

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex

Concord, New Hampshire 03301

Telephone (603) 271-3261

RESPONSE TO REQUEST FOR RECONSIDERATION

Probation/Parole Officers
Department of Corrections

The State Employees' Association, as representative of the Appellants, filed a Reconsideration Request, Appeal of Probation Parole Officers I, II and III on December 16, 1988, arguing that the Board's decision of November 29, 1988, was unreasonable. Appellants stated, "It is unreasonable for the Personnel Appeals Board to simply quote the New Hampshire Division of Personnel Evaluation Manual and not offer justifiable reasons why the Personnel Appeals Board disagrees with the contentions of the appellants and the State Employees' Association. Additionally, it is contended that the Personnel Appeals Board, based upon the Rules, Evaluation Manual, and law has committed error of law by not granting an upgrading."

In general, Appellants argue that the Board's decision failed to explain why the requested increases were not justified. The Board would remind Appellants that they bear the burden of proof. The Board is not required to demonstrate that the Appellants are in error. If an appellant is to prevail in his appeal, he must demonstrate that the Division of Personnel has erred in its evaluation of a position. Appellants did not persuade the Board that the Division of Personnel so erred, and thus their appeal was denied.

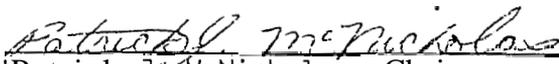
The Board rendered its decision on the appropriate degree allocation for the disputed evaluation factors by comparing the evidence and testimony presented to the definitions found in the Evaluation Manual. Merely disagreeing with the Board's analysis of the evidence, or suggesting that the Board should have provided more in-depth analysis in its decisions does not negate the findings, or support an argument that the resulting decision was either unreasonable or unlawful.

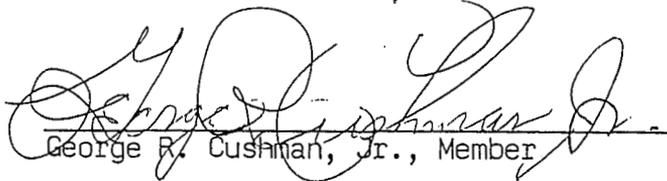
Throughout their original appeal and request for reconsideration, Appellants compared their positions to those of uniformed law enforcement positions listed in Exhibit 1 (Evaluation Factors & Degrees Analysis Form), particularly in comparing the attributes of "Physical Effort" and "Working Conditions". The Board addressed these attributes in detail in its original decision. Appellants have failed to sustain their burden by demonstrating that the Board's decision, which took into consideration the percentage of time and/or degree of regularity the appellants might be expected to experience the factors listed in the Evaluation Manual, was unreasonable or unlawful.

Appellants argue that "There were no significant position changes in duties and responsibilities for Probation Parole Officer, I, II and III since the initial request for a position review sent by Commissioner Ronald L. Powell on May 28, 1987." This argument has no bearing upon the Board's findings that the positions under appeal, at the time of the review, were properly allocated. The Board's decision makes reference to the reorganization plan (Appeal of Probation Parole Officers, page 6 ¶3., November 29, 1988) noting that discussions between the Division of Personnel and the Department of Corrections had resulted in creation of a "career path" for employees in the Probation Parole Officer class series. Career paths, by their very nature, address change which is anticipated, not change which has occurred. The Rules of the Division of Personnel require that, "If the director finds that substantial change in organization, creation or change of positions or other pertinent conditions make necessary the establishment of a new class, amendment of an existing class or abolishment of an existing class, he shall make appropriate changes." [Per 303.04 (b)] Absent a finding that there were material or substantial changes at the time of the review, the Division of Personnel decided the positions had been properly allocated. The Board subsequently upheld that decision.

The Board, upon review of the material submitted, voted to affirm its original decision. The request for reconsideration is, accordingly, denied.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George R. Cushman, Jr., Member


Robert J. Johnson, Member

cc: Stephen J. McCormack, SEA Field Representative
Virginia A. Vogel, Director of Personnel
Ronald L. Powell, Commissioner of Corrections
Thomas K. Tarr, Director, Division of Field Services

DATED: August 30, 1989

State of New Hampshire



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

APPEAL OF PROBATION PAROLE OFFICERS I, II, AND III

November 29, 1988

On Tuesday, September 27, 1988, the Personnel Appeals Board consisting of Commissioners Platt and Cushman, heard the classification appeal of Probation Parole Officers I, II and III of the Division of Field Services. The appellants, Bruce Wechsler, Probation Parole Officer I; Leslie Ryder, Probation Parole Officer II; and James Sullivan, Probation Parole Officer III, were represented by SEA Field Representative Stephen J. McCormack. Also testifying were Virginia A. Vogel, Director of Personnel and Thomas K. Tarr, Director of the Division of Field Services, Department of Corrections. Edward J. McCann, Classification and Compensation Administrator, represented the Division of Personnel.

