

State of New Hampshire

WPPID848



PERSONNEL APPEALS BOARD

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

APPEAL OF KATHLEEN BINGHAM New Hampshire Hospital (undocketed)

December 5, 1991

3
The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, October 16, 1991, to hear the appeal of Kathleen Bingham, an employee of New Hampshire Hospital, relative to her request for upgrading from salary grade 21 to salary grade 26. Virginia A. Vogel appeared on behalf of the Division of Personnel. Jean Chellis, SEA Field Representative, appeared on the appellant's behalf.

On October 14, 1988, the State Employees' Association, on behalf of the appellant, requested a hearing before the Board to appeal the Director's refusal to upgrade her position of Assistant Director of Nursing from salary grade 21 to salary grade 26. The Board heard Ms. Bingham's appeal on Tuesday, December 13, 1988. A decision was issued by the Board on April 3, 1989, which stated, in pertinent part:

"...[T]he Board voted to deny Ms. Bingham's appeal based on her lack of timely filing. In so doing, the Board noted that substantial evidence was presented which indicated that the appellant's position duties differed from the duties of employees holding the same position within the clinical area of the hospital and did not support an upgrade to Labor Grade 26. Because the Board found that the appeal was not timely filed, however, it did not issue extensive findings on the merits of the appeal."

On April 21, 1989, the State Employees' Association filed a request for reconsideration of that decision, which request was granted by order of the Board dated May 24, 1989. In that order, the Board agreed to schedule a limited rehearing.

A hearing was scheduled on October 16, 1991, for the purpose of reconsidering the Board's April 3, 1989 decision that Ms. Bingham's appeal was untimely. The Board further advised the parties in its September 23, 1991 order of notice that should the Board determine that the original appeal had been timely filed, it would limit consideration on the merits of the case to that evidence contained in the original record of the appeal.

APPEAL OF KATHLEEN BINGHAM

New Hampshire Hospital

IN RE: Assistant Nursing Director classification

page 2

On October 11, 1991, Field Representative Chellis filed a Motion for De Novo Hearing, arguing that because the full record of the earlier proceedings was not available, and because the appellant believed her earlier oral testimony established the timeliness of her appeal, her eligibility for upgrading, and entitlement to retroactive compensation, the Board must hold a new hearing.

In order to properly decide the appeal, and with the understanding that the tape recording of the original hearing was damaged during almost three years in storage, the Board agreed to convene a new hearing in the matter of Ms. Bingham's request for upgrading. The Board requested that the parties first address the issue of timeliness so that the Board might then determine what testimony and evidence it would receive on the merits of the appeal itself.

Ms. Vogel testified that in March, 1987, Dr. Melton, Superintendent at New Hampshire Hospital, had asked approval for upgrading nursing positions at the Hospital. She testified that the request was approved solely for the purpose of creating a competitive wage scale for clinical nursing positions. The decision to upgrade nursing positions was issued June 5, 1987.

Ms. Vogel testified that Bingham had telephoned her on August 28, 1987, asking why her position had not been upgraded from salary grade 21 to salary grade 26. She testified that she informed Ms. Bingham that her position was not entitled to an upgrading because her position was assigned to staff development, and the upgrading was approved for clinical nursing staff. She testified that she received a letter from Ann Spear dated August 30, 1987, asking for information on the "...status of Ms. Bingham's reclassification," and threatening an appeal if a response was not received by September 16, 1987. Director Vogel noted that had she approved the reclassification requested by Ms. Spear, it would have resulted in a downgrading of the appellant's position. Ms. Vogel testified that did not provide a response as demanded, nor did she receive notice an appeal as a result.

An appeal to the Board was filed by Ms. Spear approximately one year later, on October 14, 1988. The Director argued that the October 14, 1988 letter from Spear constituted an untimely appeal, and requested that the Board dismiss the matter on that basis.

Ms. Chellis argued that the nurse upgrading was the result of a "general decision" issued in June, 1987, and that until Ms. Bingham received her paycheck on July 14, 1987, and realized that she had not received any additional compensation, she was unaware that her position was still allocated at salary grade 21. She argued that Bingham was under the impression that there was simply a delay in processing the paperwork to effect her upgrading.

