State of New Hampshire

PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone **(603) 271-3261**

APPEAL OF

SUPPORT ENFORCEMENT OFFICERS IAND II (Docket #97-C-9)

AND

INTERSTATE CASE TECHNICIANS (Docket #97-C-10)

March 3, 1999

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Wood) met on, Wednesday, April 1, 1998, undei- the authority of RSA 21-I:58, to hear the appeal of Support Eiiforceinent Officers and Interstate Case Technicians from the Department of Healtli and Human Services. Michael Reynolds, SEA General Counsel, appeared on belialf of the appellants. Personnel Director Virginia Lamberton and Michael McAulay, Supervisor of Classifications, appeared on belialf of the appellants.

On October 24, 1996, tlie Department of Healtli and Human Services submitted a request to tlie Division of Personnel to reclassify Case Technician positions ranging from salary grade 11 through salary grade 15 to a new classification of Support Enforcement Technician, salary grade 17. The Department also requested that Support Enforcement Officers I and II, currently at salary grade 17 and 20 respectively, be reclassified to a single level of Support Enforcement Officer, salary grade 20. The Director of Personnel responded by letter dated March 28, 1997, denying those requests. In short, the Director found that the information supporting tlie request for reclassificatioii was essentially the same as information submitted by tlie Department of .Health and Human Services in requests for reclassificatioii in 1985 and 1988. After receiving

TDD **Access: Relay** NH **1-800-735-2964**

the Director's decision denying their subsequent requests for reconsideration, the appellants timely filed appeals of the Director's decision.

Director Lamberton argued that in order to support a request for reclassification, the appellants needed to provide evidence of inaterial changes in tlie duties and respoiisibilities of tlieir positions that would warrant reclassification. She argued that although tliere had been changes in the laws governing child support services, and tlie appellaiits' workloads had changed over time, these changes in and of theinselves were insufficient to support reclassification. She argued that the basic purpose, scope and level of responsibility of the positions themselves had not changed substantially since they were reviewed in 1985 and in 1988.

The appellants argued that there was no legal requirement for them to demonstrate any change in their positions in order to support a request for reclassification. Nonetheless, they argued that because of changes in state aid federal law regarding child support services, tliere had been substantial and material changes in their duties aiid responsibilities.

Over tlie appellants' objection, the appeal was,heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the audio tape recording of the hearing, notices and orders issued by the Board, pleadings submitted by tlie parties, and documents entered into evidence as follows:

SUPPORT ENFORCEMENT OFFICER I and II

Appellants' Exhibits:

1. Classification Standards from the Classification Evaluation Manual (7/93)
2. October 24, 1996 letter to Virginia Lamberton from Sandra Platt regarding Office of Child Support Interstate Office Case Technicians and Clerical positions and tlie Support Enforcement Officer Class

3. March 26, 1997 letter from Sandra Platt to Virginia Lamberton regarding the Director's Decision on Support Enforcement Positions Reviews
4. April 9, 1997 letter to Virginia Lamberton from Sandra Platt regarding the Director's Decision on Support Enforcement Officer Position Reviews
5. May 9, 1997 letter fiom Sandra Platt to Virginia Lamberton requesting reconsideration of the Director's decision
6. April 5, 1995 Memorandum to OCS Laconia District Office staff from Supervisor Rick Gay
7. Position Classification Questionnaire of SEO I Beverly MacQuarrie signed January 4, 1994

State's Exhibits

1. Letter dated October 24, 1996 from Sandra Platt to Personnel Director Lamberton requesting establishment of a single level of Support Enforcement Officer at salary grade 20
2. Letter dated October 31, 1996 from Director Lamberton to Sandra Platt requesting position classification questionnaires from Support Enforcement Officers
3. Letter dated November 25, 1996 from Sandra Platt to Director Lamberton forwarding nine position classification questionnaires for Support Enforcement Officers
4. Letter dated February 11, 1997 fiom Sandra Platt to Virginia Lamberton concerning minimum qualifications for Support Enforcement Officer and Support Enforcement Technician Class Specifications
5. Class Specification for Suppoi-t Enforcement Officer I revised 12-18-95
6. Class Specification for Support Enforcement Officer II revised 12-18-95
7. Supplemental job description for Support Enforcement Officer I position #12682 amended 12/20/93
8. Supplemental job description for Support Enforcement Officer II position #19150 amended 11/17/92
9. Position Classification Questionnaires for nine Support Enforcement Officer I positions in various district offices
10. Position Classification Questionnaire for ten Support Enforcement Officer II positions in various district offices

