

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### ***APPEAL OF WEIGHTS AND MEASURES INVESTIGATORS DEPARTMENT OF AGRICULTURE, MARILETS AND FOOD***

***DOCILET #2002-C-7***

***February 27, 2002***

The New Hampshire Personnel Appeals Board (Wood, Johnson and Urban) met on Wednesday, January 9, 2002, under the authority of RSA 21-I:57 and Chapters Per-A 100-200 to hear the appeal of Weights and Measures Investigators. The appellants were represented at the hearing by Thomas Hardiman, SEA Director of Field Operations. Thomas Manning, Director of Personnel and A. Robert Ahlgren, Supervisor of Classifications, appeared on behalf of the Division of Personnel.

The record of the hearing in this matter consists of pleadings submitted by the parties prior to the hearing, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

#### Appellant's Exhibits

1. October 16, 2001 letter from Thomas Manning to Stephen Taylor denying the Commissioner's request for reconsideration
2. October 9, 2001 letter (with attachments) from Stephen Taylor to Thomas Manning requesting reconsideration of the Director's decision
3. September 19, 2001 letter from Brad Asbury to Thomas Manning
4. September 5, 2001 letter from A. Robert Ahlgren to Stephen Taylor denying the request to reallocate Weights and Measures Inspectors from salary grade 15 to salary grade 17
5. December 20, 2000 memo from A. Robert Ahlgren to Ernest West, Jeffrey Wentworth, and Quentin Goble to schedule a job audit

6. October 31,2000 letter from Investigators West, Wentworth, and Goble requesting a position review
7. Undated "Opening Statement"
8. Undated "Knowledge Factor Letter"
9. Undated "Skill Factor Letter"
10. Supplemental Job Description amended 8-23-01 for Weights and Measures Investigator
11. Class Specification Updated 8-31-01 for Weights and Measures Investigator
12. "Volume Correction Factor Sheet"
13. "Temperature Correction Factor Sheet"
14. "Table 6-B – Generalized Products Sheet"
15. "Pressure Correction Volume Sheet"
16. "Volume Reduction Sheet"
17. "Loading Rack Meter Test Report Sheet"
18. "LPG Meter Test Report Sheet"

Mr. Manning indicated that the State would have offered many of the same exhibits that the Appellants offered and, in the interest of conservation, the State would present its case referring to the Appellants' numbered exhibits.

Mr. Hardiman noted for the record that on December 28,2001, all classified positions had been increased one salary grade as a result of a new Collective Bargaining Agreement. Therefore, he said, while the appeal refers to reallocation from salary grade 15 to salary grade 17, under the current scheme, the request was for reallocation from salary grade 16 to salary grade 18. Mr. Hardiman said that in addition to the numbered exhibits, the Appellants asked the Board to include in their record a copy of one page from the Division of Personnel's Technical Assistance Manual. He advised the Board that Investigator Todd West would be presenting the Appellants' offers of proof, and asked the Board to accept a typed copy of the presentation that Mr. West intended to read into the record.

The appellants argued that during the fifteen years since their positions were last reclassified, their requirements for both skill and knowledge had changed, warranting a reallocation of both the "Skill" and "Knowledge" factors from level 3 to level 4.

As an example of the "skill" required to perform as a Weights and Measures Investigator, Mr. West noted that Commissioner Taylor had recently implemented administrative rules for the marketing of pre-made sandwiches. He stated that New Hampshire is the only New England state that requires shelf-life markings that a customer can read to determine the freshness of pre-made sandwiches. He said that although the Commissioner wrote the administrative rules, the Investigators were the ones who brought the need for such a program to the Commissioner's attention. He explained that Investigators have to cross-train one another in the use of specialized equipment like scanners, liquid product testing devices, and tank meters. He also asked the Board to note that Investigators are required to maintain certification as police officers, retaining full powers of arrest in addition to their authority to levy administrative fines. He argued that the correct combination of "Skill" and "Education" should equate to "Common Sense," and that the degree of common sense required to perform successfully as an Investigator warranted reallocation of the positions to salary grade 18.

