State of New Hampshire

PERSONNEL APPEALS BOARD
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APPEAL OF JOHN CORRIGAN

DOCKET #99-C-23

N. H. HUMAN RIGHTS COMMISSION

October 14,1999

The New Hampshire Personnel Appeals Board (Wood, Rule and Barry) met on Wednesday, September 29, 1999, under the authority of RSA 21-I:57, to hear the appeal of John Corrigan, an employee of the New Hampshire Human Rights Commission. Mr. Corrigan, who was represented at the hearing by SEA Field Representative Brian Mitchell, was appealing his reclassification from Anti-Discrimination Investigator II, salary grade 23, to Anti-Discrimination Investigator I, salary grade 20. Virginia A. Lamberton, Director of Personnel appeared on behalf of the Division of Personnel.

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

Appellant's Exhibits:

A. Letter dated May 27, 1999 from Virginia Lamberton to Katharine Daly
B. Letter dated June 18, 1999 from Katharine Daly to John Corrigan
C. Written warning dated February 23, 1998 from Raymond Perry to John Corrigan

D. Letter dated April 10, 1998 from Raymond Perry to John Corrigan

E. Performance evaluations of John Corrigan 1994 - 1998

The appellant's June 11,1999 Notice of Appeal (not numbered as an exhibit) included the following attachments: May 27, 1999 letter from Virginia Lamberton to Katharine Daly, Executive Director of the Commission for Human Rights; February 23, 1998, letter of warning issued to Mr. Corrigan by Raymond Perry, former Executive Director of the Commission for Human Rights; Performance Evaluations issued to the appellant on 9/17/98, 4/11/97, 3/25/96, 3/21/95 and 3/16/94

State's Exhibits

A. Letter dated February 26, 1999 from Raymond Perry to Director Lamberton

B. Letter dated March 5, 1999 from Katharine Daly to Robert Ahlgren

C. Position Classification Questionnaire for position #13938, Anti-Discrimination Investigator II

D. Copy of former supplemental job description for position #13938

E. Copy of proposed supplemental job description for position #13938

F. Organization chart for Human Rights Commission

G. Decision letter to Katharine Daly dated May 27, 1999

H. Letter of appeal dated June 11, 1999

I. Class specification for Anti-Discrimination Investigator I

J. Class specification for Anti-Discrimination Investigator II

K. Point factor ratings for Anti-Discrimination Investigator I

L. Point factor ratings for Anti-Discrimination Investigator II

Before taking up the merits of the reclassification appeal, the Board heard oral argument on two pending motions:

Appellant's Motion to Amend Appeal, State's Objection and Appellant's Response

By letter dated July 27, 1999, SEA Field Representative Brian Mitchell filed a Motion to Amend the Appeal of John W. Corrigan. In that motion he argued that, "The recently-enactedFloor Amendment to House Bill 2, FN-A (copy of pertinent part attached) reads, in pertinent part:

> '44. Changes in Salary Groups. Any classified employee whose position was changed from one salary group to a lower paying salary group, during the 1999 legislative session, shall continue to receive the salary and scheduled raises of the higher paying salary group so long as such employee is employed in such positions.'"

Mr. Mitchell wrote, "Mr. Corrigan's demotion clearly fits into this category. Therefore, we respectfully request that as an additional remedy, the Board ensure that Mr. Corrigan's salary remain at his current rate for the duration of his employment with the New Hampshire Commission for Human Rights."

In her objection to that Motion, Ms. Lamberton argued: 1) that the Board's rules did not provide for amendment of any appeal filed with the Board; 2) that the language of 351:31 was simply "boilerplate" that always appeared with any legislative amendment to the salary matrix for classified employees; 3) that it would be illogical for the Legislature to protect employees whose positions were downgraded while the Legislature was in session and not protect those whose positions were downgraded during non-legislative months; and 4) that there was no floor amendment as Mr. Mitchell had asserted.

