

# State of New Hampshire



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

January 20, 1989

TO: Lorraine Drake, Laboratory Scientist  
Division of Public Health Services  
Denise Peters, Laboratory Scientist  
Division of Public Health Services  
Dr. William Wallace, Director  
Division of Public Health Services  
Virginia A. Vogel, Director of Personnel  
Stephen J. McCormack, SEA Field Representative

RE: Appeal of Lorraine Drake and Denise Peters, Laboratory Scientists  
Division of Public Health Services

On December 28, 1988, a decision in the above-captioned case was mistakenly issued to the parties. That decision had not been reviewed by all members of the Board, and it is hereby withdrawn. Enclosed is the final opinion of the Board. The time period for seeking rehearing or other appropriate review shall be calculated from the date of this notice.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE  
Executive Secretary

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301  
Telephone (603) 271-3261

### APPEAL OF LORRAINE DRAKE AND DENISE PETERS Laboratory Scientists Division of Public Health Services

January 20, 1989

By letter dated October 19, 1988, Lorraine Drake and Denise Peters, employees of the Public Health Laboratory, Division of Public Health Services, appealed the Division of Personnel's October 5, 1988 decision regarding the effective date of reallocation of their positions from Laboratory Scientist II to Laboratory Scientist III. The appellants argued that their original request for reclassification was first submitted to the Division of Personnel on March 28, 1985. The appellants concluded that the issue under consideration by the Board was identical to that submitted on behalf of the Division of Public Health Services Laboratory Scientists represented by the State Employees' Association, and that the appeals be considered together. The Board took this final request under advisement pending the outcome of the hearing as scheduled before the Board for Ms Drake and Ms Peters.

The appellants appeared on their own behalf at the Board's meeting of December 13, 1988. One of the appellants' submissions for the Board's review was a "Chronological List of Documents Supporting Appeal of Lorraine Drake, LS II and Denise Peters, LS II of Effective Date of Position Reclassifications." The Division of Personnel did not dispute the appellants' representations of the dates and types of correspondence concerning the Public Health Labs position reviews. The appellants also referred to an April 8, 1986 memorandum from former Personnel Director Judy Bastian which indicated that, "those review requests that were received prior to March 27, 1986, if... granted... would be retroactive to the pay period following the date the Division of Personnel received said request."

Director Vogel, in her testimony before the Board, did not dispute the chronology of events provided by the appellants. She did testify that the original position review in question, the resulting denial of upgrading, and the reconsideration request filed by the appellants had occurred prior to her appointment as Director of Personnel. Susan Epstein, former Deputy Director of the Division of Public Health had approached Ms Vogel in March of 1987 with a request for action on the October 1986 reconsideration request made to former Director Judy Bastian. Ms Vogel testified that she and Ms Epstein had agreed that any reallocation or reclassification of the positions would be from March, 1987 forward. Ms Vogel testified that her position in this matter was one of honoring an agreement between the Division of Personnel and the Division of Public Health Services, and that as far as she was concerned,

APPEAL OF LORRAINE DRAKE AND DENISE PETERS

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the parties were all aware in March, 1987 that there would be no compensation retroactive to the original review request should Personnel determine that the positions were, in March, 1987, improperly allocated.

The Board voted to grant the appellants<sup>1</sup> request for compensation retroactive to the beginning of the pay period following the date the original request for reclassification was received by the Division of Personnel. In so doing, the Board found that the original request for position review was made on March 28, 1985. A request for reconsideration was filed by Susan D. Epstein on November 3, 1986. That request for reconsideration was still pending at the time the appellants<sup>1</sup> positions were reallocated. The Board also found that the appellants had made a good faith effort to comply with requests for information from the Division of Personnel and that they had no knowledge of an oral agreement between the Director of Personnel and the former Deputy Director of the Division of Public Health Services. The Board further found that the Director of Personnel had made a good faith effort to equitably review and classify the positions in the Public Health Laboratory. The Director could easily have denied the reconsideration request and then insisted that the appellants wait a full year before resubmitting their request for position reviews. The Director chose not to pursue this latter course of action.

