State of New Hampshire

PERSONNEL APPEALS BOARD
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APPEAL OF LICENSING SPECIALISTS
Docket #93 -C- 16
Division of Public Health Services

October 21, 1993

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, September 1, 1993, to hear the classification appeal of Child Care Licensing Specialists of the Department of Health and Human Services, Division of Public Health Services. The appellants were represented at the hearing by SEA Field Representative Margo Hurley. Personnel Director Virginia Lamberton appeared on behalf of the New Hampshire Division of Personnel.

The appellants, whose positions had been classified as Social Workers I, II and III (salary grades 15, 17 and 18) were all reclassified to Child Care Licensing Specialist (salary grade 17) as a result of a request for reconsideration of the Director's original decision, dated April 15, 1992, which initially ordered reclassification of the subject positions to Standards and Licensing Officer, salary grade 16.

In addition to their appeal on the basis of the actual classification and salary grade allocation of the positions under appeal, the appellants argued that the original reclassification decision occurred prior to adoption of the current Rules of the Division of Personnel, and that the position incumbents were therefore entitled to protection of their former salary level even in the event of a position downgrading. The Director of Personnel argued that although the original decision was made on April 15, 1992, prior to the adoption of the current Personnel Rules, the final decision was made only as a result of a request for reconsideration filed by the Director of Public Health on May 12, 1993, some fifteen days after the current Rules of the Division of Personnel became effective. On that basis, the Director argued that regardless of the appropriate classification of the subject positions, the final classification decision was made subsequent to the enactment of the current rules and that the incumbents' salaries must be adjusted to reflect the actual salary grades at which their positions are allocated.

At the conclusion of the hearing, the Director submitted proposed findings of fact and rulings of law for the Board's consideration. While the Board is mindful of its obligation to respond to proposed findings of fact and rulings of law and often finds them helpful, detailed, compound proposed findings which do not allow the Board to focus on the issues are not helpful in reaching a decision. Accordingly, the Board will make its own findings in this case. To the extent that the proposed findings are consistent with the Board's decision, they are granted. Otherwise, they are denied.

On April 15, 1992, the Director of Personnel wrote to the Director of the Division of Public Health Services, advising him that as a result of reviewing proposed supplemental job

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descriptions for two vacant Social Worker positions, the Division of Personnel had determined that a new class title, Standards and Licensing Officer (salary grade 16) should be established. The result of that decision would be the reclassification of seven positions to the new class of Standards and Licensing Officer. Two of the positions, a Social Worker II and a Social Worker III, were vacant at the time of the decision. Of the remaining positions, the incumbents had been compensated as follows: 1 @ Social Worker I, salary grade 15; 2 @ Social Worker II, salary grade 17; and 2 @ Social Worker III, salary grade 18.

Because the decision was dated April 15, 1992, prior to adoption of the current Rules of the Division of Personnel, the Director of Personnel advised the Director of Public Health Services that the incumbents' salaries would not change, although it would be necessary for the position classifications themselves to be adjusted. The incumbents had never been asked to complete Position Classification Questionnaires.

On May 12, 1992, subsequent to the adoption of the current Personnel Rules, Dr. Meehan, Director of the Division of Public Health Services, wrote to the Director of Personnel asking that the Director of Personnel create the classifications of Child Care Licensing Specialist I and II, salary grades 18 and 20 respectively. (SEA Exhibit C) Director Meehan agreed "...the classification of Social Worker is inappropriate to the responsibilities, accountabilities, education and experience that the Division requires of Child Care Licensing Specialists." He suggested that the positions were comparable to Child Protective Service Worker positions and requested that the Division of Personnel reclassify eight positions, including one not listed in the Director's April 15th letter, to Child Care Licensing Specialist I and II (salary grades 18 and 20 respectively) instead of Standards and Licensing Officer (salary grade 16).

The Director of Personnel responded by letter dated May 27, 1992, indicating that in order for her Division to undertake a review of the positions, the incumbents would need to submit completed Position Classification Questionnaires, and that the supervisors should complete questionnaires for the vacant positions. (SEA Exhibit D). She reminded Dr. Meehan that the positions had already been reclassified to Standards and Licensing Officer, salary grade 16, and that the Human Resource Office at the Department of Health and Human Services needed to submit Personnel Action Forms to update the employee data base to reflect the reclassification on April 15, 1992.

