

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301  
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### *APPEAL OF:*

*Heather M. Fairchild, Docket #99-C-11*

*Miclzael A. Weider, Docket #99-C-12*

*Valerie Hamilton, Docket #99-C-13*

### *NEW HAMPSHIRE LABOR DEPARTMENT*

*October 21, 1999*

The New Hampshire Personnel Appeals Board (Wood, Rule and Barry) met on Wednesday, September 1, 1999, under the authority of RSA 21-I:57, to hear the above-listed appeals. Mr. Weider, who is currently employed as a Labor Inspector for the Department of Labor, Ms. Fairchild and Ms. Hamilton, who previously were employed formerly as Labor Inspectors, were appealing the Director's November 16, 1998, decision and November 25, 1998, reconsideration decision denying their request for reclassification to a new title of Safety Inspector, salary grade 21. The appellants appeared pro se. Sara Willingham, Administrator of the Bureau of Human Resources, appeared on behalf of the Division of Personnel.

The appeal was heard on offers of proof by the parties. The record of the hearing in this matter consists of pleadings submitted by the appellants prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing, and documents admitted into evidence without objection.'

#### Appellants' Exhibits

The appellants submitted a packet of exhibits numbered to correspond to the "Characteristic Duties and Responsibilities" for the classification of Institutional Safety Officer, salary grade 22, as follows:

- A copy of the class specification for Institutional Safety Officer

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<sup>1</sup> Ms. Willingham indicated that many of the documents being offered by the appellants were not part of the original request for reclassification. However, she said that if the documents were indicative of the work being performed by the appellants at the time of the review, she would not object to their admission.

- Print-outs of "web" pages with information about programs and downloadable forms for use in complying with Department of Labor safety and employee health regulations
- Correspondence between the Department of Labor and the Department of Corrections
- "A Guide for Developing a Written Safety Program"
- NHDOL Safety Inspection Report dated 11/4/98 for the Town of Wolfeboro
- Inspection Report dated 11/5/98 for GeacFasFax - Geac Computers, Inc.
- Safety Inspection for O.D. Hopkins Associates, Inc., dated 11/3/98
- Safety Re-Inspection Report for Finishield Corporation dated 4/28/98
- Correspondence with Littleton Coin Company dated 11/16/98
- Correspondence with Bedford School District dated 6/30/98
- Various Safety and Health Regulations
- Packet headed "Welcome to the N. H. Department of Labor's Safety Training"
- Packet headed "How to Develop an Effective Safety Program"
- Packet headed "The Status of Joint Loss Management Committee's in New Hampshire"
- PowerPoint presentation on Fatal Accident Review
- Fatal Accident Investigation report for Claremont Steel Corporation
- Accident investigation for Salem School District dated September 3, 1998
- Letter dated July 15, 1998, to Department of Corrections
- Letter dated July 29, 1998, to Department of Corrections
- Proposed supplemental job description for Labor Inspector, Workplace Safety Inspector

By letter dated February 4, 1999, the Director of Personnel submitted to the Board a packet of exhibits identified with the letters A through P. The Director's letter indicates that copies were forwarded to Jack Jarvis, the appellants' supervisor, and James Casey, Commissioner of Labor. The appellants asserted that although the information may have been provided to their supervisor and their commissioner, it was not provided to them personally prior to the date of hearing. The Board offered the appellants an opportunity to postpone the hearing until a later date in order to allow them to review the Director's submissions, or to exclude any documents with which they were unfamiliar. At the appellants' request, the Board excluded exhibits to which the appellants objected and admitted the remainder into evidence, without objection, as follows:

State's Exhibits

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|-----------|---|
| Exhibit A | Memo from Jack Jarvis to Division of Personnel  |
| Exhibit F | Position Classification Questionnaire completed jointly by Safety Labor Inspectors                              |
| Exhibit G | Supplemental Job Description for Safety Labor Inspectors  |
| Exhibit H | Director's Decision for all Labor Inspectors  |
| Exhibit I | Request for Reconsideration from Jack Jarvis on behalf of Safety Labor Inspectors                               |
| Exhibit J | Response to Request for Reconsideration addressed to Jack Jarvis  |
| Exhibit P | Job Specifications for: Chief, Recreational Ride and Lift Safety; Institutional Safety Officer; Labor Inspector |

The appellants argued that although they had requested an upgrading of their positions from salary grade 18 to salary grade 21, their duties and responsibilities were accurately described by the class specification for Institutional Safety Officer, salary grade 22, and should be reclassified accordingly. Ms. Hamilton and Ms. Fairchild noted for the record that they were no longer employed by the Department of Labor as Labor Inspectors, but wished to speak in favor of the reclassification because they felt so strongly about the issue.