The appellants asked the Board to note that according to the Classification Standards of the Technical Assistance Manual published by the Division of Personnel in July 2000, level 4 for the "Skill" factor "Requires skill in developing formats and procedures for special applications OR in investigating and reviewing the use of equipment and data for a specialized application." According to their new supplemental job description, they said, a Weights and Measures Investigator, "Develops and implements formats and procedures for special applications such as price verification, timed devices, liquid product testing and refrigerated sandwiches." That accountability, they argued, justified an increase in their positions from salary grade 16 to salary grade 18.

In Exhibit 2, Commissioner Taylor wrote:

"This request is made as a consequence of receipt of information relating to the classification of certain positions in the liquor, gambling and fire safety areas, where it appears positions are in substantially higher classifications although the work performed is quite similar to that performed by the referenced Weights and Measures Investigators. The focus of these positions has changed in recent years to include an emphasis on marketplace surveillance and investigation and the resolution of customer complaints across the entire spectrum of commercial activity requiring the measurement of mass, distance, volume, time and quantity. The range and complexity of their work has evolved far from the traditional task of merely inspecting and sealing devices."

Mr. Manning asked the Board to review Appellants' Exhibit 4, noting that although Dr. McGinnis and Commissioner Taylor had acknowledged certain changes in technology that affected how the appellants perform their duties, they did not believe that there had been significant changes in the Investigators' actual responsibilities. Mr. Manning said that while the Investigators were obviously very knowledgeable and skillful, the disputed factors needed to be reviewed specifically in terms of the classification plan. He suggested that Appellants' Exhibits 4, 10 and 11 were perhaps best suited to that process. He said that when the Division of Personnel reviews the "Skill" and "Knowledge" factors, they are actually looking at the amount of education and length of experience necessary to perform the duties and responsibilities of a position at entry level.

Mr. Ahlgren argued that the agency had not requested reclassification of the positions, but a reallocation of the points assigned to the various evaluation factors in order to achieve an increase in the salary grade assigned to the position. He noted that the accountabilities listed on the supplemental job description were submitted by the Department of Agriculture.

Mr. Ahlgren said that when the Division of Personnel reviews a position, it ties the "Skill" factor to amount of experience, and the "Knowledge" factor to the amount of education required for a position. He said that "Knowledge" is currently at level 3, which equates to an Associate degree. By comparison, level 4 would equate to a Bachelor degree. He said that in looking at the 3 candidates' at the time the reviews were conducted, none of them had more than an Associate degree, yet they all appeared to be doing the job and performing the required tasks. Therefore, he argued, the Division did not believe that "Knowledge" should be increased from the 3<sup>rd</sup> to the 4<sup>th</sup> level.

Mr. Ahlgren said that in reviewing the factor of "Skill," the Division of Personnel found that the positions were already rated at level 3, which normally calls for 2 – 4-years of experience. When the positions were reviewed, however, the existing class specification only called for the applicants to have 1 year of experience, which normally would result in a rating at level 1 or 2. Rather than decreasing that factor, he said, the Division allowed it to remain at level 3, increasing the experience requirement on the specification from 1 to 2 years, regardless of the experience the incumbents possessed. He said that the Division would be unable to justify increasing the factor to level 4, which would require an applicant to possess 3 -- 6 years of experience. In weighing the appellant's

arguments about the required education and experience, their powers of arrest, and their authority to levy administrative fines, Mr. Ahlgren asked the Board to note that they are rated at the same level as a State Police Trooper in the areas of "Skill," "Knowledge," and "Impact."