The Board found that the appellant's Motion to Amend was more accurately described as a request to supplement his request for relief. On the Motion, Objection and Response, the Board found the following:

In response to a request for information about the language of HB-2, Section 44, Legislative

Budget Assistant Michael Bucltley wrote that staff from his office and the Research Division of the Office of the Legislative Budget Assistant had looked back as far as the 1989 legislative session for the history of what Mr. Mitchell described as a floor amendment. Mr. Bucltley wrote, "It appears that this paragraph has been carried forward from pay raise to pay raise without any documented discussions." [See Bucltley letter, August 26, 1999]

The appellant failed to offer evidence supporting his position that the Legislature adopted the language of HB-2, section 44, to "grandfather" the level of compensation for employees whose positions were reviewed and reclassified downward during the period that the legislature was in session. First, the term "salary group" does not appear to have the same meaning as the term "salary grade," since all other references in the bill to the salaries of classified employees address "salary ranges" or "salary grades." Further, the phrase "...during the 1999 legislative session..." implies action by the legislature, not a reclassification decision of the Director under the authority of RSA 21-I:42, III, or a decision of the Board under the authority of RSA 21-I:57. Therefore, the Board found that a reduction in the salary grade assigned to Mr. Corrigan's position as a result of a position review and reclassification would not be subject to the provisions of HB2, section 44.

Appellant's Motion for Directed Judgment

The Board voted to deny Mr. Mitchell's Motion for Directed Judgment. Mr. Mitchell argued that, "...Mr. Corrigan's reclassification was done as a pretext for punitive action; i.e., a disciplinary demotion." Mr. Mitchell argued that Mr. Corrigan continued to disagree with the content of the letter of waming received by him on February 23, 1998, that the letter of warning issued to Mr. Corrigan lacked a corrective action plan, and that the appellant had made every effort "to comply with the wishes of his then supervisor Raymond S. Perry." Mr. Mitchell argued that the Commission failed to take any additional disciplinary action and should not be pennitted now to demote the appellant under the guise of a position review and reclassification.

The evidence reflects that Mr. Corrigan filed a timely request for informal settlement of the written warning. However, when Mr. Perry refused to remove the warning from his file, Mr. Corrigan chose not to pursue a further appeal to this Board. Having failed to do so, those issues involving the propriety of the warning are not timely and may not be used to challenge the Director's decision to review and reclassify his position some two years after the appellant's duties changed.

Appeal of Reclassification

On the evidence, argument and offers of proof, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. Mr. Corrigan began his employment with the New Hampshire Commission on Human Rights in 1982 as an Anti-Discrimination Investigator.
2. In 1993, Mr. Corrigan was promoted to Anti-Discrimination Investigator II and named Deputy Director of the agency.
3. The appellant's duties as Investigator II/Deputy Director included supervision and management of the Commission's Anti-Discrimination Investigator I incumbents.
4. Evaluations of the appellant's work performance between March, 1994 and September, 1997, were satisfactory over-all, but reveal difficulties that the appellant continued to experience with supervision of subordinate Investigators.
5. In 1997, the appellant's supervisory duties were reassigned, but he retained the title of Anti-Discrimination Investigator II, salary grade 23.
6. In 1999, the former Director of the Human Rights Commission submitted a request for reclassification of the Investigator's position held by Katharine Daly, who was later appointed as the agency's Executive Director.
7. Whereas the duties assigned to Ms. Daly's position included administrative and supervisory duties previously assigned to the appellant's position, the Division of Personnel requested a

classification questionnaire from the appellant as well.

8. On Part II of the appellant's Position Classification Questionnaire, former Director Perry wrote, "The most important duty listed on the supplemental job description is to investigate discrimination complaints. As of 3/1/99, the position will no longer manage all incoming cases. That duty will be returned to each individual investigator. Although this position did coordinate rulemaking, that task was completed. It is not contemplated that this position will conduct any future rulemaking functions. This position has not been performing public relations duties. The Commission is contemplating the utilization of the Department of Corrections to upgrade and maintain our web site."
9. The Basic Purpose of the Anti-Discrimination Investigator II classification is, "To supervise professional staff in investigating allegations of discrimination in employment, housing and public accommodations as outlined in federal or state statutes."
10. The Basic Purpose of the Anti-Discrimination Investigator I classification is, "To conduct investigative work and prepare reports regarding allegations of discrimination in employment, housing and public accommodations as outlined in state and federal statutes to educate the public by answering telephone inquires and by presenting workshops."
11. In the appellant's classification questionnaire, Director Perry described the basic purpose of the appellant's position as, "…to investigate discrimination complaints and to negotiate resolutions of discrimination problems."
12. The Scope of Work suggested by the appellant as part of the position review was, "Performs wide variety of administrative and investigation duties to advance agency's mission."
13. The appellant's original and proposed supplemental job descriptions included accountabilities that could not be verified during the Division of Personnel's field audit of the position, particularly as they related to management of subordinate staff and assignment of cases to staff investigators.
14. In her May 27, 1999 letter to the Human Rights Commission, Director Lamberton wrote that she had reclassified Ms. Daly's then vacant position from Anti-Discrimination Investigator I, salary grade 20 to Supervisor IV, salary grade 24. She also notified the Commission that Mr. Corrigan's duties and responsibilities were more accurately described by the specification