The appellants said that their original request for reclassification involved only the Safety Inspectors. However, they said, the Division of Personnel reviewed all of the Labor Inspector positions and by "lumping them in" with Wage and Hour Inspectors, the Division of Personnel failed to recognize the distinct differences between auditing payroll records and conducting safety inspections.

The appellants argued that Safety Inspectors need the same technical background as Loss Control Consultants (salary grade 24). They said that under the Workers' Compensation legislation that created their positions at salary grade 21, the Department of Labor assumed expanded responsibilities for safety inspections and workplace safety programs in both the public and the private sector. They explained that the Department of Labor is the regulatory agency for towns, counties and State agencies, and that any employer in New Hampshire with 10 or more employees also falls under the Department's jurisdiction.

Ms. Willingham explained that when the Division of Personnel reviews positions, it often asks for classification questionnaires from employees performing similar functions. She said that although the appellants' job functions were different from other Inspectors in the Department of Labor, a review of their questionnaires revealed that they were functioning at roughly the same level. She said that the Division also compared the positions to investigator and inspector positions in other agencies, including Liquor Investigator (salary grade 15), Trooper (salary grade 17) and Arson Investigator (salary grade 18) and found that the assigned salary grade was consistent with similar positions statewide.

Ms. Willingham argued that the position occupied by the appellants' supervisor, Mr. Jarvis, is comparable in terms of complexity and level of responsibility to the Institutional Safety Officer position to which the appellants compared their jobs. She said in an agency institution, the Institutional Safety Officer does more than inspect the facility for compliance with local, state and federal codes and laws, that employee has over-all responsibility for ensuring that the facility comes into compliance with those standards. She said that unlike the Institutional Safety Officer, the appellants are not responsible for writing or revising

agency policies and procedures. Ms. Willingham also argued that the appellants reported being in the field 4 to 5 days a week, and therefore would not be performing many of the administrative functions performed by their own supervisor or positions classified as Safety Officer.

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

#### Findings of Fact

1. When the instant appeal was filed, the three appellants were employed by the Department of Labor as Labor Inspectors, salary grade 18. Since that time, Ms. Fairchild has transferred to a position of Institutional Safety Officer, salary grade 22, and Ms. Hamilton has transferred to a position of Loss Control Consultant, salary grade 24.
2. According to The Evaluation Manual, "'Supervision' means training, guiding, and directing the efforts of state employees as well as managing the functional activities of an organizational unit. This factor measures organizing, planning, and scheduling the work of subordinates, including the responsibility for performance appraisal, in order to achieve organizational goals."
3. The appellants indicated in their classification questionnaire that they had no supervisory responsibilities. Therefore, their positions are appropriately rated at level 1 for Supervision which, "Requires no supervision of employees or functions."
4. In their Classification Questionnaire, the appellants indicated that 30% to 50% of their work time is spent, "...in the Concord office answering telephone calls from employers/employees throughout the state." They wrote that that they conduct extensive research and utilize that information to, "...[assist] in the development of [safety] training programs and on occasion will conduct the training." They indicated that the remainder of their time (50% to 70%) is spent conducting safety inspections where, "...Working environments can range from office-based agencies to lumber mills, medical facilities, foundries, machine shops, construction sites, warehouse operations, sand and gravel companies, and large manufacturing firms."
5. The appellants indicated that roughly half the time in the field during Safety Inspections is sedentary work that involves reviewing documentation, consulting with the employer and writing the Safety Inspection Report. They listed physical conditions that could be found on the job during an inspection to include potential exposure to hazardous chemicals, high noise, machinery, construction site hazards, high heat and electrical hazards.