Having considered the parties' evidence, arguments, and offers of proof, the Board made the following findings of fact and rulings of law:

#### Findings of Fact

1. On December 20, 2000, Weights and Measures Investigators of the Department of Agriculture requested a review of their positions for reallocation from salary grade 15 to salary grade 17.
2. On September 5, 2001, A. Robert Ahlgren issued a decision denying that request, finding that while there had been technological changes that had affected the manner in which the appellants' duties were performed, the actual position responsibilities had not changed sufficiently to warrant reallocation.
3. On October 9, 2001, Agriculture Commissioner Taylor requested reconsideration of that decision, indicating that based upon his own review of other Inspector/investigator positions in other State agencies, he believed it would be appropriate to reallocate the Weights and Measures Investigators to salary grade 17.
4. On October 16, 2001, Director Manning denied the request for reconsideration.
5. On November 9, 2001, the Investigators filed an appeal, through their SEA Field Representative, Brad Asbury, asserting that the evaluation factors of Skill and Knowledge should each be increased from level 3 to level 4.
6. In support of their request for an increase in the "Skill" factor, the investigators indicated that they are involved in developing and implementing Department Administrative Rules such as the regulations involving pre-packaged sandwiches.
7. Commissioner Taylor has rulemaking authority and was responsible for developing the Administrative Rules. The investigators brought to his attention the need for rules concerning the sale of pre-packaged sandwiches.
8. In support of their request for an increase in the "Skill" factor, the investigators noted that they had developed a test method procedure for testing temperature-compensated meters on vehicle tank meters.

9. The investigators did not assist in the actual development of temperature-compensated meters, nor did they participate in developing the conversion charts used to determine how temperature affects the volume of liquid fuels at the point of delivery or storage.
10. The investigators believe that their understanding of temperature compensators used by the oil industry, or knowledge of practices involving debit and credit card purchases at the point of sale qualify as "logical understanding in a specialized field" as defined by level 4 for the "Knowledge" factor.
11. The investigators are required to obtain certification as part-time police officers at the New Hampshire Police Academy, and they are authorized to levy administrative fines.
12. The current supplemental job description for Weights and Measures Investigators defines the "Scope of Work" for their positions as "Enforces the provisions of the Weights and Measures Act and regulates the use of weighing and measuring devices used by wholesale and retail industries."
13. The current minimum qualifications for positions of Weights and Measures Inspectors requires applicants for those positions to possess an Associate degree or its equivalent from a recognized college or technical institute with major study in a physical science or criminal justice. Each additional year of approved formal education may be substituted for one year of required work experience. Applicants must also have two years experience in electronic or mechanical work involving fine adjustment. Each additional year of approved work experience may be substituted for one year of required formal education.
14. The Technical Assistance Manual published by the NH Division of Personnel and utilized in the process of position review and reallocation defines skill as representing "job training time and specific vocational preparation necessary to perform specific job functions. The 'Skill' factor measures the usual amount of time spent by the average worker in acquiring information, learning job techniques, and developing the facility for acceptable performance in a specific job, occupation, or field of work..."
15. The Technical Assistance Manual describes Level 3 for the "Skill" factor as 2 – 4 years of relevant experience.
16. The appellants requested an increase in the Skill factor allocation to level 4, involving 3 - 6 years of experience.
17. The Technical Assistance Manual published by the NH Division of Personnel and utilized in the process of position review and reallocation defines knowledge as measuring "the general

education development necessary to perform specific job functions. Knowledge represents education of a general nature which contributes to a worker's reasoning development, including the acquisition of mathematical and language skills..."

