

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF JOHN E. JARVIS
DOCKET #99-C-2
DEPARTMENT OF LABOR

October 6, 1999

The New Hampshire Personnel Appeals Board (Wood, Johnson and Barry) met on Wednesday, August 25, 1999, under the authority of RSA 21-I:57, to hear the appeal of Jack Jarvis, an employee of the Labor Department. Mr. Jarvis, who appeared pro se, was appealing the Personnel Director's decision denying his request for reclassification from Supervisor III, salary grade 22, to a classification in the Administrator series. Virginia Lamberton, Director of Personnel, appeared on behalf of the Division of Personnel.

The appeal was heard on offers of proof by the parties. The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State's Exhibits

- A. Letter dated February 23, 1998 from Jack Jarvis to the Division of Personnel
- B. Position Classification Questionnaire completed by Jack Jarvis
- C. Organizational Chart, Department of Labor
- D. Supplemental Job Description, dated 7/1/94
- E. Supervisor III Job specification
- F. Administrator I Job Specification
- G. Administrator II Job Specification
- H. Point Evaluations
- I. Decision of the Director of Personnel
- J. Request for Reconsideration
- K. Response to Request for Reconsideration

Appellant's Exhibits

1. Class evaluation performed by the Commissioner of Labor and the appellant for the appellant's position
2. Organizational chart for the Department of Labor
3. Printed copy of the department's Web Site, showing the appellant as leading a division
4. Letters from businesses and associations expressing appreciation for services he had provided
5. Copy of the Letter to Director Lamberton requesting reconsideration of the original denial of his reclassification request
6. Copy of RSA 281-A:64-b creating the position currently occupied by the appellant

The appellant offered into evidence a letter dated August 18, 1999, with attachments, addressing "significant changes [that] have, or are about to occur," in his position. The Board declined to accept those documents, explaining that its authority to hear and decide classification appeals is limited to a review of the Director's decision and the information and evidence that was available to her at the time that the classification decision was made. Therefore, the only evidence that the Board can consider is the evidence and information that was available to the Director at the time of her review. Changes to a position occurring after the date of the Director's decision could not have formed part of her review of the position, and therefore are not admissible.

Mr. Jarvis argued that in his position as the Manager of Safety and Training, he is responsible for administration of programs under RSA 277, Public Employee Safety and Health; RSA 277-A, Worker's Right to Know; RSA 281-A:64, Written Safety Programs and Joint Loss Management Committees; and RSA 278, Apprenticeship Programs in Trade and Industry. Mr. Jarvis argued that his position was equivalent to that of a Division Director within the Department of Labor, that he reported directly to the Commissioner of Labor rather than to any Division Director or Administrator, and that his duties and responsibilities far exceeded those of his current classification of Supervisor III, salary grade 22.

Mr. Jarvis argued that the legislature created the position he now occupies as a "Manager of Safety, Training, and Injury Prevention," salary grade 24.¹ He said that he was very surprised to

¹ "There is created within the department of labor the classified full-time position of manager of safety, training, and injury prevention who shall be under the direction of the labor commissioner. The position shall be at labor grade 24. The manager shall be responsible for mandatory workplace safety programs and for the development of effective multi-media workplace safety programs which shall be available to all employers." [RSA 281-A:64-b]

find that the position had been downgraded by the Division of Personnel from its statutory title and grade to Supervisor III, salary grade 22, and that he never received prior notification of the change.

Mr. Jarvis argued that on several occasions, he has been called upon to testify before the New Hampshire House and Senate on pending legislation. He stated that he develops administrative rules, presents rulemaking requests to the Joint Legislative Committee on Administrative Rules, and ensures that the rules remain in effect and up-to-date. Mr. Jarvis said that he is responsible for ensuring that the Safety Inspectors who report to him receive appropriate training and guidance. He said that following an inspection, he is personally responsible for assessing civil penalties if appropriate, and is authorized to hold "first phase informal hearings on civil penalties." He stated that the Commissioner also has authorized him to reduce or waive civil penalties after they have been issued.

Mr. Jarvis said that his position compares favorably with the classification for Administrator II in that he evaluates state and federal regulations in relationship to the apprenticeship program, and studies safety issues on a national level to ensure that any revisions to New Hampshire's programs are in conformance with changes at the federal level. He stated that he prepares and presents public defense of changes in policy for the agency. He stated that in addition to evaluating the work performance of safety professionals under his direction, he develops staffing plans for his work unit.

