

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF ANN KENNARD
DEPARTMENT OF RESOURCES AND ECONOMIC DEVELOPMENT
DOCKET #95 - C-6

January 9, 1996

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, November 15, 1995, under the authority of RSA 21-I:57, to hear the appeal of Ann Kennard, an employee of the Department of Resources and Economic Development. Ms. Kennard, who appeared pro se, was appealing the Division of Personnel's May 26, 1995, final decision reclassifying Ms. Kennard's position in the Office of Travel and Tourism Development from Advertising Specialist, salary grade 24, to Promotion Specialist, salary grade 22. Virginia A. Lamberton, Director, and Michael McAulay appeared on behalf of the Division of Personnel.

The documentary evidence submitted by the parties prior to the hearing for the Board's review included the following:

1. Position Classification Questionnaires completed by Ann Kennard and Andrea Tindal
2. Class specification and point evaluations for Promotion Specialist and Advertising Specialist
3. Inter-department communication dated 10/10/94 from Norman B. Storrs to Virginia Lamberton, re: Office of Travel and Tourism Development
4. Letter dated 5/4/95 from Virginia Lamberton to Norman B. Storrs, re: Director's Decision Pursuant to Per 303.04
5. Letter dated 5/17/95, from Ann Kennard to Virginia Lamberton, re: Request for Reconsideration
6. Letter from Virginia Lamberton to Ann Kennard dated May 26, 1995, re: Reconsideration of Personnel Director's Decision
7. Supplemental job descriptions for Promotion Specialist, approved April 27, 1995, and Advertising Specialist dated April 27, 1995.
8. Organizational chart - Division of Economic Development 7/1/94
9. June 8, 1995, letter of appeal from Ann Kennard to the New Hampshire Personnel Appeals Board
10. New Hampshire Film and Television Bureau informational materials
11. Assorted newspaper clippings featuring Ms. Kennard, Film Bureau activity, or travel and tourism information

The documentary evidence reflects that on November 10, 1994, Norman B. Storrs, Director of the Division of Economic Development, wrote to Personnel Director Lamberton concerning staffing in the Office of Travel and Tourism Development. In his letter, Mr. Storrs asserted that the Tourism Director had pointed out several positions which he felt were incorrectly classified. Mr. Storrs stated, in part:

"An example of this is the Promotion specialist's evaluation (position 11491), which noted that the class code 7315-22 did not accurately reflect the accountabilities of the supplemental job description. This is also true of position #11495...

"It is my understanding that this problem has been inherited by the current supervisor and although he has tried to correct it by revising supplementals, this was unsuccessful. I would like to request, at this time, that your office look at all permanent positions within OTTD in order to propose more meaningful classifications, and recommend a plausible course of action."

In her oral presentation to the Board, Ms. Lamberton asserted that Chris Jennings, then Tourism Director, had discussed this issue with her approximately one year earlier and had advised her that in the Office of Travel and Tourism Development, Andrea Tindal who was classified as a Promotion Specialist (salary grade 22) was actually performing the duties and responsibilities of the Advertising Specialist (salary grade 24) position occupied by Ms. Kennard. Ms. Lamberton said that Mr. Jennings had hoped to simply "switch" the titles and supplemental job descriptions to more accurately reflect the work the two employees performed. She said that when she explained how his proposal would actually result in an immediate promotion of Ms. Tindal, and an immediate demotion without warning of Ms. Kennard, Mr. Jennings elected not to pursue the issue. However, when Mr. Storrs assumed responsibility for the Division of Economic Development, he did request that some correction occur.

Ms. Lamberton said that both Ms. Tindal and Ms. Kennard completed classification questionnaires as requested by the Division of Personnel. A field audit was conducted as well, which included interviews with both Ms. Kennard, Ms. Tindal and their supervisors. The review disclosed that Ms. Kennard's responsibilities were more accurately described by the Promotion Specialist classification. Part II of Ms. Kennard's classification questionnaire, completed by Chris Jennings, Director of Tourism, described the major changes in duties that had occurred in the position since it was established or last reviewed as follows: "Deals with promotion not advertising - does not reflect supplement to job classification of Advertising Specialist." Part III of the questionnaire, completed by Kenneth Plourde, Administrator IV of the Department of Resources and Economic Development, described the basic purpose of Ms. Kennard's position as follows: "Promotes the State for tourism through press releases and

editorial/pictorial information."

