. Rule

cc: Dick Chevrefils, Director of Elderly and Adult Services  
Jan Beauchesne, Human Resource Coordinator  
Virginia A. Vogel, Director of Personnel  
Christine L. Eaton, 30 Maplewood Ave., P.O. Box 599 Portsmouth NH 03801  
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# State of New Hampshire



## PERSONNEL APPEALS BOARD

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Division of Elderly and Adult Services  
Docket #89-0-14, 89-0-15 and 89-0-16  
Response on Request to Consolidate Appeals

DATED: November 15, 1989

By letters dated November 8, 1989, Susan Bailey (Docket #89-0-16) and Linda Burton (Docket #89-0-14) requested that their appeals and that of Christine Eaton (Docket #89-0-15) be consolidated and considered as one appeal. Both letters state that consolidating the appeals should "permit a comprehensive presentation of our functional duties and responsibilities; as well as [to] offer the appeals board the opportunity to accommodate their busy schedule." An identical letter dated November 9, 1989 was forwarded to the Board by Christine Eaton (89-0-15).

These requests present several technical problems:

1. On October 18, 1989, the State Employees' Association notified the Personnel Appeals Board that it would be representing Appellant Bailey (89-0-16) in her appeal to the Board. The State Employees' Association has neither requested nor consented to representing any party other than Ms. Bailey.
2. The appeals as filed address the refusal of the Director of Personnel to review position classification questionnaires submitted by the appellants, not the substance of those questionnaires. The decision from which such appeals arise, therefore, must be limited to the director's decision not to conduct a position review, not the issue of granting or denying a request for reclassification of the subject positions.

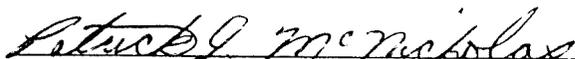
Within ten (10) calendar days of the date of this order, the appellants shall clarify in writing their request for consolidation of all three appeals, certifying the manner in which they intend to be represented.

Should the Board decide to accept the matter for hearing(s) on the merits, the

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appeals shall be limited to the issue of whether or not the Director of  
Personnel erred in not accepting their requests for review of their positions.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Esq., Chairman

  
Robert J. Johnson, Member

  
Mark J. Bennett, Alternate

cc: Susan Bailey  
Linda Burton  
Christine Eaton  
Richard Chevrefils  
M. Mary Mongan  
Stephen J. McCormack  
Virginia A. Vogel  
David S. Peck, Esq.