

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

91-325 Appeal of Robert Field

In Case No.

November 12, 1991

the court upon made the following order:

Appeal from administrative agency is declined. See Rule 10(1).

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PERSONNEL APPEALS BOARD

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91-0-6

APPEAL OF ROBERT FIELD (Docket #90-0-6)
Response to Appellant's Motion for Reconsideration
And Request for Rehearing
Of the Board's May 24, 1991 Decision
In Re:

Denial of Certification for Appointment to Child Protective Service Worker

June 27, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, June 26, 1991, to consider Robert Field's June 12, 1991 Motion for Reconsideration and Request for Rehearing of his appeal of non-certification for the position of Child Protective Service Worker, Division for Children and Youth Services.

In support of his Motion and Request, the appellant reiterated all his original arguments regarding the Personnel Director's authority to amend a class specification, culminating in his assertion that:

"Reviews of classifications that change the existing class specification are essentially reclassifications or reallocations. When a class specification is changed, it does not mean an automatic salary grade increase or decrease, which is consistent since reclassifications and reallocations do not have to result in an upgrade or downgrade in the applicable salary grade. A class specification may be changed simply because it is improperly allocated. But, as stated previously, all reallocations and/or reclassifications of positions are expressly prohibited at this time. The Director of Personnel has violated the current governing laws with respect to the current freeze." (SEA Motion for Reconsideration, June 12, 1991, page 3, paragraph 9)

He therefore argued that any amendment to the class specification constituted a reallocation. He stated, "'Reallocation'" as defined by the Personnel Rules, means a determination by the Director that a class specification be reevaluated in relation to the position classification plan established under RSA 21-I:42, II (effective March 27, 1986)." (SEA Motion for Reconsideration, June 12, 1991, page 2, paragraph 4).

When a class specification is reevaluated, the various position classification factors are weighted and point values assigned to each of those factors, affecting the eventual placement of that position specification in a class and a salary. Expanding and specifying the acceptable fields of study for the class "Child Protective Service Worker Trainee" had no effect on the value assigned to the various evaluation factors or the relationship of that class to other positions within the classification plan. Therefore, amendment of the minimum educational qualifications to specify which fields of study may be used to satisfy those requirements, when such amendment affected neither the classification or the salary grade does not constitute either a reclassification or reallocation.

The appellant further claimed that, "On June 20, 1990 Robert Field was certified by the Division of Personnel as a result of the successful completion of a required written examination for Child Protective Service Worker Trainee." On the contrary, the record clearly reflects that the initial certification decision was made by the Department of Health and Human Services through the Commissioner's Office of Management and Budget, not by the Division of Personnel. The record further reflects that if the appellant's application had been reviewed by the Division of Personnel, his application would not have been certified as meeting the minimum educational requirements. Having failed to meet the initial certification requirements, the appellant would not have been eligible to take the written examination for that class.

The record further reflects that the examination for the classification of Child Protective Service Worker was revised. Only those persons occupying a position of Child Protective Service Worker were exempt from re-examination for placement on the register of eligibles for that class. Inasmuch as the appellant did not occupy a Child Protective Service Worker at the time both the specification and examination were revised, his previous certification and test score were not valid for the purposes of placement on a register of eligibles for the class of Child Protective Service Worker.

Per 306.03 (3) of the Rules of the Division of Personnel defines a number of appeals which are considered invalid. Among them is "previous titles held or examinations passed". There is no dispute that Mr. Field was certified by the Division of Human Services as meeting the minimum qualifications for the class Child Protective Service Worker, and that he did pass an examination for that class prior to revision of the specification and the examination for the class. In accordance with Per 306.03(a)(3), his appeal of non-certification under the current specification, when based on prior qualifications, is without merit.

The appellant argued that in the appeal of Carol Baker et al, there was no dispute over the courses of study which were acceptable for certification. The Board's decision in the matter of Baker et al is silent on the question of appropriate fields of study because the issue was never raised. The only question asked of the Board in that matter was whether the Director had improperly refused to allow for the substitution of experience for education at the level of Child Protective Service Worker III.

The appellant argued that even in the absence of a freeze on reallocations, RSA 21-I:42 XVI prohibits the imposition of new or additional requirements through revision of the minimum qualifications upon incumbents in a position. Again, Mr. Field was not a Child Protective Service Worker incumbent. Therefore, the protective language specified by RSA 21-I:42 has no bearing upon his certification or lack thereof.

The appellant contended that neither the Director of the Division for Children and Youth Services nor any employee requested that the position specification be amended for the class Child Protective Service Worker. Again, while the appellant is correct, that argument in relationship to the instant appeal is without merit. Per 306.01 of the Rules of the Division of Personnel merely provides a medium through which an appointing authority may request that the Director revise a class specification. It does not, however, preclude the Director from exercising the authority to institute changes to a class specification under the provisions of Per 303 of the Rules.

