State of New Hampshire

PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire **03301**
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APPEAL OF FRANCIS E. LORD

DOCKET #99-C-5

DEPARTMENT OF SAFETY - DIVISION OF STATE POLICE

October 6, 1999

The New Hampshire Personnel Appeals Board (Wood, Rule and Barry) met on Wednesday, September 1, 1999, under the authority of RSA 21-I:57, to hear the appeal of Francis Lord, a former employee of the Department of Safety, Division of State Police. Mr. Lord, who was represented at the hearing by Attorney Frank Quinn, was appealing the Personnel Director's February 28, 1997, decision and September 30, 1998, reconsideration decision denying his request for reclassification from State Police Corporal to State Police Sergeant I. Virginia A. Lamberton, Director of Personnel and Sara Willingham, Administrator, appeared on behalf of the Division of Personnel.

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

<u>State's Exhibits</u>

A. Letter dated October 19, 1992, addressed to Colonel Lynn Presby
B. Organization Chart prior to February 28, 1997
C. Letter dated February 28, 1997, addressed to Commissioner Flynn
D. Letter dated March 7, 1997, addressed to Colonel Barthelmes
E. Generic Organization Chart, dated February, 1997

F. Letter dated January 30, 1998, addressed to Director Lamberton from Colonel Barthelmes

G. Letter dated November 4, 1997, addressed to Colonel Barthelmes

H. Position Classification Questionnaire completed by Corporal Lord.

I. Letter dated July 7, 1998, addressed to Colonel Barthelmes

J. Letter dated July 13, 1998, addressed to Director Lamberton

K. Organization charts of N. H. State Police

L. Job Specification, State Police Trooper II

M. Job Specification, State Police Corporal

N. Supplemental Job Description for Corporal Lord

O. Job Specification, State Police Sergeant I

P. Proposed Supplemental Job Description for Corporal Lord

Q. Letter dated July 19 1998, addressed to Director Lamberton

R. Letter dated September 30, 1998, addressed to Corporal Lord

S. Letter dated October 22, 1998, addressed to Mary Ann Steele, Executive Secretary, Personnel

Appellant's Exhibits

The appellant offered no exhibits other than the documents attached to his initial notice of appeal.

Before taking up the merits of the appeal, Director Lamberton asked the Board to dismiss the case on the grounds that Cpl. Lord had retired from State service prior to the final decision of the Board on the matter of his reclassification, and that under the provisions of RSA 21-I:54, III, no relief or remedy would be available to the appellant. Attorney Quinn argued that the appellant was not as much interested in retroactive compensation as he was in the effect that reclassification of his position prior to his retirement would have had on his benefits at retirement. However, he argued that if the Board were to find that the appellant's position had been allocated improperly, reclassification would be retroactive to the date of the Director's original decision. Ms. Lamberton argued that the language of RSA 21-I:54, III, was very specific, and made provision for prospective relief only.

The Board took the motion under advisement, and agreed to allow the parties ten days from the date of the hearing to submit written arguments on the motion. The Board then received documentary evidence and heard the parties' arguments and offers of proof,

Attorney Quinn made the following offers of proof:

- The appellant was hired by the Division of State Police in 1979.
- During his career the appellant served as an under-cover officer in the narcotics unit, took the Corporals' Examination in 1987, and was promoted through a selection process to the rank of Corporal.
- Upon his assignment to the Aviation Unit, the appellant was responsible for developing both the fixed wing and helicopter components, and served in Aviation until his retirement in the Spring of 1999.
- The appellant took the written examination for the classification of Sergeant and has all the credentials necessary for promotion to Sergeant.
- The appellant considered his supervisory responsibilities in the Aviation Unit to be the same or greater than all those whose positions were reclassified to Sergeant.
- The appellant was responsible for conducting performance evaluations and for training officers in the unit on both fixed wing aircraft and helicopters.
- Some of the troopers who were trained by Lord have since reached the rank of Sergeant.
- The appellant created schedules for those persons working in aviation unit, developed standard operating procedures (i.e. ground safety course, operational guidelines, etc.), and had the requisite supervisory responsibilities to warrant promotion to Sergeant.
- Other Sergeants in the Division of State Police would testify that the appellant had supervisory responsibilities warranting his reallocation to Sergeant.
- Sgt. Kelleher would testify that the appellant's job duties were equally complex or more complex than Sgt. Kelleher's own duties.