11. Supplemental job description for Supervisor IV position #12275 amended 11/17/94
12. Supplemental job description for Supervisor IV position #12648 amended 3/1/96
13. Supplemental job description for Supervisor V position #41021 amended 8/18/95
14. Supplemental job descriptioii for Program Specialist III position #41022 amended 8/18/95
15. Supplemental job descriptioii for Attorney I position #41025 amended 3/20/97
16. Supplemental job descriptioii for Supervisor VII position #40528 ainended 1/24/97
17. Supplemental job descriptioii for Attorney III position #18336 amended 11/22/96
18. NH Code of Administrative Rules - Chapter He-W 400
19. Point evaluations for Case Technician Trainee, I and II; Support Enforcement Officer I and II, Supervisor III, IV, V and VII, Attorney I and III
20. Letter dated March 26, 1997, from Personnel Director Lamberton to Sandra Platt denying the request for reclassification
21. April 9, 1997 letter from Sandra Platt to Personnel Director Lainberton requesting reconsideration of the March 26, 1997 decision
22. Letter from Director Lamberton to Sandra Platt dated May 9, 1997, denying the request for reconsideration
23. April 9, 1985 letter from Richard Clievrefils, Director of the Division of Welfare to Personnel Director Judy Bastian concerning review of Child Support Enforcement positions
24. Letter of February 28, 1985 from Director Bastian to Richard Clievrefils
25. Letter dated August 4, 1988 from Robert Pliskin, Director of the Division of Human Services to Personnel Director Vogel concerning upgrading of Support Enforcement Officers I and II, and establishing a career ladder
26. Letter of December 12, 1988 from Personnel Director Vogel to Robert Pliskin concerning review of Support Enforceinent Officers I and II
27. Letter of December 27, 1988 from Robert Pliskin to Director Vogel requesting reconsideration of the decision concerning Support Enforcement Officers I and II
28. Letter of May 3, 1989 fi-om Director Vogel to Robert Pliskin denying reconsideration
29. Letter of May 16, 1989 from Lloyd Peterson to Director Vogel concerning Reconsideration of Support Enforceinent Officer I and II positions

30. Letter of May 17, 1989 from Lloyd Peterson to Virginia Vogel concerning Support Enforcement Officers I and II
31. Personnel Appeals Board pre-hearing conference order for Support Enforcement Officer I and II positions dated January 10, 1991
32. Personnel Appeals Board Decision on reclassification of Support Enforcement Officers I and II dated May 3, 1991
33. Personnel Appeals Board's June 6, 1991 Response to Appellant's Motion for Reconsideration of the Board's May 3, 1991 decision
34. Minimum qualifications for various class titles within the Department of Healtli and Human Services, Department of Corrections, Department of Safety and Department of Employment Security

In Ms. Platt's October 24, 1996, request for establishment of a single class of Support Enforcement Officer at salary grade 20, she argued that changes in the Sltill and Complexity factors for SEO I incumbents warranted reclassification. In that letter she wrote:

> "Since 1992, there is an increased level of SEO intervention to ensure promotion of family responsibility; there are enforcement and establishment teams with team leaders that assist unit supervisors in the daily management of tlie unit; the positions are now responsible to calculate an individual's ability to pay support and establish financial agreements through mediation/negotiation; the positions now need to review and adjust child support orders that are more than three years old; and cases handled by SEOs must' meet more stringent Federal performance audit criteria than prior to 1992."

At the hearing, the appellants also argued that their positions warranted an increase in tlie majority of evaluation factors. They aslted the Board to note tliat they exercise partial supervision from time to time over other Support Enforcement Officers, including authority to grant or approve leave requests in tlie absence of 'a supervisor.

In reviewing the evidence offered by the parties, tlie Board compared the duties and responsibilities described by tlie appellants to the current class specifications for Support Enforcement Officer 1. The specification reads as follows:

BASIC PURPOSE: To investigate support enforcement cases in order to ensure compliance with child support laws and regulations, including collections aiid administration of legal orders.

