

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### APPEAL OF MAURICE MYERS

Docket #90-C-1

Division for Children and Youth Services

June 3, 1996

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, July 8, 1992, to hear the appeal of Maurice Myers, a Juvenile Services Supervisor in the Division for Children and Youth Services. Mr. Myers, who was represented at the hearing by SEA Field Representative Stephen McCormack, was appealing the Division of Personnel's decision refusing to upgrade his position, and that of other Juvenile Services Supervisors, retroactive to January of 1988, from salary grade 23 to salary grade 24. Virginia Lamberton, Director of Personnel, appeared on behalf of the Division of Personnel.

The first dispute concerned the Board's jurisdiction to hear the instant appeal. Ms. Lamberton argued that since no position review had occurred, there could be no legitimate classification appeal. Further, she argued that in the absence of a claim that there had been a violation or a misapplication of the Personnel Rules, there was nothing the Board could hear or decide. Ms. Lamberton argued that the appellants were disputing the points which had been assigned to the various classification attributes. She argued that since the points and point factors are exempt from rulemaking, the appellants could not cite any rule which had been violated or misapplied.

Ms. Lamberton further argued that when Mr. Myers' request for upgrading of JSO II and JSO Supervisor positions was received, there was a position moratorium in effect which legally prohibited her from conducting a review. She asserted that Mr. Myers claimed to have discovered an error in the specification, based on a change in the minimum education requirement, which should have resulted in a change in the total number of points assigned to the classification, thereby necessitating an upgrading of the affected positions by one salary grade. She said that the original request, and subsequent communication with the appellant, prompted a review of the specification, at which time additional errors were discovered. She said that the only issue before the Board concerned correction of clerical errors on the specifications, and that unless someone could point to a rule covering clerical errors, the Board lacked the authority to hear Mr. Myers' appeal.

The Chairman advised the Director that the Board would treat her argument as a Motion to Dismiss, and denied the motion, noting that the Director had not raised the motion at the outset of the hearing, and had not asked the Board in preliminary pleadings to dismiss the matter for lack of subject matter jurisdiction. Ms. Lambertson asked that the Board note her objection to the Board's ruling, and asked that the appeal be continued in order to allow the SEA to demonstrate what rule they were alleging to have been violated. She also asserted that a continuance would allow her an opportunity to secure counsel to file a Motion to Dismiss on behalf of her Division.

Mr. McCormack objected to any continuance, arguing that there had been ample notice of the hearing. He argued that there was a procedure in place for classification of positions, and that if an employee believed that process had not been utilized, the employee was entitled to present the issue to the Board. He argued that the appellants were entitled to a hearing where they could appeal what they alleged to be a violation of the Division of Personnel's reclassification procedures.

Ms. Lambertson said that the positions in question had been established as part of a career ladder at the request of the Division for Children and Youth Services. She said that when the JSO positions had been established, there had been no position review. She said that the JSO's were picked up by the State in January, 1988, and that the Division of Personnel had virtually no notice until the last week in December, 1987, that these employees were being transferred from the counties and district courts to the State the following week. She said that the Division met with representatives of the Division for Children and Youth Services, and established the JSO II and JSO Supervisor positions to fit a career ladder which the Division agreed to create. However, she said no review was conducted until 1991, when there was a request to upgrade these positions.

Mr. McCormack argued that the appellants should not be held accountable for the fact that the Division of Personnel had to "pick up" these positions on short notice. He said that to put the employees into the classified system, the Division of Personnel had created a job specification, applied the evaluation plan, and applied points to the various evaluation attributes. He said that in January of 1988, the Division of Children and Youth Services, with the concurrence of the Division of Personnel, increased the "Education" attribute. He argued that Part Per 303.03 of the then effective Rules of the Department of Personnel authorized the Director to review allocations. He also said that under the law, employees have the right to request reviews. He said there was no dispute that the educational requirements were changed and that the points assigned to that attribute then had to be changed accordingly. He argued that when the

Division of Personnel discovered that the increased points assigned to the "Education" attribute would result in an increase in the salary grade, the Director changed the Working Conditions attribute solely for the purpose of keeping the salary grade the same. He said that the Director's claim that supervisory positions always receive the lowest rating for Working Conditions was unsupported by the evidence, and that the Director's decision to reduce the points assigned to the "Working Conditions" attribute was arbitrary, if not illegal.

In a preliminary review of the documents submitted by the parties, the Board found that the Division of Personnel had been informed of a "clerical error" in the "Education" attribute and had agreed to correct it. The Division of Personnel then discovered and corrected what it believed to be an error in the "Working Conditions" attribute.

