

# State of New Hampshire



PERSONNEL APPEALS BOARD  
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## ***APPEAL OF CHILD PROTECTIVE SERVICE WORKERS DEPARTMENT OF HEALTH AND HUMAN SERVICES***

***Docket #92-O-1***

***Docket #92-O-12 (Marilyn Bash)***  
***Docket #91-O-43 (Beverly McKinnon)***  
***Docket #91-O-44 (Janice Deschambault)***  
***Docket #92-O-11 (Lisa Tyler-Rogus)***  
***Docket #92-P-4 (Heidimay Lake)***  
***Docket #92-O-15 (Paula Willett)***  
***Docket #92-O-4 (Timothy Hallgren)***

**January 31, 1997**

The New Hampshire Personnel Appeals Board (Bennett, Rule and Barry) met on Wednesday, January 22, 1997, to hear the above-captioned appeals. The appellants were represented at the hearing by SEA Field Representative Margo Steeves. Virginia A. Lamberton, Director of Personnel, appeared on behalf of the State. The appeal arose from the Personnel Director's decision prohibiting them from being promoted within the class series of Child Protective Service Worker within their own positions based on length of service and the recommendation of their supervisors.

The appeal(s) were heard on offers of proof by the representatives of the parties. Before taking up the merits of the individual cases, Ms. Steeves informed the Board that a number of Child Protective Service Workers who were affected by the Director's decision had since left State service, but could still be entitled to compensation. She also noted that some of the appellants were no longer members of the State Employees' Association and therefore were not represented by the Association. Ms. Steeves argued that the underlying issue in each case was the removal of a "career ladder" for Child Protective Service Workers. However, she argued that in two instances, if the

Department of Health and Human Services had processed promotion requests when the incumbents qualified for promotion, they would have been promoted to the next level in the class series before the career ladder had been removed. She argued that they were therefore entitled to retroactive compensation during the period when their promotions were delayed.

For purposes of judicial economy, and with the concurrence of the parties, the Board consolidated the cases. In so doing, the Board noted that if it were to find that individuals should have been permitted to be promoted within their own positions, several of the appellants would still have pending appeals for retroactive compensation based upon the date that they met the minimum qualifications for the next step in the class series. The Board also permitted individual appellants who were no longer represented by the Association, or whose appeals were filed *pro se*, to speak on their own behalf.

Ms. Steeves argued that in 1969, when the Department of Health and Human Services was the Department of Welfare, the Department of Personnel established the Social Worker class series. She argued that the class series provided for movement from Social Worker Trainee to Social Worker I, II and III, and that promotions occurred on an employee's anniversary date of employment in the class based upon length of service in the position, additional education, supervisory recommendations for promotion, and satisfactory completion of departmental training. Ms. Steeves stated that in 1989, the Division of Personnel created the Child Protective Service Worker class series, reclassifying Social Workers assigned to the Division for Children and Youth Services (now the Division of Children, Youth and Families) into positions of Child Protective Service Worker. She argued that when the reclassifications occurred, neither the Department of Health and Human Services nor the individual incumbents were informed that their "career ladder" had been removed, or that they would be prohibited from being promoted within their own positions in the same fashion that they had been promoted as Social Workers.

Ms. Steeves argued that the Director of Personnel arbitrarily decided that in order to be promoted within the Child Protective Service Worker class series, employees would have to meet the

minimum qualifications for the next step in the class series, then apply and compete for vacancies as they occurred. She argued that the Department of Health and Human Services first learned of the Director's decision when a Personnel Action Form to process a career ladder promotion was returned to the Department bearing a "post-it" note saying that the promotion would not be processed because there was no vacancy. Timothy Hallgren, one of the appellants, argued that he had every reason to believe that he would be promoted on his anniversary date, and because of the Director's action, he was denied a promotion that was "due" him for approximately nine months. He said that while there was only a difference of \$700 or \$800 in compensation to which he believed he was entitled, he was more concerned with the principle of the matter. He noted that the issue was re-negotiated between the Department of Health and Human Services and the Division of Personnel, and "career ladder" promotions were reinstated.

