

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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<sup>E.</sup>  
APPEAL OF WILLIAM C. EVANS

DOCKET #94-C-17

Department of Environmental Services

January 30, 1996

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and McGinley) met on Wednesday, October 18, 1995, under the authority of RSA 21-I:57, to hear the classification appeal of William C. Evans. Mr. Evans, who was represented at the hearing by Edward J. Schmidt, Director of the Water Supply and Pollution Control Division, was appealing the Division of Personnel's decision denying his request for reclassification from Sanitary Engineer III (Administrator 111), salary grade 30, to Administrator IV, salary grade 32. Virginia A. Lamberton, Director of the Division of Personnel, appeared on behalf of the Division.

In his written submissions, the appellant asserted that the position of Administrator of the Bureau of Subsurface Systems should be classified and compensated consistent with other salary grade 32 Bureau Administrators in the Division of Water Supply and Pollution Control. The appellant made particular reference to similarities between the administrative structure of his bureau, and the nature of his work assignments, with those of the Groundwater Protection Bureau. In a letter to the Board dated May 25, 1994, Robert Varney (then Commissioner of Environmental Services) stated, "[c]omparison of the Administrator position within the Subsurface Systems Bureau with that of other Bureau Administrator positions within the DES clearly indicates the inequity that currently exists." He argued that the Division of Personnel had given too little consideration to the Impact and Supervision factors when evaluating the position, and that the Division had failed to justify its decision to rate Mr. Evans' position at a lower level in "Impact" and "Supervision" than it had for other bureau administrators.

The appellant asserted that his workload had increased dramatically, and that the development boom of the late 1980's had resulted in increased involvement in the review and approval of individual disposal systems. He also argued that legislative and regulatory activity since the late 1980's had broadened the scope of his responsibilities, and that neither the Division of Personnel's April, 1989, decision to reallocate his position from Sanitary Engineer III (s.g. 30) to Administrator III (s.g. 30), nor the Board's January 17, 1991, Order upholding that decision ever adequately recognized his statewide responsibilities or the technical complexity of his work.

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The Chairman noted that he was one of the Appeals Board members who had heard Mr. Evans' prior appeal, and he asked Mr. Evans to describe what had changed in his position since January, 1991, which would warrant a different decision in 1995, than that made in 1991. Mr. Evans responded that the number of staff assigned to his bureau had decreased, thereby requiring him to increase the number of tasks for which he was personally responsible. He argued that in spite of decreased staffing, legislatively mandated demands on the bureau had increased. He said that in addition to his extensive involvement with the legislature throughout the legislative session, he also works closely with federal, state and local officials, often negotiating between two or more of those groups during project development and approval. Mr. Evans said that in spite of the increased difficulty in obtaining grant money for sewer construction, New Hampshire has one of the most comprehensive, innovative programs for approval of residential and commercial waste systems in the nation. Mr. Evans also said that increased development in the "North Country" has affected the technical complexity of his work because the region has difficult soil types for subsurface system design.

In oral argument, the Director of Personnel described the process which the Division of Personnel had utilized in completing a review of the appellant's position. She stated that after reviewing Mr. Evans' position in relationship to other Administrator positions, both within the Department of Environmental Services and in other State agencies, the Division of Personnel determined that the duties and responsibilities assigned to his position were not at the level of an Administrator IV, and had not changed substantially since the last time his position was reviewed. She referred the Board to the Board's decision of January 17, 1991 (P.A.B. Docket #89-C-5), arguing that without evidence of substantial change in the nature or scope of Mr. Evans' responsibilities, there would be no rationale for changing Mr. Evans' classification or increasing his level of compensation. She also asked the Board to note that new legislative mandates which Mr. Evans cited in support of his reclassification request were actually in place when his position was reclassified in 1989 and appealed in 1991.

The Board asked Ms. Lamberton why Mr. Evans' position did not warrant assignment at the 6th evaluation level for the factors of Impact and Supervision, and what distinguished Mr. Evans' duties and responsibilities from those of the Administrator of the Groundwater Protection Bureau, or any of the other bureaus in the Department of Environmental Services which were headed by a salary grade 32 Administrator III. Ms. Lamberton responded that Mr. Evans' duties simply did not support assignment at the highest level for those two factors. She said that Mr. Evans supervises a bureau comprised largely of technical rather than professional positions, and that he is responsible for administering a single program, whereas Administrator IV incumbents generally manage larger bureaus, administering more than one program. She said that she did not have materials with her at the hearing to use in comparing Mr. Evans' position with the Administrator IV in the Groundwater Protection Bureau. However, she said that

Administrator IV positions in the Department of Health and Human Services and the Department of Employment Security each administer more than one program, and manage well over one hundred employees in offices statewide. Ms. Lamberton also asserted that change in workload had affected most positions in State government, and that many offices have suffered a decrease in staff coupled with an increase in legislatively mandated responsibilities, but that those changes did not necessarily represent substantial or material change in the nature or scope of a position requiring its reallocation.