Upon review of the record, the Board made the following findings. By letter dated April 21, 1987, Corrections Commissioner Powell requested the Division of Personnel conduct a classification review of Probation Parole Officers I, II and III in the Division of Field Services. In that request, Commissioner Powell suggested that these positions be upgraded from salary grades 19, 21 and 23 to grades 21, 23 and 25 respectively. On May 28, 1987, the Department of Corrections submitted completed classification questionnaires which suggested increasing certain evaluation attributes in each of the positions to arrive at the proposed salary grade increases. On October 27, 1987, the Division of Personnel responded, denying the request and stating, "Based on our assessment, we cannot accept the recommendations of the Probation Parole Officers I, II, III or the recommendation made by Mr. Tarr to upgrade each level by two salary grades. Reviews such as this [are] frustrating to me for they request labor grades that are not practical within Corrections [or in] the State Classification System itself. Certainly, the incumbents have a difficult job but if we look to other positions, particularly in the field of law enforcement, they are on the correct level. If we look beyond law enforcement and corrections, we will see job titles such as Chiefs and Directors at Salary Grade 25. If you will recall, other positions within your Department, such as Corrections Major, carry a Salary Grade 25. It would not be equitable to pay the Major and Corrections Officer III the same salary because the degree of responsibility is clearly different."

After receipt of a hearing request from the three appellants, the Personnel Appeals Board scheduled a hearing on the merits on March 8, 1988. By letter dated February 25, 1988, the Division of Personnel requested postponement of the hearing stating that the Division of Personnel and the Department of Corrections were attempting to, "arrive at a decision

on the salary grades to be assigned Probation Parole Officers that will be acceptable to the administration in the Department of Corrections and the Division of Personnel. Since a decision was made that Probation Parole Officers I, II and III were correctly evaluated, certain changes have taken place in job classes assigned to the Division of children and Youth Services... [which have similar functions to those classes under review]." The request for postponement further stated that since "the Department of Corrections and the Division of Personnel are actively involved in attempting to resolve the problem of appropriate salary grades for the class series... I respectfully request the Appeal Board to postpone the hearing for two months. If at the end of that time period there is not an agreement between the Division of Personnel and the Department of Corrections, a formal hearing can be scheduled by your Board."

The Board voted to grant the requested postponement. The Board never received notice from Messrs. Wechsler, Ryder or Sullivan that the appeal had been withdrawn. Given the Board's lengthy docket, a hearing on the merits could not be rescheduled until September 27, 1988."

Among the written arguments submitted by the appellants was a "Summary" which stated, "After a review of the Evaluation Manual, State of New Hampshire, the position specifications of the cited compared positions and the written arguments submitted **by** the Probation Parole Officers there appears to be extreme similarity in the attributes of Physical Effort and Working Conditions. If the 'Board' concurs with this review then the corresponding change in the two stated attributes would increase the salary grades of the Probation Parole Officers to approximately the request presented by the Department of Corrections. Additionally, the Probation Parole officers have argued other attributes and the contention is that the other state attributes are also underevaluated. If the 'Board' concurs with the arguments then obviously the salary grade would increase higher than those suggested by the Department of Corrections." The "Summary" then suggested salary grade increases of 5 grades each for Probation Paroloe Officers I and II, and a 6 grade increase for Probation Parole Officers III, with final salary grades proposed at grade 24, 26 and 29 respectively.

PROBATION PAROLE OFFICER I

The appellants suggested that Probation Parole Officer I positions should be awarded increased point allocations for the attributes of Initiative (60 to 80 points), Supervision (10 to 20 points), Physical Effort (10 to 30 points), Working Conditions (30 to 70 points), and maintenance of the Errors attribute at 60 points rather than the decrease to 40 points recommended by the Division of Personnel. The suggested increases would result in upgrading of Probation Parole Officer I positions from grade 19 to grade 23.