Upon consideration of the information provided by the parties, the Board voted to grant the appeal of Denise Peters and Lorraine Drake. The Board further voted to review the records of those other Public Health Laboratory Scientists whose positions were reviewed at the same time as the appellants<sup>1</sup> and whose appeals are currently pending before the Board to determine whether those appeals should be decided pursuant to Per-A 202.04.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

cc: Lorraine Drake, Laboratory Scientist  
Division of Public Health Services

Denise Peters, Laboratory Scientist  
Division of Public Health Services

Virginia A. Vogel  
Director of Personnel

Stephen J. McCormack  
SEA Field Representative

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301  
Telephone (603) 271-3261

### APPEAL OF LORRAINE DRAKE AND DENISE PETERS Laboratory Scientists Division of Public Health Services

December 28, 1988

By letter dated October 19, 1988, Lorraine Drake and Denise Peters, employees of the Public Health Laboratory, Division of Public Health Services, appealed the Division of Personnel's October 5, 1988 decision regarding the effective date of reallocation of their positions from Laboratory Scientist II to Laboratory Scientist III. The appellants argued that their original request for reclassification was first submitted to the Division of Personnel on March 28, 1985. The appellants concluded that the issue under consideration by the Board was identical to that submitted on behalf of the Division of Public Health Services Laboratory Scientists represented by the State Employees' Association, and that the appeals be considered together. The Board took this final request under advisement pending the outcome of the hearing as scheduled before the Board for Ms Drake and Ms Peters.

The appellants appeared on their own behalf at the Board's meeting of December 13, 1988. One of the appellants' submissions for the Board's review was a "Chronological List of Documents Supporting Appeal of Lorraine Drake, LS II and Denise Peters, LS II of Effective Date of Position Reclassifications." The Division of Personnel did not dispute the appellants' representations of the dates and types of correspondence concerning the Public Health Labs position reviews. The appellants also referred an April 8, 1986 memorandum from former Personnel Director Judy Bastian which indicated that, "those review requests that were received prior to March 27, 1986, if... granted... would be retroactive to the pay period following the date the Division of Personnel received said request."

Director Vogel, in her testimony before the Board, did not dispute the chronology of events provided by the appellants. She did testify that the original position review in question, the resulting denial of upgrading, and the reconsideration request filed by the appellants had occurred prior to her appointment as Director of Personnel. Susan Epstein, former Director of the Division of Public Health had approached Ms Vogel in March of 1987 with a request for action on the October 1986 reconsideration request made to former Director Judy Bastian. Ms Vogel testified that she and Ms Epstein had agreed that any reallocation or reclassification of the positions would be from March of 1987 forward. Ms Vogel testified that her position in this matter was one of honoring an agreement between the Division of Personnel and the Division of Public Health Services, and that as far as she was concerned,

APPEAL OF LORRAINE DRAKE AND DENISE PETERS

Request for Retroactive Compensation

December 28, 1988

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the parties were all aware in March of 1987 that there would be no compensation retroactive to the original review request should Personnel determine that the positions were, in March of 1987, improperly allocated.

The Board voted to grant the appellants' request for compensation retroactive to the beginning of the pay period following the date the original request for reclassification was received by the Division of Personnel. In so doing, the Board found that the appellants had made a good faith effort to comply with requests for information from the Division of Personnel and that they should not be penalized as a result of an agreement between the Director of Personnel and the former Director of the Division of Public Health Services. The Board also found, however, that the Director of Personnel had made a good faith effort to equitably review and classify the positions in the Public Health Laboratory. The Director could easily have denied the reconsideration request and then insisted that the appellants wait a full year before resubmitting their request for position reviews. The Director chose not to pursue this latter course of action.

Upon consideration of the information provided by the parties, the Board voted to grant the appeal of Denise Peters and Lorraine Drake. The Board further voted to notify the State Employees' Association, as representative for the remaining Laboratory Scientists at the Division of Public Health Services, that their appeal is granted.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

cc: Lorraine Drake, Laboratory Scientist  
Division of Public Health Services

Denise Peters, Laboratory Scientist  
Division of Public Health Services

Virginia A. Vogel  
Director of Personnel

Stephen J. McCormack  
SEA Field Representative