The appellant also argued that amendment of the class specification might be violative of 1991, 4:10 and 1990, 261:1, and effectively preclude the reemployment of laid off employees. Mr. Field was not laid off, and therefore has no standing to appeal on that basis.

Mr. Field contended that because of a revision of the specification for the class Child Protective Service Worker, he is "a victim of bias and the Director of Personnel has established new qualifications for a position that are not bona fide given any standard." The Board is hard pressed to give any weight to that claim. Not only is the revised specification substantially the same as the previous specification, but the revision added behavioral science as an acceptable major field of study, as well as allowing for acceptance of Bachelor's degrees in Arts, Science or Education, provided that at least 12 courses or 36 credit hours were in the fields of social work, psychology, social psychology, sociology, cultural anthropology or human services. Rather than restricting the acceptable minimum educational requirements, revision of the specification has effectively broadened the minimum educational qualifications. The Board therefore finds the appellant's claim of bias to be completely unfounded.

Upon review of the record, the Board is equally hard pressed to understand how the appellant was originally certified for the class of Child Protective Service Worker Trainee even before the specification was amended. His education does not satisfy the original minimum qualifications, nor does it satisfy the expanded minimum educational qualifications. Further, had the agency actually considered his performance in the position of Juvenile Services Officer, as described on his performance evaluation prior to discharge from that position, he could not have been certified as demonstrating the knowledge, skills and abilities required under paragraph #3 of the specification.

The old specification called for "possession of a Bachelor's Degree from a recognized college or university with a major study in social work, psychology, social psychology, sociology or human services." The appellant possesses the following degrees: Bachelor of Electrical Engineering, Master of Divinity and Doctor of Pastoral Ministry. None of these courses of study is equivalent to major study in social work, psychology, social psychology, sociology or human services.

The class specification, prior to amendment, also called for:

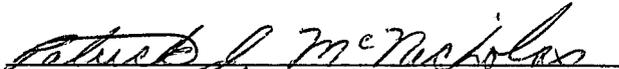
Considerable knowledge of the principles and methods of social work, availability and use of community resources. Ability to interpret departmental policy, procedures and objectives. Ability to write case histories and related reports. Appreciation of involved environmental problems arising in connection with case work. Ability to communicate effectively both orally and in writing. Ability to establish and maintain effective working relationships with representatives of other social agencies, institution officials, the public and clients."

The appellant's performance in the position of Juvenile Services Officer (DCYS Exhibit II, Docket #90-T-3) demonstrates his inability to perform in a number of those categories. Specifically, his performance evaluation cited deficiencies in the areas of oral and/or verbal presentations, ability to follow policy and procedural guidelines and instructions, and developing effective ways to complete assignments. Given that analysis by the Division for Children and Youth Services, even if the appellant had met the minimum educational requirements, he could not have certified on the basis of his previous performance.

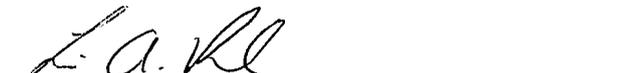
In consideration of the foregoing, the Board voted unanimously to deny the appellant's Motion for Reconsideration and Request for Rehearing. The Board had already addressed the issue of what constitutes a reclassification or reallocation in its earlier order. The appellant has no standing to appeal the effects of revision to the minimum qualifications on laid-off employees,

as his separation from service was not as a result of lay-off, but the result of discharge for cause. The allegation of bias and discrimination is unsupported by any competent evidence or argument, and the Board found it to be totally unfounded and completely without merit.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Jan D. Beauchesne, Human Resource Coordinator, C.O.M.B./H.H.S.
Clifton Stickney, Acting Director, Division for Children & Youth Services
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APPEAL OF ROBERT FIELD (Docket #90-0-6)

(Denial of Certification for Appointment to Child Protective Service Worker)
Division for Children and Youth Services

May 24, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, April 17, 1991, to hear the appeal of Robert Field, a former employee of the Division for Children and Youth Services. Mr. Field, who was represented at the hearing by SEA Field Representative Stephen J. McCormack, appeared appealing his denial of certification for the position of Child Protective Service Worker Trainee. Virginia A. Vogel, Director of Personnel, appeared on behalf of the Division of Personnel.

Mr. Field had also appealed his discharge from a position of Juvenile Services Officer in the Division for Children and Youth Services (Docket #91-T-3). The appellant had requested that his two appeals be consolidated. The Board denied the request for consolidation, but granted the appellant's request that the testimony and evidence received in each of the hearings be included in the record of the other.