- The appellant's assignment to the aviation unit, and the fact that such assignment isolated him fi-om the "general standards and protocols" of supervision and performance evaluation of subordinate personnel should not have excluded him from promotion.

Ms. Lamberton made the following offers of proof:

- The decision at issue is not a promotional issue but a question of classification and organization within the Division of State Police.
- Reorganization of the Division of State Police started in 1992 and was completed in 1998.
- In October 1992, the Division of Personnel eliminated the classification of Trooper First Class.[1] and temporarily reallocated Trooper First Class incumbents to the rank of Corporal.
- Within the Division of State Police, employees reclassified to Corporal by virtue of their length of service, successful completion of the Corporal's Examination, completion of approved supervisory training, and recommendation by a Promotional Review Board were referred to as "soft Corporals." Employees selected competitively to supervisory vacancies at the rank of Corporal were referred to as "hard Corporals."
- Although "hard Corporals" and "soft Corporals" occupied the same rank, supervisory Corporals selected to direct and supervise a shift within a troop or unit were performing work at a higher level than those who had attained the rank of Corporal by longevity and reclassification.
- On February 28, 1997, the Division of Personnel approved the Department of Safety's reorganization proposal for the Department of Safety, Division of State Police, resulting in additional reclassifications of law enforcement personnel.
- Incumbents in the Corporal classification were reclassified fi-om Corporal, salary grade 19 to Trooper II, salary grade 19, retained their rank of Corporal, salary grade 20, or if responsible for continuing investigations or supervision of a shift, were reclassified to Sergeant I, salary grade 21.

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[1] Troopers with 10 or more years of service and a record free of major discipline for seven years, were eligible to become Troopers First Class. Employees so classified were compensated at one salary grade higher than that assigned to the classification of Trooper.

- During the initial review and reclassification of Corporal positions, Cpl. Lord was not identified by the Division of State Police as one of the incumbent Corporals who should be reclassified to Trooper II or Sergeant I.

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

Findings of Fact

1. The point factor ratings for State Police Trooper II, State Police Corporal and State Police Sergeant I are as follows:

Position Title Classification	Skill	Knowledge	Impact	Supervision	Working Conditions	Physical Demands	Communi-cations	Complexity	Independent Action	Total Points	Salary Grade
SP Trooper II	3 045	3 060	3 020	2 005	6 060	4 025	4 035	4 080	3 030	360	19
SP Corporal	3 045	4 085	3 020	3 015	6 060	4 025	4 035	4 080	3 030	395	20
SP Sergeant I	3 045	4 085	3 020	3 015	6 060	4 025	4 035	4 080	4 055	420	21

1. Sergeants and Corporals receive the same number of points for the evaluation factor "Supervision."
2. The appellant's proposed amendment to his Supplemental Job Description described the appellant's "Scope of Work" as follows: "Conducts general law enforcement activities pursuant to RSA 100-6:B governing the Division of State Police within the Aviation Unit, under the direction of the Unit Commander."
3. The scope of work outlined in the appellant's approved and proposed supplemental job descriptions is consistent with the specification for State Police Corporal. It is not as

complex or comprehensive as the scope of work in the approved specification for State Police Sergeant I: "To perform supervisory police work by planning, leading and coordinating troop/unit work activities and monitoring criminal detection and investigation operations."

4. The position of Corporal has a higher rating than Trooper II in the factors of Knowledge and Supervision.
5. The position of Sergeant I has a higher rating than Corporal in the Independent Action factor.
6. "Independent Action" is described 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."
7. Corporals are rated at the third level for Independent Action, described by the Evaluation Manual as follows: "Requires a range of choice in applying a number of technical or administrative policies under general direction and malting routine decisions or in recommending modifications in work procedures for approval by supervisor."
8. In his position classification questionnaire, in response inquiry on the "types of decisions" made and "what is affected by those decisions," the appellant wrote, "Determine the method and usage for aircraft in consideration of all conditions to ensure the safety of passengers, ground personnel and associated personnel. Requires judgment to sequence operations to integrate professional and technical goals."
9. The appellant's work assignments as described by his approved and his proposed supplemental job description, and his position classification questionnaire, support allocation at the 3rd level for Independent Action.
10. The appellant retired from the Division of State Police prior to the decision of the Board on the matter of his request for reclassification.