APPEAL OF KATHLEEN BINGHAM
New Hampshire Hospital

IN RE: Assistant Nursing Director classification
page 3

She said the appellant contacted Sharon Sanborn, Director of Human Resources for New Hampshire Hospital, and Personnel Director Virginia Vogel for information regarding that delay.

She argued that Ms. Bingham had no actual notice of the denial of upgrading, and therefore no decision which she could appeal. For that reason, Ms. Chellis argued that the Board should consider Ms. Bingham's appeal to be timely. In the alternative, she requested that the Board waive its requirements for timely filing and grant Ms. Bingham a hearing on the merits of her appeal.

The Board decided to hear the entire matter before taking up the Director's Motion to Dismiss.

On the merits of her appeal, Ms. Bingham testified that in January, 1983, her position had been classified as a Nursing Coordinator, salary grade 19. She testified that the Personnel Commission had upheld her reclassification to Assistant Nursing Director, salary grade 21, effective October, 1985.

For the record, the Board reviewed the Commission's decision in that matter dated March 7, 1986. According to the Commission's decision in that matter, New Hampshire Hospital had requested a review of Ms. Bingham's position in June, 1984. On October 25, 1985, the Department of Personnel issued its recommendation that Ms. Bingham's position be reclassified from Nursing Coordinator, salary grade 19 to Assistant Nursing Director, salary grade 21. Ms. Bingham appealed that decision, arguing that her position should have been reclassified to Administrative Director, salary grade 24.

The Commission denied Ms. Bingham's appeal. In so doing, it upheld the Department of Personnel's decision to reclassify her position to Assistant Director of Nursing, salary grade 21. As findings of fact, the Commission adopted Edward J. McCann's December 30, 1985 written report, a portion of which stated the following:

"...Ms. Bingham is responsible for assigning work, discipline, solving work problems, methods of operation and reviewing work of subordinates for accuracy as outlined in the 4th degree for employees assigned to the two open wards in the M&S Building. ...

"...The reason Ms. Bingham has responsibility [in the Medical/Surgical Building] for Physical Therapy, Radiology, EEG, the treatment room, the Ambulance Service and related is that there are only two wards in the M&S Building that are open at this time and this responsibility by itself would not support an upgrading of her position. ...

APPEAL OF KATHLEEN BINGHAM

New Hampshire Hospital

IN RE: Assistant Nursing Director classification

page 4

"Although after completing our review, this department recognized that the duty assignments of Ms. Bingham go beyond that of Nursing Coordinator incumbents at N.H. Hospital, we were of the opinion that it was unnecessary to establish a new classification of Administrative Director, based upon the overall assignments outlined by Ms. Bingham on her Position Classification Questionnaire and during the job audit process...."

Ms. Bingham testified that she had been administratively transferred out of the Medical Surgical Building to Staff Development on or about October 26, 1986. She testified that in June, 1987, she was assigned to coordinate the Mental Health Worker training program. During the time she was assigned to Staff Development, she did not complete a new position classification questionnaire and did not participate in a field audit of nursing positions.

Ms. Bingham testified that she assumed her position would be upgraded automatically as a result of the nursing upgrade at New Hampshire Hospital in June, 1987. She said she did not realize until she received her paycheck on July 14, 1987, that her position had not been upgraded to salary grade 26.

Ms. Bingham testified that once she learned her position had not been reallocated, she then contacted both Sharon Sanborn and Virginia Vogel regarding what she believed to be an oversight in processing the paperwork for the upgrading. She testified that in a telephone conversation with Personnel Director Vogel, Ms. Vogel had indicated she was waiting for a list of names from New Hampshire Hospital of those persons who were in the classifications to be upgraded. During that conversation, Ms. Vogel had told her she would not be entitled to an upgrading because her position was out of the clinical area. She testified, however, that she still believed New Hampshire Hospital had inadvertently left her name off the list of those persons to be upgraded, and that she was entitled to the five salary grade increase.

Ms. Bingham testified that several weeks after her conversation with Ms. Vogel, she was informed that neither she nor Constance Lessard were to be upgraded. When she later learned that Ms. Lessard's position had been increased, she became upset and began calling Sharon Sanborn three or four times a week to find out when she could expect a written denial of her upgrading request. She said she believed she needed a written decision before she could file an appeal with the Board.