Mr. McCormack requested on behalf of the appellant that the Board grant his verbal motion for default, arguing that the Director of Personnel erred in not providing written notice to Mr. Field that his certification as meeting the minimum qualifications for the classification "Child Protective Service Worker" had been revoked. In support of that motion, Mr. McCormack argued that Per 301.06 (b) of the Rules of the Division of Personnel requires that an applicant be given written notice of non-certification when applying for a position. He further argued that the Director had no authority to revoke an applicant's certification for a position once given.

Director Vogel asked the Board to deny the appellant's motion, arguing that she had had numerous verbal communications with the appellant in addition to her letter to him of September 18, 1990 explaining why he could not be certified as meeting the minimum qualifications for Child Protective Service Worker. She also argued that the initial certification for that class was based upon a review of the qualifications for the class "Social Worker". When certain social worker positions in the Division for Children and Youth Services were reclassified to Child Protective Service Worker, the qualifications were reviewed and the approved minimum qualifications amended.

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The Director testified that unless an individual is actually employed in a classification when the minimum qualifications are changed, that employee is not grandfathered and must meet the new minimum qualifications in order to remain on the list of eligibles.

The Director stated that the Division of Personnel had rescinded certification authority at the agency level for the majority of positions in the Department of Health and Human Services. She testified that following the lay-offs in April, 1990, as bumping and demotion in lieu of lay-off began occurring, it came to the Division's attention that many of the certification decisions made at the Department of Health and Human Services were questionable. The Director and her staff determined that those persons certifying applications in the Commissioner's office of Management and Budget had little or no understanding of what constituted "related fields" when such qualifications appeared on class specifications. Intensive audit of agency-level certifications began in July and August of 1990.

The Board, having determined that the parties were well into the merits of the case, voted to take the Motion for Default under advisement. The Board informed the parties that it would rule on that Motion as part of its decision and order in the instant appeal. The parties were then directed to proceed with direct presentation of their respective cases.

Ms. Vogel argued that the development of the qualifications for the class series "Child Protective Service Worker" was based on lengthy study of similar positions nationwide. The minimum qualifications were developed after a thorough review of college catalogs and their standards for "major study" in the social sciences. The Division of Personnel then amended the minimum entrance requirements to include 12 courses or 36 credit hours in the behavioral sciences.

With regard to the appellant's particular background, the Director testified that Field's degree in theology had nothing in common with a degree in psychology, sociology, social psychology, or the related social sciences. She indicated that his bachelor's degree was in Electrical Engineering, and included 6 undergraduate credits in psychological studies. Ms. Vogel argued that even if Field had met the minimum qualifications for the class, he still would have had to pass the revised examination for the class and be selected for a vacant position. She contended that certification alone would not have guaranteed him employment as a Child Protective Service Worker.

The appellant testified that his experience in the field of human services should more than compensate for the degree requirements for Child Protective Service Worker. He stated he had been a Catholic priest for 29 years, serving 6 years in the Dominican Republic. He said he had earned a Doctorate in Ministry, including 34 credits in moral theology and 3 graduate credits in psychology. The appellant testified that his degree requirements had been

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satisfied in part by "life experience" credits, which he argued to be a common practice in New York where his degree was earned.

The minimum qualifications for the position "Child Protective Service Worker Trainee", revised August 10, 1990, include:

"1. Possession of a Bachelor's degree from a recognized college or university with a major study in social work, psychology, social psychology, sociology, human services or behavioral science. 2. No experience required.

OR

"1. Possession of a Bachelor of Arts, Bachelor of Science, or Bachelor of Education degree with at least twelve (12) courses or thirty-six (36) credit hours in social work, psychology, social psychology, sociology, cultural anthropology or human services. 2. No experience required. 3. Considerable knowledge of the principles and methods of social work, availability and use of community resources. Ability to write case histories and related reports. Appreciation of involved environmental problems arising in connection with case work. Ability to communicate effectively both orally and in writing. Ability to establish and maintain effective working relationships with representatives of other social agencies, institution officials, the public and clients."

Upon review of the specification, the Board found that *Mr.* Field did not meet the minimum qualifications for the class, and accordingly upheld the Director's decision to deny his certification for that class. The Board also reviewed the specifications for Child Protective Service Worker I, II, and III, as suggested by *Mr. McCormack* to determine if he did, in fact, qualify at one of the higher levels in the class series. In light of the agency's own assessment of *Mr. Field's* difficulties in preparing realistic case management plans (See Docket #91-T-3), his inability to interpret court orders, his difficulties in dealing with the court system, and complaints that he was unable to establish effective working relationships with such agencies as local police departments, the Board determined that he could not be certified as meeting the minimum qualifications for any of the other positions in the class series.