Mr. Evans and Dr. Schmidt argued that within the Water Supply and Pollution Control Division, there are Sanitary Engineers III and Administrators III compensated at salary grade 30 who are not responsible for administering a bureau, and that other administrators who are compensated at salary grade 32 have duty assignments almost identical to Mr. Evans' responsibilities. However, neither Mr. Evans nor Dr. Schmidt offered documentary evidence or oral argument detailing the specific duties and responsibilities assigned to those other positions which the Board might review or use as a comparison. Inasmuch as the burden of proof in classification appeals is upon the appellant, the Board found that there was insufficient evidence presented by the appellant to warrant a finding in his favor.' However, having heard the appeal of Rend Pelletier (Administrator III, Water Supply Engineering Bureau, P.A.B. Docket #94-C-13) in which essentially the same arguments had been raised, the Board also reviewed the materials submitted in that appeal in order to see if there was evidence of the alleged "inequity" between Administrator III and Administrator IV positions in the Division of Water Supply and Pollution Control which would warrant further consideration.

The record reflects that at the time of his position review, Mr. Evans supervised a bureau consisting of 31 positions (5 of which were vacant when the organizational chart was prepared) divided into four sections: Permits, Construction Inspection, Enforcement and Administrative. Rend Pelletier, the Administrator III responsible for supervising the Water Supply Engineering Bureau at that time managed a bureau consisting of 26 positions, including 5 which were part-time and 2 which were vacant. That Bureau was divided into seven sections: Administrative

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<sup>1</sup> Per-A 208.02 of the Rules of the Personnel Appeals Board provides the following:

- (a) Within twenty (20) days after filing his appeal, the appellant shall file with the Board an original and three (3) copies of any evidence (including all documents or affidavits) that he believes support his position together with any written argument that he wishes the Board to consider. This submission shall cover all aspects of the appeal.
- (b) If it is an evaluation appeal, the appellant shall cite those attributes and degree allocations that are believed improper along with supporting justification.
- (c) If it is a classification appeal, a full explanation must be given as to why the position is incorrectly classified.

Systems, Data Management, Certification and Training, and Grants Management. By comparison, the organizational chart for the Groundwater Protection Bureau showed that the Bureau Administrator was responsible for managing a staff of 42 positions, (4 of which were vacant when the organizational chart was prepared) divided into five sections: Administrative, Planning and Development, Groundwater Remediation and Permits, Petroleum Remediation and Oil Compliance.

According to the information contained in the organizational charts for these three bureaus, the Groundwater Protection Bureau is roughly 30% larger than the Subsurface Systems Bureau, and approximately 38% larger than the Water Supply Engineering Bureau. In addition to being larger than either the Water Supply Engineering or Subsurface Systems Bureau, the Groundwater Protection Bureau has a substantially higher percentage of professional positions than its smaller counterparts. For instance, in Groundwater Protection, 23 of the 42 positions are compensated at salary grade 25 and above, whereas only 4 of the 31 positions in the Subsurface Systems Bureau, and 7 (including 1 which was vacant and 1 which was part-time) of the 26 positions in the Water Supply Engineering Bureau, are compensated at salary grade 25 and above. In Groundwater Protection, there are another 7 employees compensated between salary grades 20 and 24, compared to 2 in Subsurface Systems Bureau and 1 in the Water Supply Engineering Bureau.

In comparing Mr. Evans' Classification Questionnaire with the class specifications for both Administrator III and Administrator IV, the Board found that there was insufficient evidence to support the appellant's claim that his position was improperly classified as an Administrator III, salary grade 30. The appellant did not persuade the Board that there were material changes in his position which warranted its reallocation from salary grade 30 to 32, or that there were substantial or material changes in his position which would require the Board to render a different decision in 1995 from that it made in 1991. The appellant failed to produce evidence or offer argument to persuade the Board that his position was more comparable to that of the Administrator in the Groundwater Protection Bureau than to that of the Administrator in the Water Supply Engineering Bureau.