Ms. Bingham argued that she should not have been denied an upgrading in June, 1987, from salary grade 21 to salary grade 26 simply because her position is assigned to Staff Development instead of Nursing Services. In support of that contention, in materials originally submitted to the Board on appeal, Ms. Bingham offered a side-by-side comparison of position responsibilities for

Assistant Director of Nursing, Nursing Services and Assistant Director of Nursing, Staff Development (Exhibit IV). Ms. Bingham argued that this comparison would demonstrate that the scope and function of her position in the staff development area compared favorably with similar positions in the clinical area.

Upon review of that comparison, the Board found that the position Assistant Director of Nursing, Nursing Services, is required to continuously exercise "...direct supervision over nurses, M.H.W., other employees as assigned with responsibility for discipline, work assignments, and nursing techniques." The Board found that description of duties in the area of Nursing Services to be consistent with the duties Ms. Bingham would have performed prior to 1987 in the Medical Surgical Building. The Board did not find any comparable requirement for direct supervision of nursing staff in the appellant's description of her own duties in Staff Development. On the evidence, the Board found that the Director was correct in deciding not to upgrade Ms. Bingham's position from grade 21 to salary grade 26.

'3 In its April 3, 1989 decision, the Board found Ms. Bingham's appeal to be untimely. The Board again finds Ms. Bingham's appeal to be untimely. Ms. Bingham repeatedly testified that she knew in August, 1987, that the Director would not process any request to upgrade her position from salary grade 21 to salary grade 26. Further, Ms. Vogel offered uncontroverted testimony that as early as August 30, 1987, the State Employee's Association had demanded a written response on or before September 16, 1987, or an appeal would be filed. Ms. Bingham's appeal was not filed until October 14, 1988, and is clearly an untimely request for hearing.

Even if the matter had been timely filed, the evidence would not support upgrading Ms. Bingham's position. Ms. Bingham's duty assignments clearly reflect duties and responsibilities which are not consistent with those of Assistant Directors of Nursing in nursing administration or in the supervision of those assigned to direct nursing care.

Ms. Bingham points to the fact that in order to coordinate the Mental Health Worker training program, she must be a Registered Nurse in the State of New Hampshire. Upon review of Appellant's Exhibit I, however, the Board notes that Registered Nurse positions range from salary grade 16 to salary grade 20. Nurse Specialist and Nurse Practitioner positions are allocated at salary grade 22, and Nursing Coordinators are allocated at salary grade 24. The requirement that she be a Registered Nurse in order to perform the duties of her position does not, therefore, mandate that her position be assigned at salary grade 26.

APPEAL OF KATHLEEN BINGHAM
New Hampshire Hospital
IN RE: Assistant Nursing Director classification
page 6

The Board was not persuaded that Ms. Bingham's duties in Staff Development are consistent with those assigned to the classification Assistant Nursing Director within the clinical area. The Board hesitates to reproduce the evidence within the context of its decision. However, the best way to illustrate how the Board reached that conclusion can be accomplished by comparing the duties of Assistant Nursing Director with Ms. Bingham's own description of her duties.

By definition, an Assistant Nursing Director position allocated at salary grade 26: "Performs professional administrative and management nursing duties associated with the care and treatment of patients; supervises nursing and custodial care of patients, maintains established standards of nursing care and treatment on a twenty-four hour, seven-day a week basis; does related work as required." (Emphasis added)

Below are listed the "Examples of Work" found in that specification. Those duties involving direct nursing supervision, for which Ms. Bingham has no similar responsibility, are highlighted:

Assists in establishing and implementing nursing policies, objectives and practices for nursing services.

Prepares and submits reports to the Director of Nursing or to another designated supervisor and makes appropriate recommendations that affect budget, labor/management relationships, patient care standards and requirements, and related policies.

Insures that professional nursing and other worker coverage is available 24 hours, seven days a week.

Recruits, trains and disciplines nursing personnel.

Insures that orientation and in-service programs are developed and implemented.

Serves on various committees as assigned by the Director of the institution.

Communicates with community and state and federal agencies to provide continuity of care for discharged patients.

Consults with other members of the staff in reference to problems relating to care and treatment of patients; investigates accidents, injuries, illnesses, sanitation, personal hygiene of patients, and complaints,

APPEAL OF KATHLEEN BINGHAM
New Hampshire Hospital

IN RE: Assistant Nursing Director classification
page 7

Engages in nursing research by preparation of reports and statistics used in the planning of nursing service within the agency and makes recommendations to improve nursing procedures and techniques.