Completed reclassification requests for the subject positions were received from the Division of Public Health Services on October 5, 1992. Included in the request was a copy of Dr. Meehan's July 20, 1992 memo requesting the establishment of a new series of positions, Child Care Licensing Specialist I and II, and reclassification of the position incumbents to Child Care Licensing Specialist II, salary grade 20, or Program Specialist II. The Director of Personnel responded on January 21, 1993 (SEA Exhibit F), approving establishment of a single level of Child Care Licensing Specialist, salary grade 17. In that letter, she also advised Director Meehan that as provided by Per 303.06(b) of the Rules of the Division of Personnel, the two incumbents who had been compensated at salary grade 18 would be allowed to retain that salary for a period of two years from the date of the decision, after which the salaries would be reduced to that of the class, salary grade 17. The incumbents appealed by letter dated February 11, 1993.

The degree allocations for the newly created classification of Child Care Licensing Specialist found in the Director's decision dated January 21, 1993, and the points recommended by the appellants are as follows, with the factors in dispute highlighted:

	Current Points/Level		Proposed Points/Level	
Skill	65	4	65	4
Knowledge	85	4	85	4
Impact	20	3	40	4
Supervision	5	2	5	2
Physical Demands	10	2	10	2
Working Conditions	10	2	20	3
Communications	35	4	35	4
Complexity	50	3	80	4
Independent Action	30	3	55	4
Total points	310 (salary grade 17)		395 (salary grade 20)	

Factor 3 (Impact) is defined as:

> ...the manner in which the basic purpose and job functions of a position interact with and respond to the overall needs of the agency. This factor measures the probability for and consequences of error in relation to the achievement of agency goals and objectives, including the responsibility for planning and developing agency programs, implementing operational procedures, and providing services to specific client populations.

The appellants argued that their positions warranted allocation at the 4th of 6 available levels, and that Child Care Licensing Specialists are responsible for achieving direct service objectives by assessing agency service needs and making preliminary recommendations for the development of alternative short-term program policies or procedures. They cited their role in recommending or drafting policies and operational procedures to further the operational objectives and legal mandates of the agency. They also asserted that "they authorize short term waivers of provisions of licenses to accommodate emergency needs of child care providers" (SEA letter, February 18, 1992 to P.A.B., page 3), as well as assessing child care facility staff to determine if the individual poses a threat to children, either by having been convicted of certain criminal offenses or through a DCYS determination that the individual has been neglectful or abusive of children.

The Board found that this level of "impact" is properly rated at the 3rd level, involving responsibility for contributing to immediate, ongoing agency objectives by facilitating the direct provision of services to the public or other state agencies. The appellants are not assessing the service needs of the agencies. Rather, they are comparing performance of child care facilities to the standards established by the agency. Errors at their level do not result in disruption of agency programs, although errors could result in inaccurate reports which would ultimately affect the credibility of the agency within a limited area.

The appellants failed to persuade the Board that this factor should be increased.

Similarly; the appellants did not demonstrate that the "Working Conditions" factor should be increased from the 2nd to the 3rd degree. The 3rd degree for this factor is defined 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 iniuries or health hazards."~~

This factor itself is defined in the Classification Plan as measuring "...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. ..." The 2nd degree does address the possibility that the appellants will be exposed to certain disagreeable working conditions, but also recognizes that such disagreeable conditions are not continuous. Further, the appellants did not demonstrate that their work assignments have exposed them to frequent minor injuries or health hazards which can not be reasonably controlled. Accordingly, the Board denied the request to increase this factor to the 3rd degree.

"Complexity" is defined in the classification plan as follows:

> "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.

