

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF:

TIMOTHY DUNLEAVY Docket 99-C-16

AND

STEPHEN KACE Docket 99-C-17

Department of Safety, Bureau of Marine Patrol

January 19, 2000

The New Hampshire Personnel Appeals Board (Wood, Johnson and Rule) met Wednesday, September 8, 1999, under the authority of RSA 21-I:57, to hear the classification appeals of Sergeant Timothy Dunleavy and Sergeant Stephen Kace, employees of the Department of Safety, Bureau of Marine Patrol. The appellants were appealing the Director's March 30, 1999, decision denying the agency's request to increase the salary grade for the position of Marine Patrol Sergeant from salary grade 16 to salary grade 22. The appellants were represented by SEA Field Representative, Jean Chellis. The State was represented by Virginia Lainberton, Director of the Division of Personnel. Without objection, the appeal was heard on offers of proof by the representatives of the parties.

The record in this matter consists of the audio tape recording of the hearing, pleadings submitted by the parties prior to the hearing, and documents admitted into evidence at the hearing. Those documents were admitted as follows:

Appellant's Exhibits

1. The March 30, 1999, letter to Claude Ouellette from Director Lamberton regarding her decision on the position review of Marine Patrol Sergeant

2. The position classification questionnaire completed by Sergeant Stephen A. Kace in May of 1998
3. The class specification for Marine Patrol Sergeant
4. The supplemental job description for Marine Patrol Sergeant Position Number 9T500 approved by Director Lamberton on March 29, 1999
5. Point distribution information for selected class titles from the December 2, 1997 Administrative Services list
6. Division of Safety Services Organization Chart
7. A September 16, 1986 memorandum from Thomas F. Manning to Director of Division of Safety Services Robert Danos regarding Boating Education Officer
8. An October 1, 1992 letter to ~~Henry~~ Descoteau from Virginia A. Vogel regarding Position #9T500

State's Exhibits

- A. Memo dated June 9, 1998 from Claude Ouellette to Director Lamberton
- B. Memo dated October 8, 1998 from David Barrett to Director Lamberton
Position Classification Questionnaire for positions #9T500 and #8T624, Marine Patrol Sergeant
Proposed supplemental job description for positions #9T500 and #8T624
- E. Organization chart for Division of Safety Services
- F. Decision letter to Claude Ouellette dated March 30, 1999
- G. Letter of appeal dated April 14, 1999
- H. May 4, 1999 letter to Virginia Lamberton from Jean Chellis
- I. Class specification for Marine Patrol Sergeant
- J. Current and proposed Point Factors for Marine Patrol Sergeant

Ms. Chellis argued that contrary to the Director's decision, there had been sufficient change in the appellants' job duties to warrant a reallocation of several classification evaluation factors, and she asked the Board to rule on each of them individually as follows:

Knowledge, increase from 60 points to 85 points

Supervision, increase from 15 points to 40 points

Physical Demands, increase from 20 points to 25 points

Working Conditions, increase from 25 points to 60 points

Complexity, increase from 50 points to 80 points

Independent Action, increase from 30 points to 55 points

Ms. Chellis argued that the appellants are required to "reconstruct fatal boating accidents, use highly technical equipment such as navigational and speed radar and maintain a working knowledge of District Court procedures and rules of evidence." She argued that although the duties performed by Marine Patrol Sergeants might be properly allocated at the 4th level for the "Knowledge" factor, the more appropriate allocation would be level 5 which, "Requires logical or scientific expertise to resolve problems of a specialized or professional nature." She also argued that in the performance of their duties, Marine Patrol Sergeants provide direct supervision "for numerous programs that involve sworn patrol officers, unsworn patrol officers and civilian volunteers in the areas of law enforcement, investigations and public education." She argued that the appellants are responsible for disciplining subordinates, for making employee hiring and termination decisions, and completing employee performance evaluations. She argued that the duties supported a reallocation from level 3 to level 4.