6. The Evaluation Manual defines "Working Conditions" as, "...the specific working environment and physical conditions to which an employee is exposed in performing required job duties and tasks. This factor measures the uncontrollable job elements which affect an employee's mental or physical ability to complete job assignments in the normal course of work, including occupational hazards such as injury or disease. This factor does not include climate control problems that are typically not directly linked to tasks the incumbent must perform."
7. According to the Evaluation Manual, an environmental condition as a classification issue must be present at least 20% of the time during the basic workweek or it must be hazardous in that it causes a bona fide risk of bodily injury or danger to life and health during the basic workweek.
8. None of the inspection reports offered into evidence provide proof that the inspectors face environmental conditions such as extensive continuous cold, extensive continuous heat, fluctuating temperatures, noise and/or dust at least 20% of the time. Also, while there is evidence of potential risk in some inspections, the evidence does not reflect that the potential hazards have any effect on the employee's mental or physical ability to complete job assignments in the normal course of work. The factor would be most appropriately rated at level 2 for the Working Conditions factor. Such an allocation would reduce the overall rating of the position by 10 points.
9. The Inspectors wrote that, "While conducting safety inspections, approximately 50% of the time is spent in a sitting position reviewing documentation, consulting with the employer and writing the Safety Inspection Report. The other 50% is spent walking (both indoors and outdoors), climbing stairs, ladders and cat-walks."
10. Applying the percentages listed by the Inspectors in their classification questionnaire for the nature of their work, although the Division of Personnel rated these positions at level 3 for Physical Demands, they could be accurately described by level 2 defined by the Evaluation Manual as, "...light work, including continuous walking or operating simple equipment for extended periods of time as well as occasional strenuous activities[between 10-25% of total work time] such as reaching or bending." Such a change would reduce the points assigned to the Physical Demands factor by one level, or by 10 points.
11. The appellants' positions are rated by the Division of Personnel at level 4 for the Communications factor, described by the Evaluation Manual as, "Summarizing data, preparing reports and making recommendations based on findings which contribute to solving problems and achieving work objectives. This level also requires presenting information for use by administrative-level managers in making decisions,"

12. The appellants listed their contacts inside and outside of the Department of Labor and described the nature of their communication with those contacts as ascertaining information from employers within the state, verifying employer policies, discussing findings, informing personnel of expired inspection certificates, and discussions to develop useful computer queries and printouts from the mainframe computer.
13. Insofar as the described communication does not rise to the level of presenting information for use by administrative-level managers in making decisions, the nature of their communication could be described as, "Explaining facts, interpreting situations, or advising individuals of alternative or appropriate courses of action. This level also requires interviewing or eliciting information from state employees or members of the general public." That allocation would result in a 15 point reduction in the overall points assigned to the classification.
14. The Evaluation Manual defines Independent Action as, "...the amount of decision making, initiative, and responsive effort required in originating new or more efficient work methods and procedures. This factor measures the type, frequency, and priority of well-defined alternatives and the extent to which instructions or policies guide action in selecting and applying strategies to enhance service delivery of the agency."
15. The appellants listed RSA 281-A:64, the Administrative Rules for Safety Programs and Joint Loss Management Committees; RSA 277, Lab 1400, RSA 277-A, 29 CFR 1910 and 1926, ANSI guidelines and NHDES Hazardous Waste Rules as the policies and procedures used to perform their duties.
16. The Division of Personnel rated the positions at level 4 for Independent Action which, "Requires objective assessment in analyzing and developing new work methods and procedures subject to periodic review and in making decisions according to established technical, professional or administrative standards."
17. The evidence does not reflect that the appellants analyze and develop new work methods and procedures. Therefore, the Independent Action factor for the appellants' positions could be described by level 3, which "Requires a range of choice in applying a number of technical or administrative policies under general direction and making routine decisions or in recommending modifications in work procedures for approval by supervisor."
18. The appellants' supervisor recommended establishing the minimum qualifications for appointment consideration at the level of a bachelor's degree and two years of experience, with, "Additional experience required in lieu of a bachelor's degree."
19. The existing class specification calls for an associate's degree and four years of experience.