The Board advised the parties that the evidence would determine what the nature of the alleged errors were, where those errors came from, and whether or not the correction of those errors was a matter which the Board might decide. The first issue for the Board to decide was whether or not the Board had jurisdiction to hear the instant appeal. The second issue, which the Board described as significantly subsidiary to it, was whether or not the "Working Conditions" attribute was entitled to five or ten points. The Board affirmed its decision to deny the Director's request for dismissal of the appeal, as well as the Director's request for a continuance. The Board also noted the Director's objection to any review by the Board of the points assigned to the "Working Conditions" attribute since the change was not the result of a request for a position review, or a position review initiated by the Division of Personnel.

Mr. McCormack said that there was no dispute that the job description had been changed in 1958 to require additional education. He said that the Director was obliged to make a change in the points and therefore was required to change the salary grade assigned to the classification. He said that the second change was in dispute, and that the Director was obliged to review the positions before making further changes to the specification or the points spread assigned to the classification. Mr. McCormack also argued that there was no evidence to support the Director's claim that supervisory personnel are generally assigned the lowest rating for "Working Conditions." In support of his argument, he cited the following examples:

- Probation/Parole Officers III, grade 23, 20 points
- State Police Sergeant, grade 21, 70 points
- State Police Lieutenant, grade 23, 50 points
- State Police Captain, grade 25, 30 points
- Corrections Lieutenant, grade 20, 70 points
- Correctional Captain, grade 22, 50 points
- Supervisor III, grade 22, 10 points

He also argued that there was no support for the claim that JSO Supervisors have "good working conditions, office and comparable." He argued that the appellants are required to work in the field, handle cases, and be subject to threats like any Juvenile Services Officer.

Maurice F. Myers, a Juvenile Services Supervisor, testified that he first started working for the State in June, 1964, and left around November, 1967. He testified that he worked for Manchester Probation until transferring to the State in January, 1968. He said that when employees were transferred from the counties, their credentials were reviewed by the State. He said that the employees were also required to attend training at Police Standards and Training to learn methods for restraint, subject take-downs, handcuffing, arrest, search and seizure, and search and transport. He said the JSO Supervisors use these methods on a regular basis, asserting that he is rarely in the office as a supervisor more than 35% of the time. He said that the remaining 65% of his time is spent in the field, training Juvenile Service Officer Trainees, I's and II's in their jobs, training with Interstate Compact transfer cases, working in the community and transporting people to lock-up facilities in Concord or the Youth Development Center in Manchester.

Mr. Myers noted that he had been called recently by a parent to arrest their daughter when the daughter attacked her father with a knife. He said this is indicative of the "Working Conditions" for the classification. He said that working in the North Country, there may be no available law enforcement personnel in situations such as the one he had described, and that the JSO Supervisors are the only available law enforcement personnel. When asked by Director Lamberton to define the greatest difference between a JSO II and a JSO Supervisor, Mr. Myers cited training and assigning work to subordinates. He also noted that JSO Supervisors generally have more seniority on the job, and often are more sophisticated in performing their duties because of their experience.

Mr. Myers testified that JSO Supervisors' assignments will vary by location. He noted that in the North Country where he is assigned, there is no public transportation and the area he supervises covers a larger geographic area. He said that the additional time which may be necessary to transport juveniles places the Juvenile Services Supervisor in greater jeopardy.

Thomas Broderick, a Juvenile Service Supervisor, testified that the difference between a JSO I, II and a JSO Supervisor is defined in part by the number of contacts they have in the community. He testified that Juvenile Service Supervisors assign work to their subordinates, and become involved in the more difficult situations where a JSO I or II might need additional support. He testified that the JSO Supervisor does many of the same jobs that the JSO I and

II would perform, such as taking juveniles into custody and transporting them to a facility. He said that he spends about 50% to 60% of his time supervising JSO I's and II's, comparing his assignments to those of a police sergeant. He said that in addition to assigning cases, the JSO Supervisor needs to assure that cases are closed. Upon inquiry by the Board, Mr. Broderick said that he spends approximately 60% of his time in the office.

The record reflects that on January 31, 1990, Maurice Myers and James Broderick had written to Personnel Director Lamberton requesting a review of the salary grades assigned to Juvenile Services Officer II and Juvenile Services Officer Supervisor positions in the Division for Children and Youth Services. In that letter, they stated that they had discovered an apparent clerical error in the points assigned to the attribute of "Education." Specifically, they said that in January, 1988, the Division for Children and Youth Services received approval to increase the education requirements to include 12 graduate credits in addition to the required bachelor's degree. They argued that all JSO II and JSO Supervisor positions should be upgraded accordingly.