APPEAL OF PROBATION PAROLE OFFICERS I, II, and III

November 29, 1988

Page 3

For Initiative, the Board found this attribute properly allocated at 60 points. Given the appellant's representation of his responsibilities, the Board found the level of Initiative required in the position at the time of the review best described as, "Requires considerable initiative to perform the work, though under general direction, of devising new methods, modifying procedures to meet new conditions, and planning and performing unusual or difficult work where general instructions only are available." The Board thus voted unanimously to deny the requested increase;

For the attribute of Supervision, the appellant suggested an increase from 10 to 20 points. In support of this request, the appellant indicated that Probation Parole Officers I "exercise supervision over clerical employees, assigning and prioritizing work." The appellant also argued that, "New PPO I's are frequently trained and directed by a PPO I until familiar with the work. PPO III's and II's often have new PPO I's work with experienced PPO I's." This description of supervisory responsibilities cannot support an increase to the 3rd degree or 20 points. In fact, the Board found it only marginally met the standard of the 2nd degree which, by definition, "Involves about 25% to 50% of time supervising other employees doing related work while performing similar work part of the time, or where supervision is over a large number of workers on repetitive and routine work." The Board therefore voted to deny the requested increase for this attribute.

For the attribute of Physical Effort, the appellant suggested an increase from 10 to 30 points. At the hearing, the appellant demonstrated a number of items such as handcuffs, flashlight, handgun and Kubaton which he must generally carry. Mr. Wechsler, in his written submission, also mentioned that Probation Parole Officers I periodically move "desks, office equipment, drug testing equipment and supplies." The Evaluation Manual defines the 4th degree for Physical Effort as requiring the "continuous [50% or more of the time] lifting of material weighing up to 25 lbs., or frequent [10%---50% of the time] lifting of material up to 60 lbs., or occasional [2%---10% of the time] lifting of material over 60 lbs. Also work requiring frequent [10%---50% of the time] strenuous work positions." Neither the written nor oral presentation by the appellant supported the requested degree reallocation. The Board therefore voted to deny this request.

The appellant recommended increasing the attribute of Working Conditions from the 4th degree (30 points) to the 6th degree (70 points). The Evaluation Manual defines Working Conditions as "the physical conditions, surroundings, or disagreeable job conditions under which the work must be performed, over which the employee has no control, that affect his physical or mental comfort and to those unavoidable hazards such as accidents and occupational diseases to which an employee may be exposed while performing the work required. Consideration must be given to safety devices and protective

methods so as to determine whether or not the hazard has been eliminated. Also the probability for and type of injury resulting from accidents must be analyzed." The Board found that the appellant had not sufficiently supported his argument for increase to the highest degree allocation for this attribute. One of the controlling factors in the definition of the 6th degree for Working Conditions is the presence of "exceptional disagreeable factors of such a nature that workers must be relieved frequently." Given the appellant's description of his office assignments, court appearances and automobile travel, the Board found no evidence to support allocation at the highest degree for Working Conditions.

The final attribute which Mr. Wechsler addressed was that of Errors. The Board, upon review of the record, found this attribute to be properly allocated at 40 points, defined as work in which "Errors very difficult to detect, work not being subject to verification, audit or check. Employee has considerable responsibility for accuracy as errors may cause extensive confusion, damage, delay, etc." The Board found this allocation consistent with the appellant's representation of his duty assignments and exercise of independent judgment. The Board therefore voted to deny the request that this attribute remain allocated at the 5th degree or 60 points.

PROBATION PAROLE OFFICER II

Mr. Ryder's submission in support of upgrading Probation Parole Officer II positions from salary grade 21 to salary grade 26 suggested increasing the evaluation attributes of Initiative (60 to 80 points), Physical Effort (10 to 30 points) and Working Conditions (10 to 70 points). In general, the appellant argued that the Division of Personnel misunderstood the scope of work performed by a Probation Parole Officer II. He stated, "PPO II's are correctly identified as District Office managers. However, unlike PPO III's they do have significant caseloads of probationers and parolees." He then indicated that the Probation Parole Officers II have a caseload of approximately 75% to 95% of that handled by the Probation Parole Officer I and could manage such a caseload in addition to supervisory responsibilities because they are "experienced officers who can usually handle their cases with greater efficiency, and PPO II's routinely work far in excess of the required hours in order to meet their caseload and supervisory responsibilities." The Board found, however, that Mr. Ryder's description of his work was adequately defined by the 4th degree which "Requires considerable initiative to perform the work, though under general direction, of devising new methods, modifying procedures to meet new conditions, and planning and performing unusual or difficult work where general instructions only are available."

The Board found insufficient evidence to warrant increasing any of the attributes suggested by the appellant to the degrees requested. The Board denied the requested increase in the attributes of Physical Effort and Working Conditions for the same reasons addressed in the decision concerning the classification appeal of Probation Parole Officer I.

PROBATION PAROLE OFFICER III

For the position of Probation Parole Officer III, the appellant requested increases in the points allocated to the attributes of Complexity of Duties (100 to 125 points), Personal Relationships (50 to 70 points), Physical Effort (10 to 30 points) and Working Conditions (10 to 70 points). Additionally, the appellant argued that reduction of the Experience attribute (100 to 80 points) as recommended by the Division of Personnel was arbitrary and unrepresentative of the actual experience an employee must possess to successfully perform the duties of a Probation Parole Officer III.