The appellant also failed to provide sufficient evidence supporting his assertion that the Supervision or Impact factors were improperly evaluated at the 5th level, or to persuade the Board that his position as Administrator of the Subsurface Systems Bureau within the Division of Water Supply and Pollution Control, has agency-wide, or division-wide responsibility rising to the level of the 6th degree for Impact or Supervision. Some of the responsibilities which former Commissioner Varney cited as justifying the increased assessment of these two factors included the following: "...providing input during the development and evaluation stages of

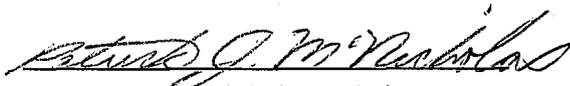
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Agency wide personnel issues established by the Commissioner and Human Resources Administrator," "interfacing with numerous other agencies such as the Office of State Planning, the Attorney General's Office, Soil Conservation Service...," "...overseeing the interaction and coordination of related permit programs within DES," "routinely and independently writes, edits, and testifies on proposed and existing legislation that has statewide impact." (May 25, 1994, Notice of Appeal) Those types of assignments are adequately described by the 5th level for Supervision and Impact, and are well within the scope of work for an Administrator III.

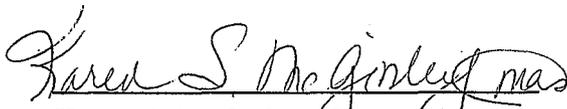
Accordingly, the Board voted unanimously to deny Mr. Evans' appeal. To the extent that the Director's proposed findings of fact and rulings of law are consistent with the foregoing, they are granted. Otherwise, they are denied.

Accordingly, the Board voted unanimously to deny his appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett, Commissioner

  
Karen S. McGinley, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Dr. Edward Schmidt, Director, Division of Water Supply and Pollution Control  
Joy Dean O'Connor, Human Resources Administrator, Environmental Services

Appendix 1

Subsurface Svstems Bureau

1 Chief Water Pollution Sanitarian - s.g. 26  
1 Civil Engineer V - s.g. 29 (position vacant)  
1 Civil Engineer VI - s.g. 31  
1 Clerk III - s.g. 7  
1 Engineering Technician III (part time/temp.) s.g. - 15  
1 Environmentalist IV - s.g. 26  
1 Environmentalist III - s.g. 22  
1 Secretary Typist I - s.g. 5 (position vacant)  
1 Soils Engineer II - s.g. 20  
1 Water Pollution Sanitarian Trainee - s.g. 15  
11 Water Pollution Sanitarian II - s.g. 18 (2 positions vacant)  
6 Water Pollution Sanitarian I - s.g. 16 (1 position vacant)  
1 Word Processor Operator II - s.g. 11  
3 Word Processor Operator I - s.g. 8

Water Supply Engineering Bureau

1 Civil Engineer V - s.g. 29  
1 Clerk III - s.g. 7  
1 Clerk II (part-time) - s.g. 4  
1 Data Management - s.g. 22  
1 Environmental Technician I s.g. 8  
1 Environmental Technician II (part time) s.g. 11  
1 Environmental Technician II - s.g. 11  
1 Environmental Technician III (part-time) s.g. 13  
1 Environmental Technician III - s.g. 13  
1 Environmentalist I (vacant) s.g. 15  
1 Environmentalist II - s.g. 18  
1 Environmentalist IV - s.g. 26  
1 Environmentalist IV (vacant) s.g. 26  
1 Paralegal (part-time temporary)  
1 Sanitarian I - s.g. 16  
1 Sanitary Engineer II (part time) s.g. 27  
2 Sanitary Engineer II - s.g. 27  
2 Sanitary Engineer III - s.g. 30  
1 Senior Clerk Interviewer - s.g. 9  
1 Senior Engineer (salary letter grade L)  
1 Water Pollution Sanitarian II - s.g. 18  
1 Word Processor Operator II - s.g. 11  
2 Word Processor Operator I - s.g. 8

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Groundwater Protection Bureau

1 Account Steno II - s.g. 9  
1 Administrator II s.g. 28  
1 Civil Engineer IV - s.g. 26  
1 Civil Engineer VI - s.g. 31  
1 Clerk III - s.g. 7  
1 Engineering Technician IV s.g. 18  
1 Environmentalist I - s.g. 15  
2 Environmentalist II - s.g. 18  
5 Environmentalist III - s.g. 22  
4 Environmentalist IV s.g. 26  
1 Hydrogeologist II - s.g. 22  
9 Hydrogeologist III - s.g. 26  
2 Hydrogeologist IV - s.g. 31  
1 Librarian II (PT) s.g. 20  
1 MIS Analyst Programmer I - s.g. 25  
1 Pl. Technician I - s.g. 13  
1 Soils Engineer III - s.g. 30  
2 Supervisor VII - s.g. 27  
1 Supervisor VII - s.g. 28  
1 Water Pollution Sanitarian I s.g. 16  
1 Water Pollution Biologist - s.g. 23  
2 Word Processor Operator I - s.g. 8  
1 Word Processor Operator II - s.g. 11

Proposed additional positions:

Administrator II s.g. 28  
2 Civil Engineer III s.g. 22  
Civil Engineer IV - s.g. 26  
Civil Engineer V - s.g. 29