Ms. Chellis argued that the "Physical Demands" and "Working Conditions" factors should be reallocated from levels 3 and 4 to levels 4 and 5 respectively. In support of that assertion, she argued that the positions require "heavy work, including continuous work such as frequent bending, lifting or climbing." She also argued that they perform their regular job assignments in "extremely disagreeable or dangerous working environments by doing so in open boats on New Hampshire's lakes and sea coast." She asked the Board to find that the appellants are also exposed to occupational accidents, injuries, blood, other bodily fluids, airborne pathogens, or disease which could result in total disability or death."

Finally, Ms. Chellis asked the Board to order a correction in the allocation of the "Complexity" and "Independent Action" factors. She argued that the appellants often function as the senior officer for the entire state and, as such, would be charged with handling multiple calls involving fatal collisions, drownings, suicides, arrests, calls of complaints, and the assignment of department resources as needed." Ms. Chellis argued that the appellants are not simply making routine decisions. Rather, she asserted, their decisions must be based upon the application of professional standards when determining what

*TIMOTHY DUNLEAVY Docket 99-C-16
AND*

STEPHEN KACE Docket 99-C-17

Department of Safety, Bureau of Marine Patrol

Page 3 of 8

department resources to allocate and what other local, State or federal agencies should be involved in such tasks as fatal accident investigation and reconstruction.

Ms. Lamberton argued that although the appellants might be dealing with a longer boating season, greater turnover in seasonal staff, growing numbers of larger, faster marine craft, potential increase in crime and requirements for performance of mandatory boater education, those changes were indicative of an increased volume of work, not a change in the basic nature of the jobs that would require their reclassification or reallocation.

The table below depicts the degree allocations and point factor ratings from the classification plan for positions of Marine Patrol Sergeant. Highlighted sections represent those factors in dispute:

MARINE PATROL SERGEANT	CURRENT ALLOCATION	PROPOSED ALLOCATION
SALARY GRADE	16	22

FACTOR	LEVEL	POINTS	LEVEL	POINTS
SKILL	3	45	3	45
KNOWLEDGE	3	60	4	85
IMPACT	3	20	3	20
SUPERVISION/MANAGEMENT	3	25	4	40
WORKING CONDITIONS	4	35	6	60
PHYSICAL DEMANDS	3	20	4	25
COMMUNICATION	4	35	4	35
COMPLEXITY	3	50	4	80
INDEPENDENT ACTION	3	30	4	55
TOTAL EVALUATION POINTS		300		445

Having considered the evidence, argument and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The Evaluation Manual defines "Knowledge" as "the combination of preparation and learning through formal education or through experience in a position which requires formal education necessary to perform specific job functions. This factor measures the educational background or technical knowledge required to meet the minimal job performance standards."
2. The class specification for Marine Patrol Sergeant requires an applicant to possess an associate's degree or 60 credit hours, preferably in Criminal Justice, Police Science, or related field. According to the Technical Assistance Manual, an Associate's degree is equivalent to level 3 for the "Knowledge" factor.
3. The class specification for Marine Patrol Sergeant requires an applicant to have two years experience in a marine law enforcement agency. Each additional year of approved work experience may be substituted for one year of required formal education. Applicants must also possess a valid New Hampshire driver's license and certification as a full-time law enforcement officer by the New Hampshire Police Standards and Training Council. According to the Technical Assistance Manual, the requirement for two years of experience could be rated by the "Skill" factor at either level 3 (two to four years of experience), or could be reduced to level 2 (one to two years of experience).
4. The appellants' positions are currently rated at level 3 for "Supervision/Management" and they have requested an increase to level 4. The Evaluation Manual defines supervision as "...training, guiding, and directing the efforts of state employees, as well as managing the functional activities of an organizational unit. This factor measures organizing, planning, and scheduling the work of subordinates, including the responsibility for performance appraisal, in order to achieve organizational goals."
5. Although the appellants indicate that they make recommendations for hiring and terminating employees, the evidence does not support allocation overall at level 4 in that they are not responsible for supervision of programs or of employees doing work that differs from their own, nor are they responsible for developing the unit's work methods and managing the work unit.
6. The Technical Assistance Manual indicates that in order to be considered a "working condition" a specific physical condition to which a worker is exposed while performing assigned duties and tasks must be present at least 20% of the time during the basic workweek. The evidence does not support a finding that 20% or more of the appellants' basic work week is spent performing "regular job

*TIMOTHY DUNLEAVY Docket 99-C-16
AND*

*STEPHEN KACE Docket 99-C-17
Department of Safety, Bureau of Marine Patrol*

assignments in an extremely disagreeable or dangerous working environment with continuous exposure to an uncontrollable number of hazardous elements, including occupational accidents, injuries, or diseases which result in total disability or death."

