

State of New Hampshire

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

APPEAL OF DONALD C. DAVIS
Docket #89-C-4
Air Resources Division

February 14, 1991

The New Hampshire Personnel Appeals Board (McNicholas and Johnson) met Wednesday, November 8, 1989, to hear the classification appeal of Donald C. Davis, Administrator of the Air Resources Division, Department of Environmental Services. Mr. Davis appeared pro se. Also appearing on his behalf was Dennis Lunderville, Director of the Air Resources Division, Department of Environmental Services. Virginia A. Vogel, Director of the Division of Personnel, appeared on behalf of the Division.

Mr. Davis' appeal arises from a decision of the Director of Personnel dated February 22, 1989 denying the Department's request to reclassify **Mr.** Davis' position of Chief Engineer, Air Pollution Control, salary grade 29 to Administrator IV, salary grade 32. The appellant had originally requested that his position be reallocated to salary grade 34. In its February 22, 1989 decision, the Division of Personnel approved reclassification of his position from Chief Engineer to Administrator III, salary grade 30.

Mr. Davis submitted his initial request for a hearing by letter to the Board dated March 16, 1989. Although his appeal, superficially, was an untimely appeal, **Mr.** Davis provided evidence that his Division had not received notice of the classification decision until March 15, 1989. The Board allowed his appeal under those circumstances, but cautioned the Department that it should make timely notification to employees affected by such decisions in order to avoid the late filing of appeals of this nature. Written arguments in support of his appeal were submitted by **Mr.** Davis to the Board on April 3, 1989.

Mr. Davis argued that the Department of Environmental Services had fully supported his upgrading, believing his position responsibilities to be equivalent to duty assignments of all other Chief Engineers and many Bureau Chiefs. **Mr.** Davis argued that the Division of Personnel, in recommending his reclassification to the Administrator class, did not take into consideration the technical requirements of his position, and failed to address the engineering specialty which an incumbent would need to possess.

As Mr. Davis noted, the point-to-grade table found in the Evaluation Manual for position classifications only addresses positions up to salary grade 30. Nonetheless, he provided an analysis of what he believed to be the appropriate degree allocations for the nine evaluation attributes, his proposed total point allocation, and a suggestion that the resulting total of 755 points should result in allocation at salary grade 32 (Appellant's Attachment IV).

The appellant suggested increasing four evaluation attributes: Education, Experience, Initiative and Supervision. By reclassifying his position to Administrator III, salary grade 30, the Division of Personnel increased the attribute Initiative from 80 to 100 points, or from the 5th to the 6th degree. Accordingly, the Board need not address this issue. Of the remaining attributes, the Board ruled as follows:

EDUCATION: In his former classification of Chief Engineer, Air Pollution Control, and his current classification of Administrator III, the appellant's position was allocated at 100 points (7th degree). He has suggested this attribute be increased to 125 points (9th degree). The 7th degree is defined in the Evaluation Manual as requiring "...one or two years of graduate work or its equivalent in order to understand and perform methods and developments offered beyond the scope of ordinary college training". The 9th degree, which the appellant suggested was more appropriate for his position, would require "...an educational background usually equivalent to three or four years of graduate work leading to a M.D., or Ph.D."

While Mr. Davis' position clearly requires formal education beyond the bachelor's degree level, the Board was not persuaded that an employee at entry level would require the degree of formal education which the appellant has recommended. Accordingly, the Board voted to deny his request for increasing the Education attribute from the 7th to the 9th degree. In so doing, the Board gave careful consideration to the Experience attribute, both as it is currently rated and as has been suggested by Mr. Davis.

EXPERIENCE: The Evaluation Manual defines "Experience" as "the amount of time spent in practical preparation in the same or related work [emphasis added]. It is the time required by a person to satisfactorily perform the work [of sufficient quality, output, and performance standards as to insure continued employment] and does not include any time of the employees spent beyond this. Technical ability and fundamental knowledge should not be included in this factor."

When classified as Chief Engineer, Air Pollution Control (salary grade 29) the appellant's position was allocated 100 points (8th degree) for the attribute Experience, requiring 7 or 8 years' experience performing the same or related work. That attribute remained at the 8th degree when Appellant's position was reclassified to Administrator III (salary grade 30). Mr. Davis has suggested the Experience attribute should be increased to 150 points (10th degree) and should require that an employee possess over 10 years' experience.