Makes ward rounds to observe coverage, evaluate the quality of nursing services being rendered, review ward reports, and consult with nurses and others regarding patient's condition.

Directs subordinates in the care and safety of the patients and provides information regarding policies and procedures in regard to the use of supplies and equipment.

By contrast, Ms. Bingham describes her responsibilities as follows:

Maintains established standards of Nursing Care in regards to training according to Nurse Practice Act Section 8...

Develops and participates in Mental Health Work Training Program Policy and Procedures. Develop and maintain records of evaluations, course components, tests, practicums. Coordinates through Clinical Conferences and Meetings with Nursing Services, Unit Personnel, training needs.

Develops and maint MHW manuals for new hires and re-hires, keeping them up to date and consistent with N.H. Hospital Policy, Nursing Standards Evaluation Instructor's course content, and method of presentation. Periodic review of overall program with documentation. Prepare monthly orientation schedules for MHW Trainees and Re-Hires.

Contacts are made with various departments within N.H. Hospital, and also within the state, to disseminate information regarding training needs and availability of all ready existing course components that are available to them.

While attending course components MHW Trainees are responsible to adhere to already established procedures.

Evaluates the MHW Trainee or Re-Hire in their performance of techniques that are required of all Mental Health Workers in order to function at New Hampshire Hospital.

Physical effort is required in instructing various courses such as S.O.L.V.E., and carrying equipment necessary to perform the class components. One needs to be physically fit to instruct.

APPEAL OF KATHLEEN BINGHAM

New Hampshire Hospital

IN RE: Assistant Nursing Director classification

page 8

She described the examples of her work as follows:

Directs the Mental Health Worker Training Program. Develops and assists in developing, and implementing policies, objectives, and course content in the Mental Health Worker Training Program, in collaboration with Nursing Service, and Staff Development Department.

Reports and submits statistics with requested to Nursing Service, Staff Development, and Quality Assurance. Have been asked to evaluate and problem solve with on ward staff on the units.

Insures that instruction for course components are covered with appropriate instructors. Evaluates by monitoring classroom/or practicum components of the program.

Recruits and evaluates instructors in the 'Mental Health Worker Training Program according to standards that have been set.

Insure that in-services and on-going training are implemented and developed for MHWS as needed.

Acts as liaison to the Units, Nursing Service, and Staff Development in regards to the Mental Health Worker Training Program.

Communicates and at times provides training or consultation with or for community, regarding training in dealing with clients that have been discharged into the community.

Consults with staff in reference to problems/training needs relating to care and treatment of clients, re: accidents, injuries, etc., to evaluate what training needs might be appropriate.

Yearly Orientation Evaluation Needs Assessments done in order to plan for future training regarding needs within our agency. Acts as consultant as needed to the Units and/or others regarding Training.

The document submitted by Ms. Bingham, dated 1987, reflects no direct nursing care activities. The Board has no doubt that Ms. Bingham performed duties consistent with the classification of Assistant Nursing Director while she was administratively responsible for the Medical/Surgical Building. However, after her transfer to Staff Development, the essential nature of her duties changed with the focus on training, not on patient care and staffing issues.

Based on the record before it, the Board found that Ms. Bingham's position should have been reviewed for reclassification at the time the position was transferred to Staff Development and no longer was responsible for direct supervision of nursing staff in an active medical unit of New Hampshire Hospital. Given Ms. Bingham's description of her current duties, and her

APPEAL OF KATHLEEN BINGHAM
New Hampshire Hospital
IN RE: Assistant Nursing Director classification
page 9

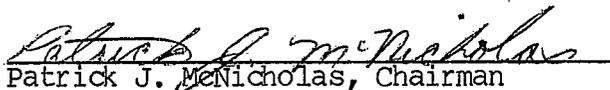
duties as they existed subsequent to her reassignment, it would appear that her position should have been reclassified to reflect its assignments at that time. The Board reviewed class specifications as follows in an effort to determine which classification most accurately described the appellant's position duties:

Institution Staff Development Coordinator I, II and III
(salary grades 13, 15 and 17 respectively)
Registered Nurse I, II and III
(salary grades 16, 18 and 20 respectively)
Nurse Practitioner (salary grade 22)
Nurse Specialist (salary grade 22)
Assistant Director Nursing Education (salary grade 25)
Assistant Nursing Director (salary grade 26)

Inasmuch as the Board did not have a position classification questionnaire to consider, the Board declines to make any specific findings concerning the appropriate classification of the appellant's position. However, based on the limited information presented and the Board's review of the class specifications noted above, it would appear that Ms. Bingham's position would be more appropriately classified within the Institutional Staff Development Coordinator series.