CHARACTERISTIC DUTIES AND RESPONSIBILITIES:

- Investigates, verifies and documents information required to enforce child support obligations.
- Reviews payment records to identify support violations; investigates circumstances pertaining to violations and prepares reports concerning status of investigation.
- Prepares documents for judicial presentations and appears at superior court to present disputed cases.
- Performs financial assessments of legally liable relatives to determine child support obligations.
- Collects child support through wage assignments, repayment plans, or draft agreements.
- Conducts investigations into circumstances pertaining to visitation riglits.
- Enforces court orders on assigned cases wliicli may include visitation riglits, collection of support payments, fines and court costs, complaints and public relations.

DISTINGUISHING FACTORS:

Skill: Requires skill in applying instructions to accomplish different job functions OR in operating machines for a variety of different purposes.
Knowledge: Requires logical or scientific understanding to analyze problems of a specialized or professional nature in a particular field.
Impact: Requires responsibility for achieving direct service objectives by assessing agency service needs and making preliminary recommendations for tlie developmelit of alternative short-term program policies or procedures. Errors at this level result in incomplete assessments or misleading recommendations causing a disruption of agency programs or policies.
Supervision: Requires no supervision of employees or functions.
Working Conditions: 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 injuries or health hazards.
Physical Demands: Requires light work, including continuous walking or operating simple equipment for extended periods of time as well as occasional strenuous activities such as reaching or bending.
Communication: Requires summarizing data, preparing reports and making recommendations based on findings wliicli contribute to solving problems and achieving work objectives. This level also requires presenting information for use by administrative-level managers in making decisions.

Complexity: Requires 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 altei-native solutions where only limited standardization exists.
Independent Action: Requires objective assessment in analyzing and developing new work inetliods and procedures subject to periodic review and in making decisions according to established technical, professioiial or administrative stmidards.

On tlie evidence offered by tlie pal-ties, tlie Board is not persuaded tliat tlie appellaiits' duties and responsibilities exceed tlie level at wliicli tliey are currently evaluated. The appellants failed to persuade the Board tliat their positions sliould be increased to levels 2 or 3 for Supervision, from level 3 to level 4 for Complexity, fi-om level 4 to level 5 for Knowledge, from level 3 to level 4 for Working Conditions, from level 2 to levels 3 or 4 for Sltill. Tlie appellants failed to produce evidence sufficient to persuade tlie Board that their current accountabilities support the requested increase in salary grade. In reacliiiig that decision, the Board compared the salary grade assigned to Support Enforcemeiit Officer I positions to a number of other positions statewide. The Board takes judicial notice that positioiis of Bank Examiner I, State Police Trooper, Conservation Officer II, Correctional Officer/Case Manager, Child Protective Service Worker and Disability Examiner are allocated at salary grade 17 as well. Given tlie nature of tlie duties associated with those positions, and the level of responsibility assigned to them, tlie Board found tliat salary grade 17 was appropriate for tlie positions under appeal.

Tlie appellants argued tliat Support Enforcement Officers I mid II share tlie same responsibilities, aiid should therefore be allocated at the same salary grade. Tlie Director argued that tliere liad been no change in the positions since the last review aiid appeal, and tliat if tliere were no difference between tlie positions, then tlie State could argue that it would be appropriate to downgrade SEO II positions to be consistent with positions of SEO I. However, there was no evidence tliat SEO II positions were specifically reviewed for reallocation or reclassification, and tlie Board made no specific findings witli respect to the appropriate classification or allocation of those positions.

On the evidence, argument and offers of proof, the Board voted unanimously to DENY the appeal of Support Enforcement Officers I for reallocation to a proposed single classification of Support Enforcement Officer, salary grade 20.

INTERSTATE CASE TECHNICIANS

Appellants' Exhibits

1.A Sulpplemental job description - Support Enforcement Officer I revised 12-18-95

2.A Supplemental job description - Support Enforcement Officer II revised 12-3-93

3.A Supplemental job description - Case Technician Trainee I revised 3-14-97

4.A Supplemental job description - Case Technician Trainee II revised 9-20-93

State's Exhibits

1. Letter dated October 24, 1996, from Sandra Platt to Virginia Lamberton requesting creation of a new class of Support Enforcement Technician, and reclassification of existing Interstate Case Technicians to tliat class
2. Supplemental job description for Case Technician Trainee, and I, position #41101, amended 7/1/95
3. Supplemental job description for Case Technician Trainee, and I, Interstate group, amended 3/97
4. Supplemental job description for Case Technician II, position #12202, amended 4-2-92
5. Organizational chart for Division of Human Services, Office of Child Support, Interstate Operations dated February 29, 1996
6. Position Classification Questionnaire for position #41100, signed by Jonathan Vinovich on 3-11-96
7. Position Classification Questionnaire for position #12183, signed by Donna Peirce on 3-12-96