The appellants' positions are currently rated at the 3rd degree, requiring "a combination of job functions to establish facts, to draw daily operational conclusions, or to solve practical problems. This level also requires providing a variety of alternative solutions where only limited standardization exists." The Board found that this description more than adequately defines the complexity of the work which the appellants perform, particularly when considered in conjunction with the current levels at which their positions are assigned for the factors of "Skill", "Knowledge" and "Communication". Except for the fact that the appellants must exercise more than minimal judgment, the Board found that the appellants' positions could be described as performing "...a variety of job tasks according to clearly prescribed standard practices and procedures as set forth in the 2nd degree for this factor. However, the Board recognizes that the standards themselves can be complex, and therefore will not recommend that the Director decrease the points allocated to this factor.

The last factor for which the appellants have recommended an increase is "Independent Action". The classification plan defines this factor as follows:

> "Independent Action" means the amount of decision making, initiative, and responsive effort required in <u>originating new or more efficient work methods and procedures</u>. 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.

The appellants have suggested that their positions should be allocated at the 5th level, involving independent judgment in "planning and evaluating work procedures and in supervising the developinent of professional, technical, and managerial standards under administrative direction and according to broad departmental guidelines". The appellants, in their February 18, 1993 letter to the Board, describe their level of independent action as follows:

> "The CCL Specialists spend 80% of their time in the field. They must be competent and able to operate <u>according to established technical, professional and administrative standards</u>. They conduct interviews and make observations and assessments within

child care facilities to independently apply the information to licensing and operating rules and laws to determine areas of non-compliance, areas needing improvement and areas deserving commendation. They independently summarize and communicate their findings and decisions to child care personnel, applicants, facility directors or board members during an exit interview. They evaluate and assess current agency policies and procedures for conducting licensing operations including interview protocol, methods of assessment, investigation procedures, forms and guidelines used to complete required processes. They evaluate and assess current agency policies and procedures to develop alternative procedures. forms, materials, protocol, etc., to enable the agency to more efficiently and accurately complete its legal mandate. They advise and consult with child care facility directors, personnel and governing boards to make recommendations and to assist them with problem recognition, analysis and resolution across a broad spectrum of child care issues to improve the quality of child care.

None of the described functions qualifies as "supervising the development of professional, technical, and managerial standards under administrative direction and according to broad departmental guidelines" as contemplated by the 4th level. Their level of independent action is more than adequately addressed by the 3rd level, at which their positions are currently allocated.

Therefore, on the evidence, the Board voted unanimously to deny the Child Care Licensing Specialists' request for reallocation to salary grade 20.

With regard to the issue of "grandfathering" two of the positions at salary grade 18 because the original review was initiated under the former Rules, the Board found the following:

Per 303.06(b) (1) - (4) of the Rules of the Division of Personnel, effective April 26, 1992, states:

"(b) If the director reallocates or reclassifies a position into a class with a lower salary grade, the incumbent's salary shall be adjusted as follows:

(1) The incumbent's salary shall not be reduced for a period of 2 years.

(2) If the incumbent was not at the maximum step, the incumbent shall be eligible for annual step increases as the former grade that do not exceed the maximum of the new grade, provided such increases are documented by performance evaluations.

(3) After a period of 2 years, the appointing authority shall adjust the incumbent's salary downward by assigning the step in the lower salary grade in accordance with Per 901.07(b).

(4) When the incumbent leaves the position, the appointing authority shall post the vacancy at the adjusted salary level set for the position, and not at the level assigned to the employee who held the position prior to reallocation or reclassification."

The incumbents in position 14614 and position 18984 who had been compensated at salary grade 18 prior to the reclassification in April, 1992, were entitled under the former Rules to retain their salary regardless of the downward allocation of their positions. However, the

request for reallocation of their positions from Standards and Licensing Officer to Child Care Licensing Specialist was made after adoption of the current Rules of the Division of Personnel. Under those rules, when an incumbent's position is downgraded, the incumbent can only enjoy that salary protection for a period of two years, after which the employee's salary must be adjusted to reflect the actual classification and allocation of the position the employee occupies.