Personnel Director Virginia Lamberton argued that Mr. Jarvis' position is properly classified as a Supervisor III, salary grade 22. Ms. Lamberton said that it was not unusual for agencies to ask the Legislature to create a position with a specific title and grade, effectively circumventing the classification process. Nonetheless, she explained, all positions in the classified service are subject to allocation under the provisions of RSA 21-I:42, III. Ms. Lamberton said that when the position currently occupied by the appellant was created, it was part of a "fast-track" legislative package developed under the Merrill administration in an attempt to reduce Workers' Compensation premiums in the State in order to attract and retain businesses. She said that she had a "gentleman's agreement" with then Commissioner Richard Flynn that once the legislation was passed, the position would be reviewed to determine the appropriate title and grade within the classification plan. Ms. Lamberton said that the review and allocation occurred before Mr. Jarvis was appointed to fill the position, and the Division therefore would not have notified Mr. Jarvis prior to its establishment of an appropriate classification and salary grade.

Ms. Lamberton stated that the request for reclassification (State's Exhibit A) submitted in February, 1998, did not specify a class or grade being requested for reclassification. She said that in the request for reconsideration, however, it was clear that the appellant was asking for the position to be reclassified to Administrator II, salary grade 28. Ms. Lamberton said that when a reclassification request is vague, or makes no specific recommendation for reclassification, the Division of Personnel tries to look more "globally." In this case, she said, the Division compared the information in the appellant's request to the entire Administrator class series.

Ms. Lamberton said that the classification process includes a review of minimum qualifications to determine what level of education and experience an applicant for the position would need in order to certify as being minimally qualified for a vacancy in that position. She said that in this case, the Labor Commissioner indicated on page 5 of the classification questionnaire that the position should require a bachelor's degree and 4 years of experience, whereas the minimum qualifications for either Administrator I or Administrator II are a master's degree and six years of experience.

Ms. Lamberton said that the documents submitted to the Division of Personnel were consistent with the statutory enactment, in that there was no provision in the law for Safety, Training and Injury Prevention to be a separate Division of the Department of Labor. She said that under the provisions of RSA 21-G, the "Manager of Safety, Training and Injury Prevention" was specifically created as a classified position, not an unclassified Director as required by RSA 21-G for organization of executive branch agencies. Therefore, she said, despite the appellant's assertion that he heads a "division" of the Department of Labor, or the fact that the Commissioner considered the appellant to be a "direct report" at the time of the reclassification request, it had no bearing on the correct classification of the position itself. Ms. Lamberton argued that final authority for classification is vested in the Director of Personnel, and that after reviewing the appellant's duties and responsibilities in relationship to the classification plan, she determined that his position was properly allocated at Supervisor III, salary grade 22.

At the Board's request, the appellant discussed his duties in light of the proposed level/point assignments for each of the evaluation factors for his duties at the time of the classification review and decision. Upon review of the evidence, arguments and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The minimum Education and Experience requirements for the classification of Supervisor III are a bachelor's degree and 4 years of experience, or any equivalent combination of approved education and experience totaling 8 years.
2. Reclassification to either Administrator I or II would result in amendment of the minimum qualifications to include a Master's degree and 6 years of experience, with no allowance for equivalent combinations of education and experience.
3. In the request for reclassification submitted by the appellant and former Labor Commissioner Symonds, the Commissioner recommended a bachelor's degree and four years of experience as the appropriate minimum qualifications for the position under appeal.
4. The recommended and approved minimum qualifications are consistent with the class specification for Supervisor III, and are properly rated at the 4th degree for the classification evaluation factors of "Skill" and "Knowledge."
5. The appellant's position is currently allocated at level 4 for the factor "Impact." The evidence reflects that he is "...responsible for achieving direct service objectives by assessing agency service needs and making preliminary recommendations for development of alternative short-term program policies and procedures" as set forth in his current class specification and supplemental job description.
6. While there is evidence that the appellant participates in the long-range planning process for some functions within the Labor Department, his duties in relationship to the agency as a whole do not reflect that he is responsible for, "...achieving major aspects of long-range agency objectives by planning short- and long-term organizational goals, reviewing recommendations for procedural changes and developing or revising program policies." The appellant's summary of his responsibilities as outlined in his August 19, 1998, letter to Personnel Director Lambertson clearly relate to achievement of direct service objectives.
7. The appellant's supervisory duties are properly rated at the 4th level for "Supervision/Management." The evidence does not reflect that he is responsible for, "...delegating supervisory or program responsibilities to subordinate managers with overall accountability for hiring employees and approving program policies" as described by the specification for Administrator II. Instead, the evidence reflects that he is responsible for, "...direct supervision of programs or of employees doing work which differs from the supervisor, including disciplining employees, solving personnel problems, recommending hiring and firing employees and developing work methods.."
8. The appellant's duties are accurately described by the 5th level for the "Communication" factor, which, "Requires reviewing summaries and reports and making management level

decisions to solve problems or to achieve work objectives as well as articulating and expressing those solutions and goals..." The appellant's responsibility to testify before legislative committees accurately described by this level as, "...also requires formal presentations of solutions and goals to employees and the general public to increase the responsiveness of the agency toward the demands of its client system."

