

State of New Hampshire

WPPID910



PERSONNEL APPEALS BOARD

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

APPEAL OF JOAN ASCHEIM AND SANDRA VAN SCOYOC
Docket #92-0-16

Program Chiefs - Division of Public Health

March 19, 1992

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, February 26, 1992, to consider the appeals of Joan Ascheim and Sandra Van Scoyoc filed by SEA Field Representative Margo Hurley on January 7, 1992. In that appeal, Ms Hurley argued that the Director of Personnel improperly refused to complete a position reclassification review request submitted by the appellants on February 16, 1989. Ms Hurley argued that position classification questionnaires completed by the appellants were submitted to the Division of Personnel on February 16, 1989. She further argued that the Division of Personnel should have completed its review and rendered a decision on their request within 45 days of that date.

On January 17, 1992, Personnel Director Virginia Vogel filed with the Board a Motion to Dismiss. In her Motion, the Director of Personnel argued that the classification request as submitted was not "complete" prior to implementation of the legislative moratorium on position classification reviews required by Chapter 408, Section 105, Laws of 1989. The Director argued that there was no "classification decision" appealable under the provisions of RSA 21-I:57. Further, the Director argued that if there had been an actual classification or allocation decision, RSA 21-I:57 specifically provides for appeal of such decisions by "the employee or the department head, or both, affected by the allocation of a position in a classification". She contended that a response to an inquiry made by a Governor's Councilor on behalf of an employee did not constitute a classification or allocation decision from which an appeal might arise.

The Board refers the parties to its decision dated February 14, 1991 in the Appeals of Bailey, Burton and Eaton, portions of which are reproduced below:

"Chapter 209:4 of the Laws of 1990, provides that:

Notwithstanding any other provisions of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991.

"We do not, nor do we need to, more fully consider issues of retroactivity, or timing in connection with pending appeals, or our jurisdiction pursuant to RSA 21-I, the Rules of the Department of Personnel and those of the Board, except as follow:

"First, it is apparent from an examination of Chapter 408:105 I (and II) of the Laws of 1989, and Chapter 209:4 of the Laws of 1990, and related enactments, that the General Court appears to wish to see a transition from the "present system" of classification to the, so-called, "new system" of classification contained in the standards published in the Technical Assistance Manual, classification chapter, which was distributed to state agencies on July 1, 1988, as part of the initial implementation process. (See, inter alia, Chapter 408:105, Laws of 1989, in its entirety).

"Second, it is apparent from an examination of Chapter 209:4 of the Laws of 1990, that the General Court wishes to see a moratorium or freeze on reallocation or reclassification "considerations" or "implementations" until, at least, July 1, 1991. It would further appear from the legislation referenced in this Decision, that these "considerations" or "implementations" should be aimed toward the, so-called, "new system," and not the old system (see Chapter 269:5, Laws of 1988). It is not clear whether the General Court continues to seek progress toward that end.

"It appears, without deciding, that a reclassification or reallocation decision is not final or binding until all appeal options are exhausted, and that the retroactivity of any such decision may also apparently be limited by legislative intent. (Note, State's Response to Order of May 17, 1990, at Page 5; RSA 21-I:54).

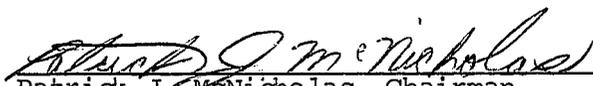
"Accordingly, it is reasonable to conclude that the legislature's intent has changed since 1989; i.e., that a transition in the types of classification appeals, and how they would be handled, was contemplated initially in order to implement the so-called "new system." However, this appears to have given way in light of recent (probably particularly, fiscal) developments to a view that no reclassification, reallocation or reevaluation appeals (without deciding what each of the foregoing indeed is), should be available, be heard by us, or considered by the Director of Personnel until at least July 1, 1991.

"The instant appeals are dismissed. The Director of Personnel is ordered to consider the classification of the affected positions under the then lawful system pertinent thereto as soon as she is lawfully and reasonably able to do so in accordance with said system. The director may require that the appellants submit new position classification questionnaires at that time, or such other information as may be warranted for consideration under the then applicable system."

APPEAL OF ASCHEIM AND VAN SCOYOC
Docket 192-0-16
page 3

Having reviewed the appellants' original request for hearing, the Director of Personnel's Motion to Dismiss and the appellants' response to that Motion, the Board voted unanimously to dismiss the instant appeal consistent with its ruling in the matter of Bailey, Burton and Eaton (P.A.B. Decision, February 14, 1991).

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Margo Hurley, SEA Field Representative
Barbara Ingerson, Human Resource Coordinator, Div. of Public Health
Patrick Meehan, Director, Div. of Public Health Services