20. Adopting the supervisor's recommendation would result in a one level, 25 point increase in the Knowledge factor, and a one or two level, 25 to 40 point decrease in the Skill factor.
21. The Evaluation Manual defines the Complexity factor as, "...the combination of specific job functions in relation to the overall structure and purpose of the job. This factor measures the diversity of the tasks performed, the application of fundamental principles to solve specific problems, and the level of judgment required to apply knowledge acquired through training and experience."
22. The appellants' positions are best described by level 3 for the Complexity factor which, "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 alternative solutions where only limited standardization exists."
23. The Evaluation Manual defines Impact as, "...the manner in which the basic purpose and job functions of a position interact with and respond to the overall needs of the agency. This factor measures the probability for and consequences of error in relation to the achievement of agency goals and objectives, including the responsibility for planning and developing agency programs, implementing operational procedures, and providing services to specific client populations."
24. The appellants have, "...responsibility for contributing to immediate, ongoing agency objectives by facilitating the direct provision of services to the public or other state agencies." Their work does not rise to the level of "...assessing agency service needs and making preliminary recommendations for the development of alternative short-term program policies or procedures..." The evidence supports allocation of the Impact factor at level 3.
25. Based on the information provided by the appellants in their classification questionnaire, and the supporting documents submitted with their appeal, the following point spread accurately reflects the work performed:

Position Title Classification	Skill	Knowledge	Impact	Supervision	Working Conditions	Physical Demands	Communi- cations	Complexity	Independent Action	Total Points	Points Salary	Grade
Labor Inspector	4	3	4	1	3	2	4	3	4			
Current points	65	60	40	0	20	10	35	50	55	335	18	
Labor Inspector (Safety Inspector)	3	4	3	1	2	2	3	3	3			
	45	85	20	0	10	10	20	50	30	270	14	

## Rulings of Law

- A. "The director shall establish a formal written class specification covering each position in the classified system. The purpose of the class specification shall be to identify the job functions, distinguishing factors, examination requirements, and the minimum qualifications which apply to all positions in the same class." [Per 301.02 (a)]
- B. "Allocation Review. – The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation." [RSA 21-I:57]
- C. "If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A. If the board determines that an individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction." [RSA 21-I:57]

## Decision and Order

A strict analysis of the appellants' duties and responsibilities as they have described them in their Position Classification Questionnaire and in oral argument before the Board yields an allocation in the current classification system four salary grades below the current title and grade. If the Board were to accept Mr. Jarvis' request for amendment of the minimum qualifications, the further result would be a position for which fewer applicants would qualify at a salary that is substantially lower than that assigned to the current title and grade. Neither an increase in the qualifications nor a reduction in the salary grade would benefit the current incumbent or future applicants for position vacancies in that class. The Board is not inclined to find that the Director erred in her classification of the positions, or to order the Director to make a correction to the classification. In this instance, the Board will defer to the Director's judgment that the positions should remain classified as Labor Inspectors, salary grade 18.

The appellants discussed the impact of turn-over in their classification and difficulties that the Department had experienced in recruiting and retaining qualified employees. They asserted that individuals

performing similar duties in the private sector were receiving annual salaries in the \$60,000 to \$65,000 range.

Reclassification is not the appropriate mechanism for adjusting salaries to address market conditions. If, in fact, there is evidence that the agency is unable to recruit and retain qualified personnel because of market conditions, RSA 99:8 makes provision for salary enhancements as follows:

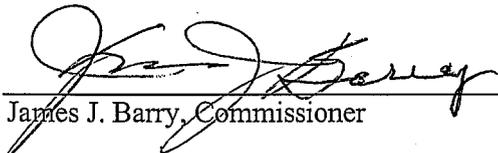
**99:8 Increases for Recruitment Purposes.** - Upon request of the appointing authority, the governor and council are hereby authorized and empowered, notwithstanding any other provisions of the law to the contrary, upon a finding by them and a recommendation from the director of personnel that a substantial number of vacancies exist in any class of authorized positions which vacancies require an increase in salaries for recruitment of qualified personnel therefor, to increase salaries of such classified positions, any such increases to be a charge against the salary adjustment fund.

On the evidence, argument and offers of proof, the Board voted unanimously to DENY the appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick H. Wood, Chairman

  
Lisa A. Rule, Commissioner

  
James J. Barry, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301  
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