9. As described in his August 19, 1998, letter to the Director of Personnel, the appellant is engaged primarily in developing training programs, monitoring client/agency compliance with State regulations, promoting a safe and effective apprenticeship program, supervising three Safety Inspectors and managing the budget for his work unit. Those duties are accurately described by the 4th level for the "Complexity" factor, in that the appellant is responsible for, "coordinating a combination of diverse job functions in order to integrate professional and technical agency goals."
10. The appellant's duties and responsibilities are accurately described by the 4th level for "Independent Action," requiring, "objective assessment in analyzing and developing new work methods and procedures subject to periodic review and in making decisions according to established technical, professional or administrative standards."
11. Overall, the appellant's duties and responsibilities are accurately described by the specification for Supervisor III.
12. The evidence supports the allocation of the appellant's position as a Supervisor III, salary grade 22. It does not support reclassification of his position to Administrator I, salary grade 26 or Administrator II, salary grade 28.

Rulings of Law

- A. "The director shall establish a formal written class specification covering each position in the classified system. The purpose of the class specification shall be to identify the job functions, distinguishing factors, examination requirements, and the minimum qualifications which apply to all positions in the same class." [Per 301.02 (a)]
- B. "The duties and work assignments for each position in the state classified service shall be defined by a supplemental job description established by this rule." [Per 301.03 (a)]
- C. The supplemental job description shall be developed and updated by the appointing authority or the supervisor assigned by the appointing authority to oversee the work assignments of the position." [Per 301.03 (b)]
- D. "Any work assignment which affects more than 10 percent of the total working time of the position shall be listed on the description by the appointing authority, designated supervisor or the employee of the position in accordance with this rule." [Per 301.03 (c)]

- E. An employee's supplemental job description must include, "A statement of the scope of work for the position, which shall be related to the basic purpose section of the class specification and shall specify how the broad purpose of the specification translates into a specific role within the goals and objectives of the agency." [Per 303.03 (d) (6)]
- F. "There is hereby established within the department of administrative services the division of personnel, under the supervision of an unclassified director of personnel appointed under RSA 21-I:2, who shall be responsible for the following functions in accordance with applicable laws: ...III. Allocating the position of every employee in the classified service to one of the classifications in the classification plan. [RSA 21-I:42, III]
- G. "Allocation Review. – The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation. 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. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A. 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." [RSA 21-I:57]

Decision and Order

During a classification appeal hearing, it is often difficult to remember that classification involves positions and not people. Clearly, Mr. Jarvis has enjoyed the confidence of the Commissioners for whom he has worked, and has been given substantial latitude to carry out the department's statutory mandates in matters ranging from continuation of the apprenticeship program to development of safety, training and injury prevention programs for use in the public and private sectors. However, in reviewing the position allocation itself, the Board must focus on the basic requirements of the position itself in relationship to the Labor Department and the state as a whole, not on the appellant's enthusiasm, dedication and skills.

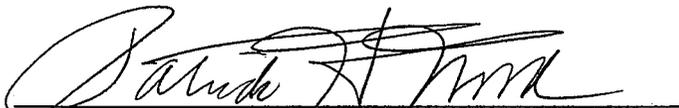
The appellant failed to offer evidence to support his assertion that "Safety and Training" is an actual Division of the Department of Labor warranting his reclassification to Administrator I or II. Although the position of "Manager of Safety, Training and Injury Prevention" was created with enactment of RSA 281-A:64-b, the language of the statute created the position under the

heading of "Workers' Compensation." The language of RSA 281-A:64-b makes no reference to a "Safety and Training Division." Instead, it lays out the purpose of the position as responsible, "...for development of mandatory workplace safety programs and for the development of effective multi-media workplace safety programs which shall be available to all employers."

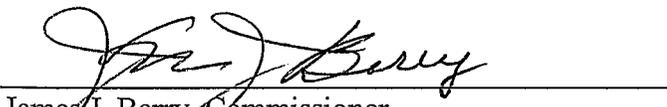
RSA 281-A:64-b did not exclude the position from allocation under the broader statutory authority vested solely in the Director of Personnel by RSA 21-I:42, III, to allocate every position in the State classified service. Therefore, the Director's decision to classify the position as a Supervisor III, salary grade 22, was clearly within her purview, and the preponderance of the evidence supports the Director's position that the appellant's position is properly classified as a Supervisor III, salary grade 22.

Having fully considered the parties' evidence, arguments and offers of proof, the Board voted unanimously to DENY Mr. Jarvis' reclassification appeal.

THE PERSONNEL APPEALS BOARD


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