Ms. Kennard stated that more than twelve years ago when she was hired, Michael Power, then Director of Travel, did most of the ad agency work. At that time, there also was an incumbent assigned to the Film Bureau, permitting Ms. Kennard to concentrate her own efforts on writing. However, Ms. Kennard reported that during her first week on the job, federal funding for the Film Bureau was eliminated, the incumbent assigned to the film bureau left the agency, and the appellant found herself having to refocus her efforts to include contact with the film industry. She said that over time, the Travel Director continued to handle the advertising end of the business, another employee dealt with developing and distributing travel and tourism materials to rest areas and tourist information facilities. Over time, more of Ms. Kennard's job responsibilities were geared toward promoting the State through travel columns, radio broadcasts and film bureau activities. Ms. Kennard said that while there are other positions in the State doing promotional work, hers is the only statewide position which is responsible for focusing on two distinct specialities: promoting travel and tourism, and encouraging more activity in the State by the film industry.

Ms. Kennard argued that the review of her position placed too much emphasis on the limited number of supervisory and administrative accountabilities associated with her work as compared to Ms. Tindal's job. She also argued that the review did not take into consideration her creativity or the positive impact that her position has on the State's economy when she succeeds in bringing film crews into the State to work. Ms. Kennard said that she was not upset when Andrea Tindal's position was upgraded. However, she said that the Board needed to understand that both her job and Ms. Tindal's job had been allowed to evolve in ways which would best utilize their particular talents. She argued that it would be unfair to downgrade her position simply because it had evolved to focus on promotional activities rather than advertising when so many of the actual job functions were similar.

Ms. Kennard argued that while Ms. Tindal handles the group tour element, Ms. Kennard handles press tours. Where Ms. Tindal works with other employees and committees to select and distribute informational materials for display at rest areas and trade shows, Ms. Kennard maintains photo files for the State travel promotions and attends an annual conference for film industry contacts. She said that while Ms. Tindal handles the advertising agencies, her own position requires her to deal with the film industry, and where Ms. Tindal has "one-on-one" administrative and supervisory responsibilities for employees of the agency, Ms. Kennard maintains "one-on-one contact" with newspaper and travel publication staff and members of the media. She suggested that their jobs should be rated comparably, again arguing that what her job lacks in supervisory and administrative responsibilities, it demands in creativity and

innovation.

Ms. Kennard's submission entitled "Proposed Supplemental Job Description" describes the evolution of her position as follows:

"The classification of my job 'Advertising Specialist' has long been inappropriate to my major duties which, for all practical purposes, focus on publicity and public relations and include being primary contact for New Hampshire's ever-expanding film and television business. 'Communications Specialist' would perhaps prove a more encompassing designation, with in-house titles of Publicity Director/Film and Television Bureau Director."

To better understand the nature of Ms. Kennard's position, the Board reviewed the appellant's classification questionnaire in relationship to "Basic Purpose" and "Characteristic Duties and Responsibilities" listed for the classifications of Advertising Specialist and Promotion Specialist. The Advertising Specialist's basic purpose and duties are described as follows:

To coordinate the development, implementation and evaluation of promotional programs including paid media advertising campaigns.

Guides the advertising agency in the planning and executing of all seasonal advertising campaigns in print, broadcast and other media.
Estimates requirements for printed material and supervises the design, production, printing and distribution of this material.
Assists in developing state advertising programs and travel shows in cooperation with regional associations, chambers of commerce and the private sector.
Stimulates and develops group tour business, including the coordination of familiarization tours, developing travel itineraries and supervising the design of travel displays.
Maintains accurate expense records while doing field work which includes staffing promotional shows and attending conferences.

The Promotion Specialist's basic purpose and characteristic duties are described as follows:

To coordinate public relations programs relative to media and to develop publicity literature and other promotional programs.

Coordinates information-gathering required for issuance of data and literature relating to tourism and travel.
Participates in broadcast and print media programs to represent the best interest of the state's travel business.
Coordinates media publicity and photographic library including designing and conducting press and photo trips throughout the state.

Maintains and updates annually media list data bases and photographic data.
Represents the department by meeting with travel-oriented organizations and individuals both within and outside of the state.
Maintains accurate expense records while working in the field, including staffing promotional shows as necessary.
Assists in the planning and production of promotional programs.

Although the differences in the two classifications are not immediately apparent, a careful review of the two specifications does demonstrate that the Advertising Specialist position has a higher level of responsibility for program planning and implementation than does the Promotion Specialist. In reviewing the two position specifications, and the Division's attachment 2 describing the points allocated for each of the evaluation factors, the Board found that the Advertising Specialist receives 30 more points for the "Complexity" factor than does the Promotion Specialist, 20 more points for the factor "Independent Action" and 10 fewer points for the factor "Working Conditions."

Complexity is defined by the Evaluation Manual as, "...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." Of the six evaluation levels, the classification of Promotion Specialist is rated at the 4th level, described as follows:

"Requires coordinating a combination of diverse job functions in order to integrate professional and technical agency goals. This level also requires considerable judgment to implement a sequence of operations or actions."

The classification of Advertising Specialist is rated at the 5th level for complexity, which is defined as follows:

"Requires evaluating a combination of wide-ranging job functions to determine work procedures, to solve problems, and to reach conclusions by applying analytical, technical, or scientific thinking. This level also requires planning policies and long-term strategies, drawing conclusions based on available criteria, and evaluating the effectiveness of program objectives."