The Board voted to deny the instant appeal. In so doing, the Board found that the appellants' positions are properly classified as Child Care Licensing Specialists, salary grade 17. The Board further found that the review of these positions for possible reclassification and reallocation from Standards and Licensing Officer, salary grade 16, to Child Care Licensing Specialist, was initiated after the adoption and enactment of the current Rules of the Division of Personnel, and any reclassification or reallocation is therefore subject to those rules.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson, Commissioner

Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Margo Hurley, SEA Field Representative
Patrick Meehan, M.D., Director, Division of Public Health Services
Sandra Platt, Administrator, Department of Health and Human Services

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APPEAL OF LICENSING SPECIALISTS - DIVISION OF PUBLIC HEALTH SERVICES
Docket #93 - C - 16
Response to Appellants' Request for Reconsideration

November 17, 1993

By letter dated November 2, 1993, SEA Field Representative Margo Hurley filed a request for reconsideration of the Board's October 21, 1993 decision in the classification appeal of Child Care Licensing Specialists of the Department of Health and Human Services, Division of Public Health Services. In support of that request, Ms. Hurley argued that the incumbents in the downgraded positions were entitled to protection under the former Rules of the Division of Personnel as the original review of those positions had occurred as a result of a request for reconsideration of a decision of the Director of Personnel dated April 15, 1992, which initially ordered reclassification of the subject positions to Standards and Licensing Officer, salary grade 16. Per 304.01(c) of the Rules of the Division of Personnel (eff. 4/27/92) states:

> "The request for reconsideration shall be considered a continuation of the original position allocation by the director."

The fact that the original decision to reclassify the positions was made prior to enactment of the current Rules of the Division of Personnel has no bearing in this instance. Per 303.04 of the Rules of the Division of Personnel provides the following:

> "If the director recommends reallocation or reclassification of a position, the director shall initiate a position profile form to implement the change in allocation or classification. <u>The effective date of the change in position allocation or classification shall be the first day of the pay period immediately following the written response made by the director under Per 303.04(a)."</u>

The incumbents' request for reconsideration of the April 15, 1992 decision was filed by the Director of Public Health on May 12, 1993, some fifteen days **after** the current Rules of the Division of Personnel became effective. As such, regardless of the appropriate classification of the subject positions, the final classification decision was made subsequent to the enactment of the current rules and the incumbents' salaries are therefore subject to adjustment in accordance with Per 303.07 (b) of the Rules of the Division of Personnel.

Ms. Hurley also argued that the Director's decision to reclassify the appellants' positions was a violation of Per 303.01(a) of the Rules of the Division of Personnel, alleging that reclassification of a position without a completed Position Classification Questionnaire violated the rule. Per 303.01 (a) states the following:

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"If the director, under the authority of RSA 21-I:42 II determines that a position in the classified service might be improperly allocated, the director may initiate a position allocation review."

Per 303.01(b) also states:

"If reauested bv the director, an appointing authority shall comply with the requirements for submission of a completed request as provided in Per 303.02(a)."

Contrary to Ms. Hurley's assertion, Per 303.01(a) does not prohibit reclassifying a position in the absence of a completed position classification questionnaire. As the evidence considered at the hearing reflects, the Division's decision to reclassify the subject positions was based upon information supplied by the Division of Public Health Services in the form of a list of job accountabilities for vacant positions in the Bureau of Child Care Standards and Licensing. The Division's decision was dated April 15, 1992. Had the decision remained final, the salaries of any of the position incumbents would have been protected by the provisions of former Per 304.01(g)(1). However, the Division of Public Health Services requested reconsideration of that decision on May 12, 1992, after the effective date of the current Rules of the Division of Personnel, and on May 27, 1992, the Director of Personnel requested that Position Classification Questionnaires be submitted to support that request. As a result, a decision was issued by the Division of Personnel on January 21, 1993, reclassifying the affected Social Worker positions to Child Care Licensing Specialist, salary grade 17. The Board continues to find that that decision was subject to the provisions of Per 303.06(b) of the current Rules of the Division of Personnel.

The remainder of the arguments offered by the appellants simply reiterate those offered at the hearing on the merits and considered by the Board in reaching its decision in this matter, and do not support a finding that the Board's October 21, 1993 decision was unlawful or unreasonable. Accordingly, the Board voted to deny the request for reconsideration, and to affirm its October 21, 1993 decision, finding that the appellant's positions are properly allocated at salary grade 17.

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