Ms. Lamberton responded by letter dated February 14, 1990, stating the following:

"In reviewing the points for the classification of Juvenile Services Officer, I have determined that there is another error in addition to the education attribute. Specifically, your class has been receiving too many points under the experience factor. The minimum qualifications require three years of experience with is the 6th degree or 65 points. The current assignment of 80 points or the 7th degree is incorrect."

On February 27, 1990, Mr. Myers again wrote to Ms. Lamberton, advising her that while her February 14, 1990, letter had addressed the classification of JSO PI, it had not answered his request for an upgrading of JSO Supervisor based upon the change in the education requirement. Director Lamberton responded on March 14, 1990, advising him that upon further review, the Division of Personnel had discovered an error in the "Working Conditions" attribute as well as the "Education" attribute. She said that the pointspread still resulted in an allocation of the positions at salary grade 23.

Ms. Lamberton argued that when the juvenile services positions were transferred to the State system, there was no job specification, and that the specification which existed in 1990, when Mr. Myers wrote to her concerning the "Education" attribute was a draft specification. She said that the assignment of minimum qualifications had been completed solely for the purpose of certification, recruitment and compensation.

Ms. Lamberton's letter to Mr. Myers, dated March 14, 1990, stated, in part:

"The point assignment for the Juvenile Service Supervisor was indeed incorrect for the

education factor. Therefore I have adjusted to the 6th degree or 90 points. In reviewing all of the factors assigned to your job class I realized that an additional clerical error was made under the working conditions factor. Positions that are supervisory in nature do not receive the second degree or ten points, but rather the first degree which is five points.

"Therefore the total points for your classification are 535 which is a salary grade 23.

"I mentioned in my original letter, even if there had not been another error in the point assignments, I would have been under no obligation to increase your salary grade. When the class series for juvenile service officers was originally established, your supervisors and I agreed to a career ladder which included duties and responsibilities at three different levels. The minimum qualifications for each of these classifications were also mutually agreed upon. The fact that a clerical error was made in writing the points that was not consistent with the plan, is not a justification to increase a salary grade up or down. The only method of changing a salary grade would be in the event that the duties and responsibilities of the position had changed to a point wherein a position review was in order. Since this is not the case, I have simply corrected the clerical error to ensure that the minimum qualifications are consistent with the job specification."

In his March 29, 1990, appeal to this Board, Mr. McCormack argued that the Director was obligated to adjust the salary grade of the positions in question after the error in the point total was detected and confirmed, but that any further correction to the specification, specifically reducing the points allocated to the attribute of "Working conditions" without first conducting a position review, was arbitrary, if not illegal. Ms. Lamberton argued that there was an error in the points assigned to evaluation attributes for the classification of Juvenile Services Supervisor. She said that points were inappropriately assigned, and that when the error was brought to her attention, she corrected them. She said that an error should not result in a "windfall" for the employees.

Ms. Lamberton argued that positions are reclassified when there are changes in the duties, not upon discovery of an error by a clerical employee in the Division of Personnel. She said that there had not been a change in the duties assigned to the positions, and that upon discovery of an error in the points, a correction was made. She argued that even when Mr. Myers had written to the Director concerning the points assigned to the position, the position classification moratorium was in effect, and she would have been prohibited by law from performing a position review, and was not legally authorized to change either the position classification or

salary grade. She said that after July 1, 1991, she had reviewed the positions and found there had not been a change in the duties since the positions were originally established.

Ms. Lamberton testified that the assignment of five points to the "Working Conditions" was consistent with the points assigned to other supervisory positions in an office setting. She testified that a comparison between the JSO series and the Probation/Parole series was inappropriate, in that Probation/Parole Officers are armed while the Juvenile Services Officers are not. She argued that if the points assigned to the position were to be adjusted, the Board needed to look at the points assigned to "Supervision" as well, since the appellants' testimony was inconsistent with information she had received in 1991 on a request to reclassify these positions. She said that contrary to the appellants' assertion, the reassignment of points within a job class was not a "reclassification" or "reallocation" subject to the position classification moratorium, while changing a job classification or salary grade would have been prohibited by law during the moratorium.

The Board inquired about the methodology which the Director had employed in deciding that the JSO Supervisors should be established at salary grade 23, if neither a pointspread nor a specification had been developed. Ms. Lamberton responded that there were already Juvenile Services Officers I and II, and that when the Division for Children and Youth Services asked for establishment of a supervisory level in the series, she used information recently gathered in a review of Probation and Parole employees in determining what would be a reasonably appropriate grade. The Board then inquired if the grade had been established before the pointspread, and the Director confirmed that while it was not a good way to classify a position, the time constraints created by late notice that Juvenile Services personnel were being transferred to the State classified system forced the Division to establish the positions at certain salary grades and then assign points which would be consistent with those grades.