7. The current allocation at level 4 properly addresses the working conditions in that it, "Requires performing regular job functions in an adverse working environment containing a combination of disagreeable elements which impact significantly upon the employee's capacity for completing work assignments. This level includes work-related accidents or assault."
8. The appellants have requested an increase from level 3 to level 4 for the "Physical Demands" factor.
9. "Physical demands" at level 4 entails "continuous physical exertion [more than 75% of total work time] in a taxing work position such as frequent bending, lifting, or climbing." Although there is evidence of physical exertion, activities such as bending, lifting or climbing do not represent 75% or more of the appellants' total working time.
10. The appellants have requested an increase in the allocation of the "Complexity" factor from level 3 to level 4. According to the Evaluation Manual, "Complexity means the combination of specific job functions in relation to the overall structure and purpose of the job. This factor measures the diversity of the tasks performed, the application of fundamental principles to solve specific problems, and the level of judgment required to apply knowledge acquired through training and experience."
11. The evidence reflects that the appellants' job assignments do require "coordinating a combination of diverse job functions in order to integrate professional and technical agency goals." The nature of the work assigned also reflects that the appellants must use "considerable judgment to implement a sequence of operations or actions."
12. The nature of the work performed warrants a reallocation of the "Complexity" factor from level 3 to level 4.
13. The appellants' positions are currently rated at level 3 for "Independent Action."
14. "Independent Action" is defined by the Evaluation Manual as "...the amount of decision making, initiative, and responsive effort required in originating new or more efficient work methods and procedures. This factor measures the type, frequency, and priority of well-defined alternatives and the extent to which instructions or policies guide action in selecting and applying strategies to enhance service delivery of the agency."

15. Viewed in light of the overall chain of command within the Marine Patrol, the evidence does not support a reallocation of the "Independent Action" factor from level 3 to level 4 which, "Requires 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." The appellants are responsible for operational decisions involving a variety of policies and procedures. However, the evidence does not support a finding that they are responsible for analysis or development of policies or procedures that would warrant the requested increase.

Rulings of Law

- 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]
- B. The position classification plan, which is exempt from rulemaking under RSA 21-I:43, II(a), shall be the plan as defined in this rule. [Per 301.01(a)]
- C. The standard for allocating the position of every employee in the classified service shall be the position classification plan, which is prepared and revised by the director under RSA 21-I:42, II. [Per 301.01(b)]
- D. The position classification plan shall consist of the following:(1) A complete set of published class specifications established under Per 301.02 grouped alphabetically by class title; and (2) The evaluation plan and point factors used to write class specifications and classify positions, which is listed in the technical assistance manual. [Per 301.01(c)]
- E. The request for a classification determination shall include at least the following: (1) A copy of the description annotated to reflect the proposed changes; and (2) A written statement which includes an explanation of how the proposed change is related to corresponding changes in the agency's goals, objectives, structure, and organizational chart. [Per 301.031 (m)]

Decision and Order

On the evidence, arguments and offers of proof, the Board found that the increased need for recruitment and training of seasonal staff and mandated boater education, combined with an increase in the number, size and speed of marine craft have increased the complexity of the positions sufficiently to warrant reallocation of the "Complexity" factor. Therefore, the Board voted unanimously to GRANT the appeal in part, increasing the over-all points assigned to the positions from 300 points to 330 points, resulting in a reallocation of the positions assigned to the classification from salary grade 16 to salary grade 18.

THE PERSONNEL APPEALS BOARD


Patrick H. Wood, Chairman

- Lisa A. Rule, Commissioner


Robert J. Johnson, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
Jean Chellis, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303
Claude Ouellette, Human Resources Administrator, Department of Safety, 10 Hazen Dr., Concord,
NH 03305