

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603)271-3261

APPEAL OF ROBERT DUBE

DOCKET #93 - C-11

Department of Health and Human Services
Division for Children and Youth Services

October 21, 1993

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, August 4, 1993, to hear the classification appeal of Robert Dube, an employee of the Department of Health and Human Services. Mr. Dube, who was represented at the hearing by SEA Field Representative Margo Hurley, was appealing the August 14, 1992 decision of the Division of Personnel to downgrade the appellant's position from Supervisor V, salary grade 25, to Supervisor III, salary grade 22. The Division of Personnel was represented at the hearing by Director Virginia Lamberton.

Mr. Dube's appeal is twofold. The appellant argues that the responsibilities of Area Office Supervisor are greater than those of District Office Supervisors, and that all positions assigned to serve as Area Office Supervisor should be classified as Supervisor V, salary grade 25 based on the duties and responsibilities of those positions. In the alternative, the appellant argues that in 1989, he was transferred in his position of Supervisor V in the Rochester District Office to Supervisor of the Eastern Area Office. Although positions of Area Office Supervisor were then classified at the level of Supervisor III, salary grade 22, Mr. Dube was assured that he would retain his Supervisor V classification and salary grade 25 pay. Therefore, he argues that regardless of the current classification of Area Office Supervisors, under the former Rules of the Division of Personnel, he should continue to be compensated at the level of salary grade 25.

At the conclusion of the hearing, Director Lamberton submitted proposed findings of fact and rulings of law. While the Board is mindful of its obligation to respond to proposed findings of fact and rulings of law and finds them helpful in focusing the review on the material facts in dispute, detailed, compound proposed findings which do not allow the Board to focus on the issues are not helpful in reaching a decision. The Board notes that in the Director's proposed finding #2, she states, in part:

"...[T]his resulted in a communication to Mr. Chevrefils dated August 14, 1992. In regard to the Area Office Supervisors, it was recommended that positions #11745 and #11766 classified as Supervisor III's be reallocated to Supervisor IV, and position #11792, held by the appellant, Robert Dube, be reclassified from its present Supervisor V to Supervisor IV."

However, in the proposed finding #4 addressing Mr. Dube's request for reconsideration of the Director's decision, the Director states:

"...[A]fter reviewing all additional information submitted with the request for reconsideration, she remained convinced that Mr. Dube's position is properly classified as a supervisor III, salary grade 22, as outlined in her August 14, 1992 communication to Mr. Chevrefils."

Accordingly, the Board will make its own findings in this case. To the extent that the proposed findings are consistent with the Board's decision, they are granted. Otherwise, they are denied.

The evidence clearly indicates that in 1989, Mr. Dube was transferred from the Rochester District Office where he was classified as a Supervisor V, salary grade 25, to the Eastern Area Office, where the office supervisors were classified as Supervisor III, salary grade 22. The evidence also indicates that Mr. Dube was assured by Administrator Ray Tague that he would continue to be compensated at salary grade 25, and that the position would not be downgraded until Mr. Dube had vacated it.

However, there is no evidence that the Division for Children and Youth Services ever formally sought approval for the transfer as required by the Rules of the Division of Personnel (Per 303.04 and Per 303.05). Further, there is no evidence that the Division for Children and Youth Services notified the Director of Personnel of material changes in the appellant's position at the time of the unauthorized transfer. Had such notification been made, and had Mr. Dube's position been downgraded at that time from Supervisor V to Supervisor III, consistent with other Area Office Supervisors, he would have been protected from a decrease in his salary grade until such time that he vacated the position, or a new review of Area Office Supervisors was conducted under the current Rules of the Division of Personnel. On the evidence, Mr. Dube's appeal for protection of his salary under the provisions of the former Rules of the Division of Personnel is denied.

Mr. Dube argues that the review of Area Office Supervisor positions was initiated prior to adoption of the current Rules of the Division of Personnel, and that any subsequent change to the position therefore must be made in accordance with the provisions of the former Rules. The legal standard for position classification reviews, including any potential retroactivity, is addressed in RSA 21-I:54, which provides for change in allocation only after a decision by the Director of Personnel or the Personnel Appeals Board. Absent an allegation and proof of malice on the part of the Division of Personnel resulting in intentional delay in the decision-making, the Board must apply the lawful standard and view the classification decision in light of the rules in effect at the time the decision was made. Therefore, the appellant's request to be held harmless on the basis of the date the review was initiated instead of the date the review was completed is denied.

On the remainder of the evidence, the appellant failed to persuade the Board that there had been a change in the duties he assumed in 1989 as an Area Office Supervisor to warrant upgrading it from its current classification of Supervisor III, salary grade 22. Therefore, on the evidence, the appellant's request to be classified as a Supervisor V, salary grade 25, is denied. Under the current Rules of the Division of Personnel, incumbents in positions which are downgraded are allowed to keep their higher salary for a period of two years from the date of the downgrading. After two years, the incumbent's salary is decreased to the level of the classification.

Therefore, on the evidence, the Board voted to deny Mr. Dube's appeal. In so doing, the Board

granted the Director's proposed requests for rulings of law.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
Margo Hurley, SEA Field Representative
Dr. Harry Bird, Commissioner, Department of Health & Human Services
Sandra Platt, Human Resources Administrator, Health and Human Services