The Board asked Mr. McCormack if the appellants believed the Director had the authority to change the points assigned to the "Education" attribute. Mr. McCormack responded that the Division for Children and Youth Services had requested a change in the educational requirements, and that the Director had agreed. He said there was no dispute from either of the supervisors, the affected parties in this instance, and that a change was therefore appropriate. He said that in order to become a supervisor, or to be hired as a supervisor, an individual needed to possess the higher level of education. He said that when the points for education were increased, consistent with the position classification in January, 1988, the resulting point change should have increased the salary grade of the positions from salary grade 23 to salary grade 24.

Upon further inquiry from the Board, Mr. McCormack asserted that while the Director was entitled to make a correction to the points retroactive to 1988, because anyone hired after January of 1988 would have to meet the new requirements, and because there was no appeal

filed within fifteen days of that change. He argued that when the points were changed, the classification and salary grade should have reflected that change. He argued that the Division of Personnel did not detect an "error" in the "Working Conditions" attribute until it discovered that changing the "Education" attribute would increase the salary grade from labor grade 23 to labor grade 24. He argued that before making the change, Ms. Lamberton had a responsibility to review the positions to discover whether or not there really was an error, and if so, whether or not these positions were entitled to more than 10 points for "Working Conditions." He argued that where the "Education" attribute was not in dispute, the parties disputed the correct evaluation for the "Working Conditions" attribute.

The Board asked Mr. McCormack if the Director would have been legally entitled to change the "Education" factor if it had been clear, based on the minimum requirements, that the factor should have been reduced to a lower point value. Mr. McCormack said that the Director probably should not have been allowed to make a reduction without conducting a review. The Board then asked why the Director should be required to conduct a position review to decrease any factor if there was not a similar requirement to conduct a review before increasing a factor. Mr. McCormack said that the "Education" factor was consistent with what the Division for Children and Youth Services had requested and the Division of Personnel had approved. He said that by contrast, there had been no request from the appellants or their department for a reduction in the "Working Conditions" factor.

The Board asked Ms. Lamberton how the errors had occurred. She responded that when the classification section had created a pointspread for the positions under appeal, they were simply trying to insert points in each of the evaluation factors which would create a total resulting in a salary grade 23. She noted that in retrospect, she believed that the requirement for increased education was without merit for the purposes of classification. She argued that having 12 credit hours toward an advanced degree probably would have little or no bearing on an individual's ability to perform the work assigned to their positions, particularly in a class series such as the Juvenile Services series.

After considering the testimony and evidence offered by the parties, the Board voted unanimously to deny the instant appeal. In so doing, the Board made the following findings of fact and rulings of law:

The State's Proposed Findings 1, and 3 through 10, are granted. However, these findings are not dispositive of the appeal. Although it is clear that the Director corresponded with the appellant and offered her explanation of the events which had occurred, they do not prove

necessarily that the Director's decision was correct.

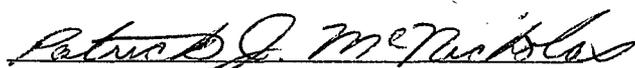
The State's Proposed Finding 2 is denied. The Director's February 14, 1990, letter said that JSO II positions were properly allocated at salary grade 21, not that JSO Supervisor positions were properly allocated at salary grade 23.

Proposed rulings A through D are granted.

The Board found that in January, 1988, juvenile services positions were transferred from the counties and district courts into the State classified system. When the State added those positions to the classified system, position evaluation points were assigned in order to arrive at salary grades which were more or less consistent with similar positions in the classified service. Without the assignment of points and salary grades, none of the individuals so transferred could have been compensated. Since that time, none of the salary grades assigned to the JSO Supervisor classification have changed, although some individual positions have been reclassified within the career ladder. In 1990, when the appeal was received, the State was subject to a position review moratorium effective June 5, 1989, and was legally prohibited from changing the position classification or salary grade of any position.

The Board found that the Director was authorized to make changes within a classification and a salary grade to be consistent with the duties and responsibilities of that position. The Board further found that the Director was entitled to make such changes during the position review moratorium, provided that the changes did not result in a change in either the class title or salary grade assigned to a position. Insofar as the original point allocations were the result of having already established a salary grade for the positions, and a review of the positions had not occurred, the Director would have acted improperly by changing the salary grade assigned to the positions without conducting a review of each of the nine evaluation factors. Such a review would have been prohibited by law until July 1, 1991.'

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett, Commissioner

  
Lisa A. Rule, Commissioner

Appeal of Maurice Myers  
Docket #90-C-1

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cc: Virginia A. Lamberlon, Director of Personnel  
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