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. "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]

G. "…No increases in salary shall be allowed for any request until a final decision is made by the director, or if the director's decision is appealed, by the personnel appeals board. Increases in salary due to reclassification or reallocation shall become effective

at the beginning of the next pay period following the final decision of the director or the board." [RSA 21-I:54, III]

Decision and Order

In her September 8, 1999, letter to the Board, Director Lamberton argued that having retired from State service, the appellant no longer held a classified position that could be reclassified or reallocated. She argued that even if the Board were to find that the appellant's position prior to his retirement should have been reclassified to Sergeant I, there was no authority to compensate him retroactively. In support of that position, she cited the language of RSA 21-I:54 III that states, "...No increase in salary shall be allowed for any request until a final decision is made by the director, or if the director's decision is appealed, by the personnel appeals board. Increases in salary due to reclassification or reallocation become effective at the beginning of the next pay period following the decision of the director or the board."

Attomey Quinn argued in his September 9, 1999, Objection to Motion to Dismiss that, "...at the time that Petitioner first took this appeal [to the Director of Personnel] (March of 1998), Petitioner was a full-time Corporal with the New Hampshire State Police..." and that he "...was still employed as an employee with the Department of Safety [when] he filed his appeal to this Board pursuant to RSA 21-I:57 on or about October 9, 1998." He argued that "...if the instant appeal is sustained, this Board's decision would be retroactive and at a minimum, the decision to upgrade Corporal Lord from Corporal to Sergeant I would impact his retirement benefits."

Attomey Quinn cited no basis in law for claim of entitlement'to retroactive compensation or adjustment of the appellant's retirement benefits.

RSA 21-I:54, III, establishes the mechanism for determining the effective date of increase in salary following the review and upgrading of a position. Prior to 1989, RSA 21-I:54, III, made specific provisions for retroactive compensation as a result of a position reclassification or

reallocation. However, when the statute was amended in 1989, the reference to retroactive compensation was replaced with language prohibiting an increase in salary upon reclassification or reallocation until the beginning of the pay period following the, "final decision of the director or the board." There is no legal authority for the Board to order payment of compensation retroactive to the date of the Director's decision, regardless of Mr. Lord's employment status on the date of the Board's decision. Accordingly, the relief sought by the appellant in the form of reclassification retroactive to the date of the Director's original decision is beyond the Board's statutory authority. On that basis, given Mr. Lord's status as a retired State employee, the Board voted to DISMISS the appellant's appeal for reclassification retroactive to the date of the Director's decision.

If the appellant had not retired and had remained in his position, the Board would have voted to DENY the appeal on its merits.

The appellant's position in the aviation unit was properly classified as a Corporal, salary grade 20, when the reorganization review was perfonned. Comparing the class specifications for Trooper II, Corporal and Sergeant I, the Board found that the most obvious distinction between the three classifications is in the "Basic Purpose" of each position classification. The "Scope of Work" outlined by the appellant on his existing and proposed supplemental job descriptions is consistent with the "Basic Purpose" of the Corporal classification, and does not rise to the level of "supervisory police work" defined by the specification for Sergeant I. By allowing the appellant to retain the rank of Corporal, the Division of Personnel did recognize and allow him to be compensated for his supervisory responsibilities by rating the Supervision factor for his position at the same level as that assigned to the classification of Sergeant I.

When the Division of Personnel conducted its review of positions assigned to the rank of Corporal, the Division of State Police did not identify the appellant's position as a shift or unit supervisor with duties that would warrant reallocation of the position to Sergeant I. When the reorganization decision was transmitted to the Division of State Police, the appointing authority

accepted the decision to keep the position allocated at the level of Corporal, and to allow the position revert to the classification of Trooper once vacated.

THE PERSONNEL APPEALS BOARD

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