8. Point evaluations for Case Technician Trainee, I and II, proposed Support Eliforcement Technician, Supervisor II and IV
9. Proposed supplemental job description for Support Enforcement Teclzliician
10. Position Classification Questionnaire for position #19149 signed by Jeannette Shuten on 3-11-96
11. Group supplemental job description for Supervisor IV, positions #12652, 12265, 12149 and 12275 amended 6-14-93
12. Letter dated March 26, 1997, from Personnel Director Lamberton to Sandra Platt on Support Enforcement Position Reviews
13. Letter dated April 9, 1997, from Sandra Platt to Director Lamberton requesting reconsideration of the director's decision
14. Letter dated May 9, 199, from Director Lainbestoii to Ms. Platt denying tlie request for reconsideration
15. 1986 cosrespondeiice related to tlie subject classificatioiis

In her October, 1996, letter to Director Lamberton requesting reclassification of Case Technician positions in the Office of Child Support, Ms. Platt described tlie duties of Case Technicians in the field as follows:

> "...conduct interstate parent locates, interview clients and absent parents to determine appropriate enforcement remedy; gatlier all pertinent information and complete legal documents and petitions necessary for presentation of case; monitor payments; conduct audits to determine cosrect amount of past due cliild support; take appropriate enforcement actions, including negotiating lump sum settlements and repayment agreements; make detennatioiis re: absent parents' ability to pay; make determinations upon wliicli to base recominendation for modification of coui-t orders; calculate amount owed in arrears; and determine whether collections were distributed properly."

She wrote that by comparison, Interstate Case Technicians must, "...be familiar witli the laws of all the states and must evaluate cases based on the different laws to decide tlie best way to

proceed with a case." She asserted that respoiisibilities of Interstate Case Technician positions had grown to include responsibility for creating and enforcing child support orders in situations wliere the absent parent resides out of state, duties normally performed by Support Enforcement Officers.

The current class specificatioii for Case Technician II, salary grade 15, lists the characteristic duties and responsibilities of the position as follows:

- Supervises and reviews work assignments of subordinate Case Technicians.
- Interviews applicants to determine eligibility for services or to establish payment plans.
- Reviews applications for assistance, services for repayment plans to ensure completeness and corrections.
- Assists in training new employees.
- Computes and authorizes payments, administers recoupments or records case dunning activity aiid other information which reflects case activity.
- Assesses need and refers applicants to agency personnel for additional services, to otlier agencies as appropriate.
- Manages case progress and contacts recipients when redeterminations are due or does collection and/or location follow-up as required.
- Determines continuing eligibility or ability to repay aiid authorizes changes in payments, payment agreements or recoupments.
- Meets and talks with applicants, recipients, clients, or defendants to explain relevant policies and procedures or collection activities.
- Reviews incoming applicant/client mail, taking action necessary for proper and timely processing.
- Visits or contacts physicians, attorneys, court staff or otlier professionals to obtain documentation and information pertaining to applicants or defendants.
- Attends court hearings to seek enforcement of court orders.

The proposed specification for a new classification of Support Enforcement Teclmician (State's Exhibit 9) listed the basic purpose of the position as, "To establish paternity and orders for child support and enforce those orders to fulfill the requirements of Federal child support laws, regulations aiid policies." It also listed the proposed duties and responsibilities of the position as follows:

- Reviews aiid assesses child support orders to determine strategies for implementation of one or more enforcement techniques to ensure continuous aiid timely collection of payments. Establishes and enforces child support orders.

- Negotiates with obligors, clients, and attorneys to establish orders and obtain current and past due child support.
- Recommends enforcement actions to state tribunals, judges and hearings officers to achieve payment settlements and oil-going future payments.
- Initiates, verifies, and documents information required to enforce obligations such as employment data, credit bureaus, federal tax documents and financial resources.
- Monitors and reviews cases for compliance and audits cases for accuracy in order to ensure the appropriateness of distributions and the correct application of enforcement remedies.