18. The Technical Assistance Manual describes Level 3 for the Knowledge factor as an Associate degree, or 2 years of college or vocational training.
19. The appellants requested an increase in the Knowledge factor allocation to level 4, representing a Bachelor degree or 4 years of college.
20. The Class Evaluation Plan defines Skill level 3 as requiring "still recommending routine changes in standardized operating procedures OR in retrieving, compiling, and reporting data according to established procedures OR in operating complex machines."
21. The overwhelming majority of the accountabilities listed on the appellants' supplemental job description are accurately described by level 3 for the Skill factor.
22. Skill level 4 is defined by the Class Evaluation Plan in the Technical Assistance Manual as requiring "skill in developing formats and procedures for special applications OR in investigating and reviewing the use of equipment and data for a specialized function."
23. The appellants' supplemental job description states that they develop and implement "formats and procedures for special applications such as price verification, timed devices, liquid product testing and refrigerated sandwiches."
24. That accountability is inconsistent with the characteristic duties and responsibilities outlined on the class specification, and the class specification more accurately reflects the duties and responsibilities described by the appellants in their presentation to the Board.
25. The evidence reflects, for example, that the actual formats and testing procedures for temperature-compensated meters have been developed by others for use by the Inspectors in carrying out their tasks.
26. The evidence does not support the appellants' request for reallocation of the Skill factor from level 3 to level 4.
27. The appellants' supplemental job descriptions and class specification would not support an increase in the minimum qualifications for the position of Inspector from an Associate degree to a Bachelor degree, nor will they support a finding that the appellants require "logical or scientific understanding to analyze problems of a specialized or professional nature in a particular field."

28. Although Commissioner Taylor argued that the appellants' salary grade should be comparable to those of employees in other agencies performing inspections and investigations, no evidence was offered to support such a comparison.

#### Rulings of Law

- A. Per 102.16 "'Class specification' means the written document containing the official title, basic purpose, characteristic duties, distinguishing factors, and the minimum qualifications of a specific class."
- B. Per 102.59 "'Supplemental job description' means a document identifying the scope of work, duties, and accountabilities of an agency-level position falling within a specific class."
- C. Per 102.01 "'Accountability' means a specific work assignment performed 10 percent or more of the total working time with a stated end result against which the employee's performance will be evaluated."
- D. RSA 21-I:57, 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. 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."
- E. Per-A 207.12 (f), Standard of Review: "In appeals of a position reclassification or reallocation, the board shall determine if the appellant proves by a preponderance of the evidence that:
- (1) The duties of the position have changed sufficiently to warrant reclassification or reallocation; or
  - (2) The position was improperly allocated or classified in accordance with the director's rules or the classification plan."

## Decision and Order

Classification decisions require a review of a position's duties and responsibilities, not the performance of the incumbents. Mr. West and the other Investigators clearly take great pride in the work that they perform and the service they provide in protecting the State's consumers and the Division of Personnel has recognized the valuable contributions made by Appellants. Nevertheless, Appellants failed to provide sufficient evidence to support the contention that their positions are misallocated in the State's classification plan.

As Director Taylor noted in his October 9, 2001 letter, one of the reasons behind the Investigators' request for reclassification is their belief that similar positions in Liquor, Gaming Enforcement, and Fire Safety are receiving a higher level of compensation for performing similar work. The appellants, however, failed to offer any evidence to support that comparison.

Having considered the evidence, arguments, and offers of proof, the Board voted unanimously to DENY the appellants' request for reallocation of their positions from salary grade 16 (former grade 15) to salary grade 18 (former grade 17). The appellants can point to the effects of changing technology as well as the responsibility they have assumed for enforcing new standards and new regulations. However, the evidence reflects that the appellants are not responsible for developing those formats, regulations, standards, or procedures. Therefore, the Board was not persuaded that the duties of the position have changed sufficiently to warrant reallocation or that their positions were improperly allocated or classified in accordance with the classification plan.

Although the Board voted to DENY the appeal and to uphold the Division of Personnel's classification decision, the Board notes with some concern that the Division approved the appellants' proposed supplemental job description. Although the actual evidence did not support the appellants' request for reallocation, the approved SJD includes language about developing formats and procedures that, at least superficially, appears to support their request for reallocation of the "Skill" factor. The Board recommends that a more careful review occur before such approvals are given to

ensure that those documents are accurate and that the level of responsibility outlined in the SJD is consistent with that described in the class specification.

THE PERSONNEL APPEALS BOARD

  
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Patrick H. Wood, Chairman

  
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Robert J. Johnson, Commissioner

  
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Anthony B. Urban, Commissioner

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