for Anti-Discrimination Investigator I, salary grade 20, and that his position was being downgraded accordingly.

Rulings of Law

A. "The director shall establish a formal written class specification covering each position in the classified system. The purpose of the class specification shall be to identify the job functions, distinguishing factors, examination requirements, and the minimum qualifications which apply to all positions in the same class." [Per 301.02 (a)]

B. "The duties and work assignments for each position in the state classified service shall be defined by a supplemental job description established by this rule." [Per 301.03 (a)]

C. The supplemental job description shall be developed and updated by the appointing authority or the supervisor assigned by the appointing authority to oversee the work assignments of the position." [Per 301.03 (b)]

D. "Any work assignment which affects more than 10 percent of the total working time of the position shall be listed on the description by the appointing authority, designated supervisor or the employee of the position in accordance with this rule." [Per 301.03 (c)]

E. An employee's supplemental job description must include, "A statement of the scope of work for the position, which shall be related to the basic purpose section of the class specification and shall specify how the broad purpose of the specification translates into a specific role within the goals and objectives of the agency." [Per 301.03 (d) (7)]

F. The Director of Personnel is responsible for "…III. Allocating the position of every employee in the classified service to one of the classifications in the classification plan." [RSA 21-I:42, III]

G. " 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." [RSA 21-I:57]

H. "If the director reallocates or reclassifies a position into a class with a lower salary grade, the incumbent's salary shall be adjusted as follows: (1) The incumbent's salary shall not be

reduced for a period of 2 years." [Per 303.06 (b)(1)]

Decision and Order

The only issue properly before the Board is the Director's decision that Mr. Corrigan's position should be reclassified from Anti-Discrimination Investigator II, salary grade 23 to Anti-Discrimination Investigator I, salary grade 20. The appellant's assertion in his Motion for Directed Judgment that, "…the Commission for Human Rights then altered Mr. Corrigan's duties by removing his supervisory responsibilities, in order to justify a downward reclassification to Labor Grade 20," is unsupported by the evidence. The evidence reflects that Mr. Corrigan's supervisory duties were removed in 1997, two years before the position was reviewed for reallocation. Throughout that period of time, Mr. Corrigan continued to be compensated at salary grade 23, although his duties and responsibilities were comparable to those of Investigator I incumbents at salary grade 20. The evidence further reflects that the Human Rights Commission did not request a review of Mr. Corrigan's position. Rather, the Division of Personnel requested a position classification questionnaire from the appellant in order to compare his duties with the duties that had been assigned to the position then held by Ms. Daly.

The Director determined that Mr. Corrigan had no supervisory responsibilities and was not performing administrative tasks at a level that would support his classification at the level of Anti-Discrimination Investigator II. Mr. Corrigan's opportunity to challenge the Commission's decision to withdraw his supervisory authority occurred when he received a written warning in February, 1998. Although the appellant initiated the procedures for informal settlement of disputes, he did not appeal the written warning to this Board. Therefore, the issues he raised in his Motion for Directed Judgment are untimely and are outside the Board's jurisdiction.

The appellant failed to offer evidence that the Director incorrectly classified his position in accordance with the classification plan or the director's rules. The evidence reflects that the appellant's current duties and responsibilities are accurately described by the class specification

for Anti-Discrimination Investigator I, salary grade 20.

Therefore, on all the evidence, argument and offers of proof, the Board voted unanimously to DENY Mr. Corrigan's appeal.

THE PERSONNEL APPEALS BOARD

Patrick H. Wood, Chairman

Lisa A. Rule, Commissioner

James J. Bany, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Brian Mitchell, SEA Field Representative, PO Box 3303, Concord NH 03302-3303
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