Although the Board recognizes tliat tlie Case Technicians assigned to the Interstate unit are required to obtain information and conduct collection activities in a multi-jurisdictional setting, the Board does not believe that tliis factor alone wan-ants the creation of a new classification of Support Enforcement Technician. After reviewing tlie evidence offered for the Board's consideration, the Board found that tlie current specification may not reflect the duties and responsibilities of Case Technicians assigned to the Interstate unit as precisely as those listed in the proposed specification. However, the Board was not persuaded that the duties described by the appellants exceed the distinguishing factors in the current class specification, or that the duties and responsibilities warrant reallocatioii from salary grades 11, 13 and 15 to salary grade 17.

The current position evaluation as outlined in the distinguishing factors and minimum qualifications for the classification of Case Technician II are as follows:

> **DISTINGUISHING FACTORS:**
> **Skill:** Requires skill in developing formats and procedures for special applications OR in investigating and reviewing tlie use of equipment and data for a specialized function.
> **Knowledge:** Requires luiowledge of business practices and procedures or teclmical training in a craft or trade, including working from detailed instructions, to apply knowledge in a variety of practical situations.
> **Impact:** Requires responsibility for contributing to immediate, ongoing agency objectives by facilitating tlie direct provision of services to the public or other state

agencies. Errors at this level result in inaccurate reports or invalid test results and require significant investment of time and resources to detect.

Supervision: Requires direct supervision of otlier einployees doing work which is related or similar to the supervisor, including scheduling worlc, recommending leave, reviewing worlc for accuracy, performance appraisal, or interviewing applicants for position vacancies.

Working Conditions: Requires performing regular job functions in a controlled environment with minimal exposure to disagreeable job elements and little risk of hazard to physical or mental health.

Physical Demands: Requires light work, including continuous walking or operating simple equipment for extended periods of tinie as well as occasional strenuous activities such as reaching or bending.

Communication: Requires explaining facts, interpreting situations, or advising individuals of altemative or appropriate courses of action. This level also requires interviewing or eliciting information from state einployees or members of the general public.

Complexity: Requires a combination of job fiuictioiis 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 staiidasdization exists.

Independent Action: Requires a range of choice in applying a number of technical or administrative policies under general direction and in making routine decisions or in recommending modifications in work procedures for approval by supervisor.

MINIMUM QUALIFICATIONS:

Education: Associate's degree or coinpletion of two years of college.

Experience: Three years' experieiice requiriiig public coiitact, and/or attention to detail, as required in explaining rules and regulatioiis or implementing technical instsuctions, one year of which shall have been as a Case Technician I.

On the evidence, argument and offers of proof, the Board voted unanimously to DENY the appellaiits' request for creatioii of a iiew classificatioii of Support Enforcement Technician[1], and for upgrading of their positions to salary grade 17.

[1] RSA 21-I:46, VIII-a. "The board shall be limited to existing job titles within the classification plan when rendering decisions regarding appeals of denial of reclassification. Tlie board is explicitly prohibited from creating new job classificatioiis or job titles."

THE PERSONNEL APPEALS BOARD

Mark J. Bennett, Chairman

Patrick H. Wood, Commissioner

Robert J. Johnson, Commissioner

cc: Virginia A. Lainberton, Director of Personnel, 25 Capitol St., Concord, NH 03301

SEA General Counsel Michael Reynolds, PO Box 3303, Concord, NH 03302-3303

Sandra Platt, Human Resources Manager, Dept. of Health and Human Services, 6 Hazen Dr., Concord, NH 03301

State of New Hampshire

PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) **271-3261**

SUPPORT ENFORCEMENT OFFICERS I AND 11 - DOCKET #97-C-9
AND
INTERSTATE CASE TECHNICIANS - DOCKET #97-C-10

RESPONSE TO APPELLANTS' OBJECTION; MOTION FOR RECONSIDERATION; AND MOTION FOR CLARIFICATION OF THE BOARD'S FEBRUARY 11, 1998 DECISION

AND
DIRECTOR'S OBJECTION THERETO

Monday, March 30, 1998

On March 13, 1998, the Personnel Appeals Board received Appellants' Objection, Motion for Reconsideration, and Motion for Clarification of the Board's February 11, 1998, decision denying Appellant's Requests for Discovery and Motion for Evidentiary Hearing. The Director's Objection was received by the Board on March 25, 1998.

Having reviewed Appellants' pleadings and the Director's objection in conjunction with the Board's decision, the Board voted unanimously to affirm its decision denying both the request for additional pre-hearing discovery and the request to present live witness testimony at the scheduled April 1, 1998, hearing. The Board also denies the request for "clarification" of its earlier order.

