

State of New Hampshire

PERSONNEL APPEALS BOARD
Edward J. Haseltine, Chairman
Gerald Allard
Loretta Platt



EXECUTIVE SECRETARY
Mary Ann Steele

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

87-0-103

June 12, 1987

Jean Chellis
Field Representative
State Employees' Association of N.H.
163 Manchester Street
Concord, New Hampshire 03301

re: John P. Flannery

Dear Ms. Chellis:

On February 17, 1987 you requested a hearing on behalf of John P. Flannery to appeal a January 12, 1987 decision of Personnel Director Judy Bastian. That decision established the effective date of reallocation for the subject employee's position in the Department of Education.

The Personnel Appeals Board voted to dismiss this appeal pursuant to Per-A 205.03 (a) in that the appeal was not timely filed in accordance with the "Rules of the Personnel Appeals Board."

Per-A 202.01(a) of those Rules states, "Any notice of appeal shall be filed in writing within fifteen (15) days of the action giving rise to the appeal." Further, Per-A 206.02(a) states in part, "...filing shall not be timely unless the papers are received by the clerk within the time fixed by rule or law."

The Director's decision in this matter was dated January 12, 1987. An appeal of that decision had to be filed with the clerk within 15 days, or not later than January 27, 1987.

Based on the foregoing, this matter is hereby dismissed.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

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cc: Charles Marston, Dept. of Education
Virginia Vogel, Director of Personnel

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APPEAL OF JOHN FLANNERY

Reconsideration Request

October 8, 1987

On June 12, 1987, the Personnel Appeals Board dismissed the appeal of John Flannery regarding the effective date of his position reallocation. The Board's dismissal was based upon the appellant's failure to timely file his reconsideration request. On June 17, 1987, the State Employees' Association requested reconsideration of that dismissal, indicating that the date of Personnel Director Bastian's decision giving rise to the appeal was a February 4, 1987 denial of reconsideration, not the January 12, 1987 decision in which the Director determined the effective date of Mr. Flannery's position reallocation. In consideration of the foregoing, the Board voted to grant the reconsideration request, and review the matter on the merits.

The issue under appeal was outlined in the SEA letter of February 17, 1987, which stated in part, "When Mr. Flannery received his upgrade, he thought he would automatically be included in the Disability Unit Supervisor review," and that "...Personnel's failure to include Mr. Flannery's position and Mr. Marston's subsequent request for a job review of Mr. Flannery's position should not be used as a rationale for denying Mr. Flannery Disability Unit Supervisor pay retroactive to October, 1984."

Mr. Flannery's conception of what should or should not have occurred "automatically", however, has no bearing upon the method prescribed in the "Rules" for determination of the effective date of a position reallocation. Therefore, in order to determine whether or not the reallocation and resulting retroactive compensation were properly calculated, the Board reviewed the entire history of this classification matter, both through submissions from the appellant and Division of Personnel records. A summary of those events follows:

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On January 4, 1984, former Deputy Commissioner of Education Neal Andrew, Jr., requested review of the Disability Specialist position, salary grade 18, held by John Flannery. The Department of Education, in a memo received in Personnel on January 24, 1984, recommended upgrading his position to salary grade 21, but made no recommendation for an appropriate title. Mr. Flannery completed a Classification Questionnaire which was forwarded and received by the Department of Personnel on May 18, 1984. Personnel responded on November 8, 1984, approving an increase to salary grade 21, Disability Unit/Quality Assurance Supervisor. The Board noted that at no time between January and November of 1984 did the Department of Education suggest that Mr. Flannery's work was similar to the work of Disability Unit Supervisors. In response to item #9 of the Questionnaire which asked for the names and job titles of other employees doing work similar to his, Mr. Flannery responded, "None -- N.A." Consequently, the Board must conclude that Mr. Flannery did not consider his work similar to that performed by Disability Unit Supervisors. That finding is further supported by additional correspondence between the Department of Education and the Department of Personnel as outlined below:

On October 3, 1984, Deputy Commissioner Andrew requested review of three positions of Disability Unit Supervisor (#0132, #0340 and #0339). Incumbents of those positions at the time of the request were Norman Cook, Dennis Gannett and John Verville. The Department of Education did not request that Mr. Flannery's position be considered in conjunction with the three Disability Unit Supervisor positions noted above.

By memo dated March 21, 1986 (less than one month after accepting Personnel's recommendation to increase Mr. Flannery's position from Disability Specialist to Disability Unit/Quality Assurance Supervisor, salary grade 21) the Department of Education forwarded to Personnel questionnaires from the Disability Unit Supervisor incumbents. Again, there was no mention of including Mr. Flannery in this position review.