The Board voted to deny the appellant's Motion for Default, finding that while Per 301.06(b) of the Rules of the Division of Personnel does require that an applicant be given written notice of disqualification, such written notice is provided so that the disqualified applicant has a "decision" which may then be appealed. Per 301.06 (b) provides as follows:

"A disqualified applicant shall be given written notice of such action. In the case of such refusal, an appeal may be taken to the [personnel appeals board] within 15 calendar days after the date the notice was

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mailed to him, provided, however, for good cause shown the [board] may in its discretion extend this period."

Per 301.06(b) does not specify when such notice must be provided, only that upon notice of disqualification, an applicant shall be given fifteen days in which to file his appeal. Mr. Field did file an appeal and his appeal was heard.

The appellant argued that the Director had no authority to change the minimum qualifications for any class of position, alleging that such changes were prohibited by Chapter 209:4, Laws of 1990, effective July 1, 1990:

"Requests for Reclassification or Reallocation. Notwithstanding any other provision of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991."

Per 101.30 of the Rules of the Division of Personnel provides that "Reallocation" means the official determination that a position be assigned to a class different from the one in which it has previously been included." The Board found that amendment of the minimum qualifications for a position, provided that such amendment does not result in the establishment of a new classification or placement of a position in a different classification or salary grade, is not violative of the provisions of Chapter 209:4, Laws of 1990.

The appellant also argued that notwithstanding the provisions of Chapter 209:4, Laws of 1990, the Director of Personnel had no authority to make changes to any position's minimum qualifications without the appointing authority's consent and concurrence. In support of that argument, the appellant pointed to the Technical Assistance Manual (classification chapter) distributed to State agencies in 1988, arguing that establishment of class specifications was designed to be a cooperative effort between the agency, the Division of Personnel and the employee in the affected class. The Board does not agree.

The appellant is correct in his representation that supplemental job descriptions originate at the agency level and include input from the employee whose supplemental job description is being written or revised. Supplemental job descriptions are intended to describe the specific duties of a particular position within a classification. Class specifications, on the other hand, describe in a general sense the duties and responsibilities of a group of positions. Bearing in mind that the same classification may be employed by a number of agencies, the Board finds it unreasonable to conclude that revision of a class specification would require the concurrence of the affected agency. The classification of Child Protective Service Worker may only be utilized by the Division for Children and Youth Services. The principle remains the same, nonetheless. Development of class specifications is part of the classification plan, and the provisions of RSA 21-I:43 would control:

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"...It is the intent of the general court that the director of personnel shall have the sole authority to adopt and interpret, subject to the appeals process established under this chapter, the rules provided for in this section..." RSA 21-I:43, I]

"The director of personnel shall adopt rules, pursuant to RSA 541-A, which shall apply to employees in the classified service of the state, relative to:

- (a) classification, except for the classification plan..."
[RSA 21-I:43 II (a)]

Accordingly, the Board found that the Director was acting within her statutory authority in determining what amendments should be made to the minimum qualifications for the classification "Child Protective Service Worker". Additionally, the Board found that the Director did discuss potential changes to the minimum qualifications with representatives of the Division for Children and Youth Services prior to those changes being made.

The appellant argued that the Division of Personnel had provided him notice on June 20, 1990, that he was certified for the position of Child Protective Service Worker Trainee (SEA Exhibit). The form letter to the appellant, however, makes no reference to certification of his application as meeting the minimum qualifications. It states, "The competitive written examination of CHILD PROTECTIVE SERVICE WORKER TRAINEE for which you were a candidate has been graded. Your passing grade is 87.2". The record reflects that the class specifications for that series were amended on July 19, 1990 and again on August 10, 1990. Inasmuch as Mr. Field was not employed in a Child Protective Service Worker position when those amendments occurred, neither his certification from the agency nor his examination scores from the Division of Personnel would have been "grandfathered".

The appellant also argued that the Director of Personnel acted outside of her authority by revoking his previous certification for the class "Child Protective Service Worker". The Board does not agree. Per 301.06 of the Rules of the Division of Personnel provides, in pertinent part:

"The director may refuse to examine an applicant, or after examination refuse to place his name on the register, or remove his name from the register, or refuse to certify any eligible on the register: (1) who is found to lack any of the preliminary requirements established for the examination for class of positions for which he applies. . ." (Emphasis added)

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Further, Per 301.06 (a) states:

"When such finding is made, the director may reject the application and may cancel the eligibility of the applicant if he has already attained a place on the eligibility register...."

Clearly, the Rules provide the Director the authority to revoke certification when an applicant does not meet the minimum qualifications for a class, even if that applicant had previously been certified and had attained a place on the register of eligibles.

In consideration of the foregoing, the Board voted unanimously to deny **Mr.** Field's appeal of non-certification.

THE PERSONNEL APPEALS BOARD


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cc: Virginia A. Vogel, Director of Personnel
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