Having considered Ms. Kennard's written submissions, her classification questionnaire, and her oral presentation to the Board, the Board did not find that her position requires planning policies and long term strategies, nor does it require her to evaluate the effectiveness of program objectives. The complexity of her duties is more accurately described by the 4th

degree, which "requires coordinating a combination of diverse job functions in order to integrate professional and technical agency goals."

For the factor of "Independent Action," the Promotion Specialist and Advertising Specialist are rated at the 4th and 5th level, respectively. "Independent Action" is defined by the Evaluation Manual as follows:

"Independent Action" means 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 to the agency.

The 4th level for the factor "Independent Action" as assigned to the Promotion Specialist Classification is defined as follows:

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 5th level for this factor, describing the Advertising Specialist classification, is as follows:

Requires independent judgment in planning and evaluating work procedures and in supervising the development of professional, technical, and managerial standards under administrative direction and according to broad departmental guidelines.

While Ms. Kennard's presentation made it clear that her activities in the Film Bureau require little supervision, and that she has broad discretion in decision-making, her overall assignments do not support the 5th level, as she is not supervising the development of professional, technical and managerial standards under administrative direction. Rather, her decision-making is subject to the administrative standards defined by the departmental hierarchy, and the professional and technical standards are a product of the industry with which she works.

The final factor in which a difference exists between the Promotion Specialist and Advertising Specialist is in the area of "Working Conditions." The Promotion Specialist and Advertising Specialist are rated at the 2nd and 3rd levels, respectively. The factor itself is defined as follows:

"Working Conditions" means the specific working environment and physical

conditions to which an employee is exposed in performing required job duties and tasks. This factor measures the uncontrollable job elements which affect an employee's mental or physical capacity to complete job assignments in the normal course of work, including occupational hazards such as injury or disease. This factor does not include climate control problems that are typically not directly linked to tasks the incumbent must perform.

The 2nd level, at which the Advertising Specialist classification is assigned, is defined as follows:

Requires performing regular job functions in a controlled environment with minimal exposure to disagreeable job elements and little risk of hazard to physical or mental health.

The 3rd level, at which the Promotion Specialist classification is assigned, is defined by the Evaluation Manual as follows:

Requires performing regular job functions in an environment which includes exposure to continuous physical elements or a number of disagreeable working conditions with frequent exposure to minor injuries or health hazards.

Having reviewed the materials submitted by both parties, and after considering the oral presentations by both Ms. Kennard and Director Lamberton, the Board found virtually no rationale for either the difference in levels for this factor in the two classifications, nor for assigning the 3rd level for this factor to the Promotion Specialist classification. However, while a reduction in 10 points would decrease the total points allocated for the Promotion Specialist classification from 455 to 445, it would have no effect on the resulting salary grade. However, the Board would recommend that the Director review this factor in relationship to the classification of Promotion Specialist.

The classification system assesses the characteristic duties and responsibilities of a position, not the special talents or dedication of an incumbent. The Board appreciates the rather unique nature of Ms. Kennard's work assignments and the creativity and innovation which she must bring to the job in order to function effectively within the limitations of the bureau's budget and staffing. The Board also recognizes the obvious enthusiasm with which the appellant approaches her assignments. However, these factors appear to have been given as much weight in the allocation of her position as the classification system will allow.

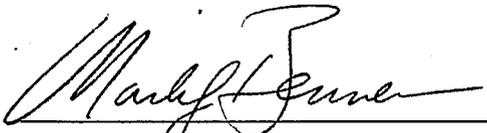
In her closing remarks, Ms. Kennard argued that if the Board chose not to order the Director to maintain her position at a salary grade consistent with that of the Advertising Specialist, the

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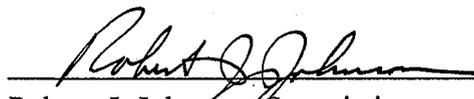
Board should provide a means for grandfathering her current salary grade until such time as Ms. Kennard vacates the position or retires from State government. Neither the classification system nor the personnel rules provides a means for negotiating salary levels, as Ms. Kennard suggested, and the Board has no authority to order any agency or the Director of Personnel to violate Per 303.06 (b), which requires an appointing authority to adjust an incumbent's salary grade downward to the appropriate grade and step after a period of two years from the date of the reallocation.

On all the evidence and oral argument presented by the parties, the Board found that Ms. Kennard's position is properly classified as a Promotion Specialist, salary grade 22. Accordingly, the Board voted to deny Ms. Kennard's appeal. As difficult as it is deciding to reduce an employee's salary grade, the weight of the evidence supports the Director's decision in this instance.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Kenneth Plourde, Business Administrator, DRED
Ann Kennard, Promotions Specialist, DRED