In consideration of the foregoing, the Board voted unanimously to deny Ms. Bingham's appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Sharon A. Sanborn, Director of Human Resources, New Hampshire Hospital
Jean Chellis, SEA Field Representative

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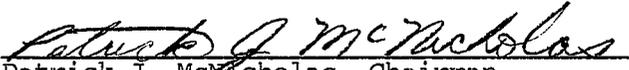
89-C-106

APPEAL OF KATHLEEN BINGHAM Ruling on Request for Reconsideration

May 24, 1989

At its meeting on Wednesday, May 17, 1989, the Personnel Appeals Board (McNicholas and Scott) reviewed the April 21, 1989 Motion for Reconsideration filed by SEA Field Representative Spear on behalf of Kathleen Bingham, an employee of New Hampshire Hospital. The Board, in consideration of Appellant's arguments, voted to grant the motion. Accordingly, the matter will be scheduled for limited rehearing as the Board's docket will allow.

FOR THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman

cc: Ann Spear, SEA Field Representative

Virginia A. Vogel
Director of Personnel

Sharon Sanborn, Human Resource Coordinator
New Hampshire Hospital

State of New Hampshire



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89-C-106

Appeal of Kathleen Bingham April 3, 1989

On December 13, 1988, the Personnel Appeals Board, Commissioners Brickett, Cushman and Platt sitting, heard the appeal of Kathleen Bingham, an employee of the New Hampshire Hospital. Ms. Bingham was appealing a denial by the Division of Personnel of her request to upgrade her position from salary grade 21 to salary grade 26. SEA Field Representative Ann Spear appeared on behalf of the appellant. Virginia A. Vogel, Director of Personnel and Edward J. McCann, Classification and Compensation Administrator, appeared on behalf of the Division of Personnel.

In support of her appeal, Ms. Bingham contended that her position as Assistant Director of Nursing for Staff Development should have been upgraded at the time that other Assistant Nursing Director positions at the Hospital were upgraded. In addition to questioning the timeliness of the filing of this appeal, Director Vogel argued that Ms. Bingham's duties were significantly different from those of other Assistant Nursing Directors. She further testified that due in part to Ms. Bingham's employment outside the clinical area of the Hospital, Ms. Bingham's responsibilities did not support an upgrade of her position to Labor Grade 26.

After considering all of the evidence presented, the Board made the following findings of fact and rulings of law. On June 5, 1987, the Division of Personnel issued a recommendation to upgrade certain positions at New Hampshire Hospital, including that of Assistant Nursing Director. Although a PAF was submitted on behalf of the appellant to upgrade her position, the Division of Personnel did not approve it. The appellant was aware when other employees in Assistant Nursing Director positions received their increase in their paychecks in July, 1987, that she had not received an upgrade in her position. Approximately fifteen months after the upgrade of the positions was granted, the SEA wrote to Virginia Vogel on behalf of the appellant referring to an upgrade from RN II to Rn III. On October 14, 1988, the appellant finally appealed the denial of her upgrade to the Personnel Appeals Board.

Based on the foregoing, the Board voted to deny Ms. Bingham's appeal based on her lack of timely filing. In so doing, the Board noted that substantial evidence was presented which indicated that the appellant's position duties

Appeal of Kathleen Bingham
April 3, 1989
page 2

differed from the duties of employees holding the same position within the clinical area of the hospital and did not support an upgrade to Labor Grade 26. Because the Board found that the appeal was not timely filed, however, it did not issue extensive findings on the merits of the appeal.

FOR THE PERSONNEL APPEALS BOARD


Executive Secretary

LSP/mas

cc: Ann Spear, Field Representative
State Employees' Association

Sharon Sanborn, Human Resource Coordinator
New Hampshire Hospital

Virginia A. Vogel
Director of Personnel