Discovery

The appellants continue to insist that they are entitled 'to any and all notes or documents that any party might have generated during the course of the Director's review of their positions.

TDD Access: Relay NH 1-800-735-2964

The Board does not agree. Simply put, those things are of no particular importance in hearing or deciding the instant appeal. The Director has sole authority to determine the appropriate allocation of every position in the classified service. The appellants have the burden of proving that their positions are incorrectly classified in accordance with the classification plan or the director's rules. What information may or may not have been considered during the review, and the weight the Director may have given that information is immaterial. The only issue properly before the Board is whether or not the appellants' positions are correctly classified in accordance with the classification plan or the Director's rules.

Evidentiary Issues

As set forth in the Board's earlier orders, if, after considering the evidence, oral argument and offers of proof the Board determines that it has insufficient evidence to fairly decide the appeal, the Board, upon its own motion or on the motion of a party, may vote to compel the production of additional evidence, up to and including the testimony of witnesses. The Board has no intention of treating this evidence any differently than the evidence it has received in classification appeals it has heard since enactment of RSA 21-I:57.

FOR THE PERSONNEL APPEALS BOARD

Mark J. Bennett, Chairman

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord, NH 03301
Michael Reynolds, SEA General Counsel, State Employees' Association
PO Box 3303, Concord, NH 03302-3303
Sandra Platt, Human Resources Manager, Dept. of Health and Human Services
6 Hazen Dr., Concord, NH 03305

State of New Hampshire

PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

SUPPORT ENFORCEMENT OFFICERS I AND 11 - DOCKET #97-C-9
AND
INTERSTATE CASE TECHNICIANS - DOCKET #97-C-10

RESPONSE TO APPELLANTS' MOTION FOR DISCOVERY,
DIRECTOR'S OBJECTION TO APPELLANTS' MOTION FOR DISCOVERY
AND
DIRECTOR'S ALTERNATIVE MOTION FOR DISCOVERY

February 11,1998

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met under the authority of RSA 21-I:57, on Wednesday, August 6, 1997, to hear the classification appeals of Support Enforcement Officers and Interstate Case Technicians. The appellants were represented at the hearings by SEA General Counsel Michael Reynolds. Virginia A. Lamberton, Director of Personnel, appeared on behalf of the Division of Personnel.

Mr. Reynolds objected to taking up the merits of these appeal until the appellants received a written response to their initial request for discovery and their request for a full evidentiary hearing. Chairman Bennett allowed the parties to offer oral argument on the requests, and directed the appellants to submit specific requests in writing.

The appellants' Motion(s) Pursuant to Board's August 6, 1997 Oral Order was received by the Board on August 20, 1997.. The Board received Personnel Director Lamberton's Objection to that Motion as well as a contingent Motion for Discovery on September 5, 1997. The appellants filed a response to the Director's submission on September 15, 1997.

Having considered those pleadings in connection with the documents filed to date, the language of RSA 21-I:57, the Rules of the Division of Personnel and the Rules of the Personnel Appeals Board, the Board voted as follows:

TDD Access: Relay NH 1-800-735-2964

Appeals Board, the Board voted as follows:

Motions for Discovery

Both the Appellants' Motion for Discovery and the Director's Contingent Motion for Discovery are denied.

Per-A 204.02 (b) of the Rules of the Personnel Appeals Board states, in pertinent part, "In exceptional cases, either party may request that the Board order formal discovery," and that the party making the request "...shall set forth those factors which it believes support its request for additional discovery." Neither party has persuaded the Board that these appeals are exceptional in any respect.

The Board's statutory authority for hearing and deciding appeals arising out of classification decisions of the Director is defined by RSA 21-I:57 which states:

> "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 classification 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."

As stated in Per 303.02 of the Rules of the Division of Personnel, an agency head or an employee requesting reclassification of a position must submit a completed request for reclassification that includes a narrative memo identifying:

"The class title and position number of the position to be reviewed by the director; an explanation of the reason or reasons for the request including what precipitated the permanent change in the duties of the position to necessitate the review; and a recommendation for change in the classification to an appropriate class title."

In addition to the narrative, the request must also include the following:

"The employee's current supplemental job description which has been approved by the director under Per 301.03(f); the proposed supplemental job description which has been annotated to reflect any changes in job responsibilities under 301.03(i); a current organizational chart identifying the position in relation to the current structure of the agency; a proposed organizational chart which includes an explanation of how the change in reporting relationship, if any, is related to the agency's goals, objectives and structure; [and] a position classification questionnaire indicating the changes in the employees duties which require a reallocation or reclassification of the position from one classification to another, or the development of a new classification to match the duties of the position."