Ms. Lamberton argued that when Social Workers in the Division for Children and Youth Services were reclassified to Child Protective Service Workers, they were assigned to a newly created class series which could not be implemented until it had received final approval from the Fiscal Committee and Governor and Council. She argued that during early discussions about creation of that classification, there was a very deliberate effort to differentiate between Social Workers and Child Protective Service Workers in light of the agency's representation that there were substantial differences in their job assignments and the complexity of the work they perform. She argued that there was never any intention on the part of the Division of Personnel or management in the Division for Children and Youth Services to establish a system of automatic position and salary upgrading based upon longevity.

Ms. Lamberton argued that in her discussions during 1987, with Angel Parker and Effie Malley of the Division for Children and Youth Services about the possibility of creating the new classification, neither Ms. Parker nor Ms. Malley, then Director of DCYS, indicated any interest in developing built-in "career ladder" promotions for that classification. Ms. Lamberton referred the Board to correspondence between herself and the Division for Children and Youth, noting that in the Division of Personnel's approval of the change, she had asked for specific position numbers which

would be assigned at the various levels of CPSW. She also noted that before the Fiscal Committee and Governor and Council would approve the creation of the classification, they required position specific information for funding. She argued that there would not have been the same requirement for specific information about the number of positions which would be reclassified at the various levels of CPSW if either the Fiscal Committee or Governor and Council had expected automatic promotions to occur within the series.

Ms. Lamberton said that in 1992, the Department of Health and Human Services approached her with a new request to create a Child Protective Service Worker “career ladder” such as that which existed in the Social Worker series. She asserted that she eventually agreed to establish such a ladder, but only if the Division agreed to require position incumbents to meet specific standards for mandatory training, performance evaluation, and supervisory recommendation before promotions could be requested. Ms. Lamberton asserted that the Child Protective Service Worker series was an entirely new classification, and that incumbents who were assigned to the new classification should not have expected to carry the standards or benefits of the old classification with them.

Ms. Lamberton noted that in her Exhibit A, a December 12, 1988 letter to her from Effie Malley, then Director of the Division for Children and Youth Services, Ms. Malley requested that Social Workers assigned to her Division be reclassified as follows. Social Worker Trainee positions, salary grade 13 and Social Worker I positions, salary grade 15, would be reclassified to Child Protective Services Worker I, salary grade 17. Social Worker II positions, salary grade 17, would be reclassified to Child Protective Services Worker II, salary grade 19. Social Worker III positions, salary grade 18, and Social Worker Consultant positions, salary grade 19, would be reclassified to Child Protective Services Worker III, salary grade 19. In the Division of Personnel’s response, Ms. Lamberton agreed to the recommendations. However, in so doing, the Director stated:

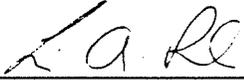
“Although my Division is accepting the recommendation made by you as to job titles and salary grades, I do not know which position numbers and incumbents will be placed at the Child Protective Service I, II and III levels. As you recognize, it will be necessary for each incumbent to meet the new minimum

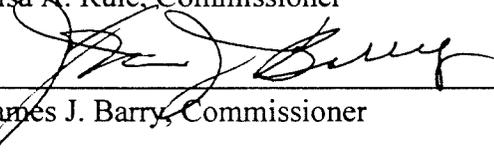
qualifications before they can be changed to any of the three levels. Please let my Division know in writing as to which positions and incumbents should go to the Child Protective Service Worker I, II or III classifications.” [Division of Personnel Exhibit B]

Having considered the evidence in light of the parties’ arguments and offers of proof, the Board voted unanimously to deny each of the appeals. The Board found that when the classifications of Child Protective Service Worker I, II and III were created, the Division of Personnel never intended or agreed to establish “career ladder” promotions. The Director did not alter or eliminate an existing promotional scheme since none existed for that classification. The Director had no reason to provide notice to the agency or the incumbents that in-position promotions would not be allowed, since none had been contemplated or approved when the classification was created.

THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Mark J. Bennett, Acting Chairman

  
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Lisa A. Rule, Commissioner

  
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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Margo Steeves, SEA Field Representative  
Sandra Platt, Human Resources Administrator, Department of Health and Human Services