The Board does not agree. When hearing classification appeals, the Board must review the position in light of the minimum requirements for individuals at entry level in that position. Obviously, the Department of Environmental Services derives enormous benefit from Mr. Davis' training and experience. The appellant has not provided sufficient evidence, however, to persuade the Board that his position at entry level would require an individual to possess an educational background equivalent to three or four years of graduate study, plus more than 10 years' experience in the same or related work in order to meet the minimum entrance requirements for the position, and to perform in such a manner as to ensure continued employment.

SUPERVISION: While classified as Chief Engineer, Pollution Control, and when reclassified to Administrator III, the appellant's position was allocated 60 points (5th degree) for the attribute of Supervision. Mr. Davis has suggested this attribute should be increased to 80 points (6th and highest degree).

Mr. Davis argued that he is required to exercise direct control over the day-to-day operations of the division, and to assume administrative authority in the Director's absence. He also stated he supervises two bureau administrators in the Division. The Board did not find Mr. Davis' supervisory responsibilities rising to the level of the 6th degree, or "...coordinating the programs or groups of various levels, having full responsibility for the results and effectiveness of all operations under his agency and exercising a measure of responsibility for policy determination at a high level of administrative responsibility."

Based on the information submitted by the appellant and the Division of Personnel, the Board found that Mr. Lunderville, the appellant's supervisor, is responsible for coordinating the various programs within the Air Resources Division. Accordingly, the Board found the 5th degree for the attribute Supervision quite adequately reflects the appellant's supervisory responsibility for "...organizing and establishing procedures of a group of subordinates, developing methods, determining flow of work, and assigning duties so as to accomplish and insure the quality and quantity of work performed at a high level of technical, professional, or scientific

competence." Therefore, the Board voted to deny the appellant's request to increase this attribute to the 6th degree.

The Board gave careful consideration to **Mr.** Davis' assertion that whether compared to positions within his own agency, or in agencies throughout State services, his position requires the same degree of technical expertise and administrative autonomy as those which are compensated at significantly higher salary grades than Administrator III, salary grade 30. In the absence of material evidence to support such a finding, the Board is more inclined to believe that the positions **Mr.** Davis has chosen for comparative purposes may be over-graded, rather than that his position is under-graded.

The Requests for Findings of Fact and Rulings of Law submitted by both parties to this appeal are numerous, and in each case are more representative of the divergent opinions of the parties, than the actual facts of the position review and eventual classification decision. Therefore, the Board has voted to present its own findings of fact, rather than ruling on those offered by the parties.

1. On February 27, 1987, Dennis Lunderville, Director of the Division of Air Resources, notified the Division of Personnel that the position held by Donald Davis should be changed from Chief Engineer, Air Pollution Control to Administrator, Engineering and Enforcement Bureau, Division of Air Resources, Department of Environmental Services, pursuant to RSA 216:6, Chapter 202, Laws of 1986.
2. The appellant, through the Department of Environmental Services, submitted a completed request for reclassification to the Division of Personnel on December 7, 1988.
3. The Department of Environmental Services recommended and supported upgrading the appellant's position from Chief Engineer, Air Pollution Control, (Administrator of the Bureau of Engineering and Enforcement) salary grade 29 to the classification Administrator IV, salary grade 32.
4. The Division of Personnel performed a desk audit of **Mr.** Davis' position, issuing a decision to upgrade his position to Administrator III, salary grade 30, on February 22, 1989.
5. The appellant's duties and responsibilities, as described by him in his classification questionnaire, and as reported in the decision following his desk audit, are adequately defined in the attributes of Education, Experience and Supervision at the levels assigned to the classification Administrator III, salary grade 30.

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6. As Administrator of the Bureau of Engineering and Enforcement, Division of Air Resources, Department of Environmental Services, the classification Administrator III, salary grade 30, is consistent with the organizational structure defined by RSA 21-G for the reorganization of the department.

The Board voted to grant the Division of Personnel's Requests for Rulings of Law.

THE PERSONNEL APPEALS BOARD



Patrick J. McNicholas



Robert J. Johnson

cc: Donald Davis, Administrator
Air Resources Division

Robert Varney, Commissioner
Department of Environmental Services

Virginia Vogel, Director
Division of Personnel

Civil Bureau - Attorney General's Office