The requested increase for the attribute of Complexity of Duties would require that Probation Parole Officers III perform, "Work carrying responsibility for consideration and analysis of major departmental problems." The Board found, however, that at the time of the review, these positions were more accurately described by the 6th degree for Complexity. That attribute, allocated at 100 points, consists of "work requiring analysis of broad problems, the planning of various interrelated activities and sometimes the coordination of effort of more than one division. May work out programs and approaches to major problems, and, in general, perform duties wherein recognized general principles may be inadequate to determine procedure or decision in all cases." The Board believed that such examples as development and implementation of the ISP (Intensive Supervision Program) are generally defined by the 6th degree for Complexity. Therefore, the Board voted to deny the requested increase for this attribute.

For the attribute of Experience, the appellant objected to the Division of Personnel's recommendation that the requirement be reduced from 7 to 8 years' experience (100 points) to a requirement for 5 to 6 years' experience (80 points). While the Division of Field Services no doubt benefits from the additional experience some of the Probation Parole Officers III might possess, they did not demonstrate a need that Probation Parole Officers III at entry level would need, in addition to a Bachelor's degree, 7 to 8 years' experience "in practical preparation in the same or related work" as defined by the Evaluation Manual. Absent specific information to support this allocation, the Board voted to deny the request that Experience remain at 100 points.

Mr. Sullivan further suggested that the Personal Relationships attribute be increased from 50 to 70 points. In support of this recommendation, the appellant indicated that his position specification requires him to make "frequent high level contacts with the judiciary, Board of Parole, Corrections Department Administrators, law enforcement agencies and members of the public to facilitate the uninterrupted exchange of information in gaining awareness and support for Field Service Programs." The Board found the scope of contacts described above to be well within the definition of the 5th degree in the Evaluation Manual for this attribute. The Board therefore voted to deny the requested increase in Personal Relationships.

For the attributes of Physical Effort and Working Conditions, the appellant failed to provide sufficient evidence of material change in either of these requirements which would support such increases for either attribute. As addressed in the findings for Probation Parole Officer I, the Board voted to deny these increases.

During the period of time the appeal of Probation Parole Officers I, II and III was pending before the Board, the Division of Personnel and the Department of Corrections had agreed to develop career paths for these classifications of positions. The agreement between the agencies would tie training, education and performance to increases within the classifications in this series. Additionally, Mr. Tarr indicated that the reorganization plan approved by the Division of Personnel and the Department of Corrections would, in essence, provide the majority of employees within these classifications with a two salary grade increase. Neither the appellants nor their representative provided information concerning the benefits of this reorganization in their pre-hearing submissions or during the hearing itself.

Another facet of the current reorganization plan, addressed by Personnel Director Vogel and Thomas Tarr, Director of Field Services, was the reclassification of two Probation Parole Officer III positions to Supervisor V, salary grade 25. Ms. Vogel explained that because these reclassifications were out of the class series of Probation Parole Officer, they needed approval by Fiscal Committee and Governor and Council. When the proposal was presented to the Fiscal Committee, that committee rejected the proposed reclassifications of these two positions, stating that the salary grade assigned to Supervisor V was too high for the organizational structure proposed. Ms. Vogel and Mr. Tarr then indicated that a subsequent proposal had been forwarded to the Fiscal Committee requesting reallocation of these two positions to Supervisor IV, salary grade 24. Both Ms. Vogel and Mr. Tarr believed this recommendation would be approved by both Fiscal Committee and the Governor and Executive Council. Therefore, although the evidence presented to the Board indicated that the appellants' positions were correctly classified at the time of the original review by the Division of Personnel, the Board found that the addition of certain position requirements since the time of that review has resulted in agreement between the Division of Personnel and the Department of Corrections to develop career paths for Probation Parole Officer positions. Those career paths will address the salary concerns of the appellants, as well as providing incentives for personal and professional development for those employees in their chosen careers.

Based upon the record before it, the Board voted unanimously that positions of Probation Parole Officer I, II and III were properly allocated

APPEAL OF PROBATION PAROLE OFFICERS I, II, AND III
November 29, 1988
page 7

at salary grades 19, 21 and 23 at the time the classification review was conducted by the Division of Personnel. Therefore, the Board voted to deny the appeals of Messrs. Wechsler, Ryder and Sullivan as originally filed.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

cc: Stephen J. McCormack
SEA Field Representative

Thomas K. Tarr, Director
Division of Field Services

Ronald K. Powell, Commissioner
Department of Corrections

Virginia A. Vogel
Director of Personnel