On February 24, 1986, the Department of Personnel responded, recommending upgrading those three positions from salary grade 21 to salary grade 23. In that correspondence, the Department of Personnel noted that the MIS position #13097 held by John Flannery had not been reviewed for additional upgrading, and asked if, in the Department of Education's opinion, this position should be included with the upgrading of the three Disability Unit Supervisors whose review had just been completed.

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In a response dated April 4, 1986 (after the effective date of Chapter 12, Laws of 1986), the Acting Deputy Commissioner of Education Charles Marston wrote to the Division of Personnel accepting the recommendation that positions #0132, #0340 and #0339 be upgraded from Disability Unit Supervisor, salary grade 21 to salary grade 23. That same memorandum from Mr. Marston requested, "...that the position of Disability Unit/Quality Assurance Supervisor currently held by John Flannery be considered for reclassification. We are recommending that the position labor grade be the same as other positions in this class which are at Labor Grade 23." Mr. Marston further stated, "You also indicate that you did not review the Disability Unit Supervisor (MIS) #13097 [held by Mr. Flannery]. We are not requesting that this position be included in the present decision [of February 24, 1986 upgrading the three Disability Unit Supervisors]. We agree that the upgrading of the other Disability Unit Supervisor incumbents may not apply to the MIS position. We are therefore requesting that you conduct a desk audit of this position and advise us accordingly."

The Division of Personnel, on June 30, 1986, received the formal request and justification for further upgrading of Mr. Flannery's position together with his Position Classification Questionnaire. A response was prepared by the Division of Personnel on October 7, 1986, approving the upgrade of Mr. Flannery's position from salary grade 21 to salary grade 23. That response also indicated that, in accordance with Chapter 12, Laws of 1986, Section 21-I:54 III, since the review was not completed within the 45-day period specified by the statute, retroactive compensation would be computed from, "...the beginning of the next pay period immediately following the date on which the 45 day period ended," or the first pay period after August 14, 1986.

The documentation and correspondence reviewed indicate that the Division of Personnel based its original determination of the effective date of the upgrading and resulting retroactive payment upon correspondence with the Department of Education (a summary of which the Division of Personnel forwarded to the appellant in its appeal response of February 4, 1987).

It was not until Mr. Marston's letter of December 11, 1986 when the Department of Education accepted the recommendation to upgrade Mr. Flannery's position from Disability Unit/Quality Assurance Supervisor, salary grade 21 to Disability Unit Supervisor, salary grade 23 that the Department questioned the effective date of the upgrading. At that point, the Division of Personnel reviewed the correspondence and responded to the Department of Education by letter dated January 12, 1987.

Reference was made in Mrs. Bastian's letter of January 12, 1987 to the Division of Personnel's "...02/24/86 memo...that the Disability Unit Supervisor position (MIS) #13097 perhaps ought to be reviewed to determine whether or not a new class should be established for this computer-type job." Insofar as this reference was made prior to enactment of Chapter 12, Laws of 1986, the Division of Personnel then used the beginning of the pay period immediately following February 24, 1986 to calculate retroactive payment to Mr. Flannery.

The Board found that the Division of Personnel erred in its establishment of February 28, 1986 as the effective date of upgrading in this instance. The Department of Education's initial request to upgrade Mr. Flannery's position from grade 21 to 23 did not occur until April 4, 1987, after the effective date of RSA 21-I:54 III: "The director shall dispose of requests for reclassification or reallocation from departments or employees within 45 days of receipt of a completed request for reclassification or reallocation." (Emphasis added.) The documentation reviewed indicates that a completed request for reclassification was not received until June 30, 1986. The 45th day per RSA 21-I:54 III was, therefore, August 14, 1986. Retroactive compensation should thus have been computed from the "...beginning of the next pay period immediately following the date on which the 45-day period ended." Compensation retroactive to February 28, 1986 therefore resulted in substantial over-payment to the appellant.

It is the Board's finding that Mr. Flannery received retroactive compensation in excess of that to which he was legally entitled. The Board voted not to seek recoupment of these monies in consideration of the fact that this administrative error and subsequent miscalculation would not have come to the Board's attention had Mr. Flannery not appealed the effective date of his position reallocation.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

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cc: Jean Chellis, Field Representative
State Employees' Association

Charles Marston, Deputy Commissioner
Department of Education

Virginia A. Vogel
Director of Personnel