

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEAL OF LEROY FRENCH DOCKET #92 - C-8 NEW HAMPSHIRE LIQUOR COMMISSION

JUNE 11, 1993

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, March 17, 1993, to hear the classification appeal of Leroy French, an employee of the New Hampshire Liquor Commission. Mr. French, who appeared pro se appealing the Director of Personnel's decision denying his request to reclassify and upgrade his position of Warehouse Superintendent (salary grade 20) to Director of Warehousing and Transportation (salary grade 25), a classification which had been abolished. Virginia Lambertson, Director of Personnel, appeared on behalf of the Division of Personnel.

Mr. French's original request for reclassification was received by the Division of Personnel on October 21, 1991. A classification review and desk audit was completed by the Division, resulting in a decision by the Director dated February 7, 1992, in which the Director found the appellant's position was properly classified as Warehouse Superintendent, and that his duties and responsibilities were adequately compensated at salary grade 20. In that decision, the Director agreed to revise the specification for the class "Warehouse Superintendent" to more accurately and completely define the duties and responsibilities of the position.

By letter dated February 25, 1992, Mr. French appealed the Director's decision to the Board, noting, however, his understanding that the agency intended to request reconsideration of the Director's decision. The Liquor Commission did request reconsideration, citing operational changes and increased responsibility in Mr. French's position as a result of the Bailment Program which the Commission had instituted at the warehouse. When the original request for reconsideration was denied, the Liquor Commission again requested that the Director reconsider her decision. By letter dated August 17, 1992, the Director responded to the Liquor Commission, approving upgrading of the classification "Warehouse Superintendent" from salary grade 20 to salary grade 22. In accomplishing the upgrading, the Division approved increasing the points allocated to the evaluation factors of Independent Action, Working Conditions and Physical Demands. However, the Director affirmed her decision that the duties and responsibilities of the position were best described by the class title of Warehouse Superintendent.

A hearing on the merits of Mr. French's appeal was scheduled before the Board on March 17, 1993. The Director initially objected to any discussion of the materials submitted by Mr. French, as he had failed to provide copies of those materials to either the Board or the director

within twenty days of filing his appeal as required by the Board's procedural rules. The Board offered to hear the appeal and receive the materials offered into evidence, or continue the matter and allow the Director time in which to review the appellant's evidence. The Director waived the opportunity to have the matter continued. Mr. French testified on his own behalf. The Director of Personnel testified on behalf of the Division of Personnel.

At the conclusion of the hearing, the Director submitted requests for findings of fact and rulings of law detailing the dates of relevant communications between her Division and the Liquor Commission, and asserting that the information presented to her in the original request for reclassification and two subsequent requests for reconsideration convinced her that Mr. French's position of Warehouse Superintendent should be upgraded from salary grade 20 to salary grade 22. The fact that the Personnel Director was convinced her decision was appropriate does not necessitate an identical finding by the Board.

The proposed "facts" submitted by the Director simply support a conclusion that the Director's decision was predicated upon her analysis of the classification request. However, the director did not submit proposed findings of fact detailing the basis for her convictions; i.e., that material changes in the duties and responsibilities of the Warehouse Superintendent position warranted increasing the points allocated to the evaluation factors of Independent Action, Working Conditions or Physical Demands. Similarly, the proposed findings of fact provide no rationale for finding that there should or should not have been changes to the remaining evaluation attributes because of the nature of the duties or material changes therein.

RSA 21-I:57 provides for appeal by employees, department heads, or both, affected by the allocation of a position in a classification plan. The statute, in pertinent part, provides the following:

If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state.

None of the proposed facts address any comparison of this appellant's responsibilities and duties to those of similar positions throughout the state. Further, the proposed findings of fact do not address the allocation of this position within the classification plan itself.

If the board determines that an individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction. Ibid.

Inasmuch as the proposed findings of fact offer no basis upon which to decide the propriety of the director's decision within the framework of the classification plan or the director's rules, they offer no basis upon which to either grant or deny the proposed rulings of law as they relate to the classification decision itself. Therefore the Board made its own findings based on the evidence received at the hearing.

The Board found that a request was made to upgrade Mr. French's position, that a review was conducted, that the employee and agency took exception to the Director's decision, that the Director reconsidered the decision twice, and that the Director ultimately decided to upgrade Mr. French's position from salary grade 20 to salary grade 22. The Director offered no evidence that Mr. French's position was compared to other positions in State government, and provided little testimony regarding the analysis performed which led to her conclusion that the

position should be reallocated from salary grade 20 to salary grade 22. Therefore, the Board had to draw its conclusions by reviewing the evidence presented orally by both parties, and the documents submitted by each party at the time of the hearing.