Per 303.04 of the Rules of the Division of Personnel provides that upon receipt of a completed request for reclassification, "The Director shall respond to a request for reallocation or reclassification in writing stating whether or not the director agrees with the recommendation made in the request by the appointing authority or the employee."

The appellants have failed to persuade the Board that without additional discovery, they will be unable to provide competent evidence of what they believe to be the permanent changes in their duties and responsibilities that would warrant reallocation or reclassification in accordance with the classification plan or the director's rules.

Having denied that Motion, the Board need not reach the merits of the Director's Alternative Motion for Discovery.

Appellants' Request for Evidentiary Hearing

The appellants argued that they have a statutory right to present the testimony of live witnesses during a classification appeal. The Board does not agree. Unlike RSA 21-I:58, RSA 21-I:57 does not require the Board to hear classification appeals "in accordance with the procedures provided for adjudicative proceedings in RSA 541-A."[1]

The procedures for hearing classification appeals have remained essentially unchanged essentially for more than a decade. Within fifteen days of the allocation of a position, an affected party who disagrees with the allocation of the position and its classification within the classification plan may appeal to the Board. That party then has twenty additional days in which to file written arguments and supporting documentation, including all statements and affidavits which the party wishes the Board to consider. If the Director files a response to those pleadings, the appellant then has ten more days in which to submit a follow-up response. At the hearing, parties are given ten minutes in which to present oral argument and answer questions. The appellants have failed to persuade the Board that the procedure prejudices them in anyway, particularly in light of the fact that within twenty days of having filed their initial appeal, they could have submitted by affidavit any and all testimony that they might offer at a hearing on the merits concerning the duties and responsibilities of their positions.

Furthermore, as set forth in the Board's notice of scheduling, parties are routinely advised that if the Board determines that it has insufficient evidence upon which to fairly decide the appeal, the Board, on its own motion or on the motion of a party, may vote to compel the production of additional evidence, up to and including the testimony of witnesses. The appellants have failed to persuade the Board that by conducting classification and evaluation appeal hearings in this fashion, they are denied any due process. Accordingly, the Board voted to deny the appellants' motion for a full evidentiary hearing.

The appellants also have argued that, "...the Board is wrong, both legally and considering past practice, if it takes the position that it need not consider the merits of the appellants' appeal as opposed to the merits/reasoning of the director in her determinations of the appellants'

[1] The Board is not persuaded that the adjudicative proceedings described in RSA 541-A provide an automatic entitlement to present live witness testimony in all cases.

specific accountability allocations." They argued that the Board is legally obliged to "fairly apply its own judgment to all of the relevant facts and to independently arrive at the proper labor grades for the positions involved."

RSA 21-I:57 authorizes the Board to order the Director to "make a correction" if the Board determines that an individual is "not properly classified in accordance with the classification plan[2] or the director's rules." In the Board's opinion, that language does not guarantee a de novo review of every classification decision appealed to the Board

The appellant has the burden of proving that the classification decision was not accomplished in accordance with the Director's rules (i.e., the Director refused to review a completed request or failed to make proper inquiries of the appointing authority with respect to the appellant's duties and responsibilities) or that the decision does not comport with the classification plan (i.e., the duties and responsibilities listed on the employee's supplemental . job description are outside of the scope of responsibilities described in the class specification). If an appellant can demonstrate error, either in the review process or the decision itself, the Board's statutory obligation is to order the Director to make a correction. While that may, in some instances, result in specific findings by the Board with respect to a position's duties and responsibilities, in other cases, it simply means that the Director is instructed to complete another review of the position.

FOR THE PERSONNEL APPEALS BOARD

Mark J. Bennett, Chairman

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord, NH 03301
Michael Reynolds, SEA General Counsel, State Employees' Association
PO Box 3303, Concord, NH 03302-3303
Sandra Platt, Human Resources Manager, Dept. of Health and Human Services
6 Hazen Dr., Concord, NH 03305

[2] "The classification plan shall consist of the following: (1) A complete set of published class specifications established under Per 301.02 grouped alphabetically by class title; and (2) the evaluation plan and point factors used to write class specifications and classify positions, which is listed in the technical assistance manual." [Per 301.01 (c)]