Mr. French's classification questionnaire listed institution of the Warehouse Bailment Program as the event which precipitated a permanent change in the duties of his position, as well as a reduction in staff and loss of an assistant due to budget reductions. He defined the basic purpose of his position as "Responsible for supervision of warehousing (Liquor), receiving and shipping." Mr. French is the only employee in his agency holding the title of Warehouse Superintendent.

The Supplemental Job Description for Mr. French's position describes the scope of work as follows:

To conduct supervisory and administrative work involving large scale storekeeping and shipping in two central warehouses, the State Liquor Warehouse, Concord, NH and Law Warehouses, Inc., Nashua NH.

Director Lamberton (formerly Vogel) wrote to the Liquor Commission on February 7, 1992, explaining her rationale for denying Mr. French's reclassification request. She advised the Commission that the classification of Director of Warehousing and Transportation, salary grade 25, had been abolished, making the class specification for that position unavailable for review. She advised the Commission that a comparison of the information contained in Mr. French's questionnaire was compared to the Specification for Warehouse Superintendent, and that most of the duties Mr. French described in his questionnaire were listed on that class specification. Furthermore, the Personnel Director indicated that the managerial functions which had previously been performed by the Director of Warehousing and Transportation had been assumed by the Administrator III position held by Scott Atherton.

In its April 2, 1992 request for reconsideration, the Liquor Commission responded that while some of the duties of the former Director of Warehousing and Transportation were assumed by the Administrator III, others had been delegated to Mr. French. The Commission indicated the Warehouse Superintendent had direct supervisory responsibility for administrative staff, including an Administrative Assistant I, Account Technician and Account Clerk. Further, the Commission also highlighted the bailment inventory procedures which had had an impact on Mr. French's position, making him responsible for reporting or communicating with 20 bailment brokers, insisting that errors and overages or shortages would have a greater impact on state revenue under the new system. They suggested further consideration should be given to the factors of complexity, independent action, communication and impact. They also suggested that working conditions for the position be reconsidered, as well as an increase in day-to-day supervisory responsibilities. In spite of those recommendations, the Director responded on May 14, 1992, that the position analysis performed would only support classification of the position at the level of Warehouse Superintendent, which was properly allocated at salary grade 20.

The Commission requested further review, which the Director completed on August 17, 1992. In her decision of that date, the Director agreed, in light of the changes in operation and increase in responsibility as a result of the Bailment Program, the classification should be reallocated to salary grade 22. She increased the factors of Independent Action, Working Conditions and Physical Demands.

In support of his appeal, Mr. French testified that he reports directly to the Liquor Commission, and has only a minimal reporting relationship to the Administrator III. He argued that his

and has only a minimal reporting relationship to the Administrator III. He argued that his reporting to Mr. Atherton was ordered by the Commission only to justify upgrading Mr. Atherton's position, but that Mr. Atherton had no more supervisory control of the Warehouse Superintendent position than any of his predecessors.

In his written submissions, Mr. French offered his opinion of the appropriate evaluation levels for the factors of Skill, Knowledge, Supervision, and Communications, suggesting that each factor be increased by a minimum of one level. Mr. French also offered a comparison of his position of Warehouse Superintendent and its allocation at salary grade 22 to the classifications of Purchasing Agent (salary grade 23), Supervisor III (salary grade 22), Business Administrator III (salary grade 26), MIS Analyst/Programmer I (salary grade 25), MIS Analyst Programmer II (salary grade 27), and Human Resources Administrator (salary grade 25). However, he offered no meaningful comparison of his duties to the responsibilities of each of those positions.

Ms. Lamberton asked the Board to remember that classification decisions are based on the minimum entry requirements for a position, and can not take into consideration the skill acquired by an incumbent in performing the duties of the position to which appointed.

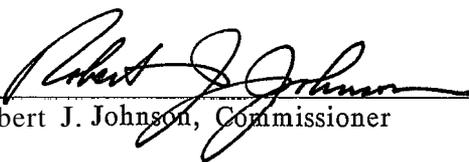
The appellant failed to offer persuasive evidence that his position should have been reallocated from Warehouse Superintendent, salary grade 20 to salary grade 25. Although the Director failed to supply any rationale for upgrading the position from salary grade 20 to salary grade 22, the Board has insufficient evidence to determine that there is an error in the classification which would warrant ordering the director to make a correction.

Accordingly, the Board voted to deny Mr. French's appeal, finding that he had offered insufficient evidence to warrant an order that the director make a correction as set forth in RSA 21-I:57.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
George Liouzis, Human Resources Administrator, Liquor Commission  
Leroy French, Warehouse Superintendent, Liquor Comm