

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### *Appeal of:*

*Liquor Investigators, Docket #2002-C-1*  
*Liquor Enforcement Sergeant, Docket #2002-C-2*  
*Assistant Chief, Liquor Law Enforcement, Docket #2002-C-3*  
*Chief of Licensing and Enforcement, Docket #2002-C-4*

### *Response to Appellants' Motion for Reconsideration*

*April 24, 2002*

By letter dated April 17, 2002, Thomas Hardiman, SEA Director of Field Operations, requested reconsideration of the Board's March 20, 2002, decision DENYING the above-titled appeals.

1. The Board fully recognizes the Police Standards training required of liquor investigators and appreciates the skills and resources that training provides. That training, by itself, however, does not necessarily change the duties and responsibilities of liquor enforcement personnel.
2. The Board thoroughly reviewed the evidence presented on the duties and qualifications of liquor investigators. Specifically, the Board reviewed the Evaluation Manual and the statements and offers of proof given by the appellants concerning their duties and responsibilities. Based on this review, the Board did not believe the duties and responsibilities of those investigators are significantly similar to the duties and responsibilities of State Police Troopers. The Board fully and unequivocally supports the concept of equal pay for equal work. The facts of this appeal do not support the argument that "an unfair barrier" to this concept exists in the decision of the Board in this appeal.

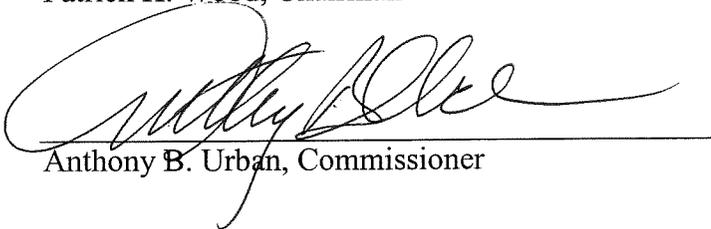
3. The Board considered the facts relating to the current status of the appellants. The issue of qualifications for future applicants was not considered by the Board as particularly relevant to the matter on appeal.
4. The Board reviewed this appeal in accordance with RSA 21-I:57 and Per-A 101.14 as a reallocation matter, and considered the material and evidence presented in accordance with this statute and this rule. The Board's findings of fact support the reallocations awarded and are consistent with established law and rules.
5. The Board agrees that a liquor investigator desiring to become a state trooper would need to receive considerable additional training to fulfill the different duties and responsibilities of a state trooper.
6. The Board considered the evidence presented and the Evaluation Manual when it reviewed the supervisory responsibilities of the Chief of the Enforcement Bureau. Findings of Fact 13 through 20 deal specifically with this matter and the Board has considered in depth the supervisory responsibilities of the Chief of the Enforcement Bureau.

The Board has considered all the aspects of the appellants' motion for reconsideration in this appeal. For all the reasons state above, the Motion for Reconsideration is DENIED.

THE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Anthony B. Urban, Commissioner

cc: Thomas F. Manning, Director, Division of Personnel, 25 Capitol St., Concord, NH 03301  
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*March 20, 2002*

A quorum of the New Hampshire Personnel Appeals Board (Wood and Urban) met on Wednesday, December 12, 2001, under the authority of RSA 21-I:57, to hear the reallocation appeals of employees in the Law Enforcement Division of the New Hampshire State Liquor Commission. Thomas Hardiman, SEA Director of Field Operations and Aidan Moore, Chief of Enforcement for the Liquor Commission, appeared on behalf of the appellants. Thomas Manning, Director of Personnel and A. Robert Ahlgren, Supervisor of Classifications appeared on behalf of the State. Neither party objected to proceeding with a quorum of the Board present to hear the appeal.

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

#### State's Exhibits:

- A. Letter dated 8/23/01 from the Liquor Commissioners requesting review and upgrade of the positions currently under appeal
- B. Decision letter of 8/22/01 to the Liquor Commissioners upgrading the positions
- C. Reconsideration request dated 9/5/01 from the Liquor Commissioners
- D. Letter dated 9/19/01 from the Director of Personnel denying the request for reconsideration

- E. Memo dated 8/3/01 from Aidan Moore to Chairman John Byrne requesting changes to the minimum qualifications of Liquor Investigators
- F. Memo dated 8/6/01 from George Liouzis to Director Manning requesting changes in minimum qualifications
- G. Letter dated 8/27/01 from Director Manning to George Liouzis approving changes in minimum qualifications
- H. Classification/position allocation worksheet
- I. Factor definitions for the nine evaluation factors
- J. Organizational Chart for the Liquor Commission, Bureau of Enforcement
- K. Existing class specifications for Investigator, Sergeant, Assistant Chief and Chief of Liquor Law Enforcement
- L. Supplemental Job Descriptions approved in August, 2001 for the positions under appeal

Appellant's Exhibits:

1. September 19, 2001 letter from Thomas Manning to John Byrne
2. September 5, 2001 letter from the Liquor Commission to Thomas Manning
3. August 22, 2001 letter from A. Robert Ahlgren to the Liquor Commission
4. August 23, 2000 letter to Thomas Manning outlining changes in the mission of the Enforcement Bureau
5. August 22, 2000 letter to Thomas Manning recommending the upgrade of Enforcement positions
6. Organizational Chart for the Bureau of Enforcement
7. Salary upgrade request memo and evaluation summary from Lisa Soiett to Nick Houhoulis
8. Opening Statement
9. Statement of the Bureau's Mission by Chief A. Moore
10. Working Conditions factor summary
11. Knowledge factor summary for Assistant Chief, Liquor Law Enforcement
12. Supervision factory summary for Chief of Liquor Law Enforcement
13. Position Classification Questionnaire completed by Nicholas P. Houhoulis, Liquor Investigator

14. Position Classification Questionnaire completed by Paul C. Cote, Liquor Investigator Sergeant
15. Position Classification Questionnaire completed by Robert C. Pierce, Assistant Chief of Liquor Law Enforcement
16. Position Classification Questionnaire completed by Aidan J. Moore, Chief of the Bureau of Liquor Law Enforcement
17. Class Specifications for Liquor Investigator, Liquor Enforcement Sergeant, Assistant Chief of Liquor Law Enforcement, and Chief of Licensing and Enforcement

Position Title	Salary Grade Before Position Review	Salary Grade Increase Recommended by Appellants	Salary Grade Increase Approved by Division of Personnel
Liquor Investigator	15	18	16
Liquor Enforcement Sergeant	17	20	18
Assistant Chief, Liquor Law Enforcement	21	24	22
Chief of Licensing and Enforcement	26	29	27

Chief Moore argued that in determining the appropriate salary grade for positions in the Liquor Law Enforcement Bureau, the Division of Personnel needed to compare these positions with other law enforcement positions statewide. He argued that fairness and equity should extend “across the board,” and officers’ pay should be based on what they are required to do. He argued that as law enforcement has evolved, in addition to the centralized police function performed by the State Police, various other agencies are required to enforce particular laws. In the case of the Liquor Commission, he said, officers are responsible for enforcing laws controlling the sale of alcohol as well as those limiting youth access to tobacco. He argued that all other officers in the State’s classified system are paid at a higher salary grade than Liquor Enforcement, even though their duties can be equally demanding and hazardous.

Mr. Moore explained that the Liquor Commission’s Enforcement Bureau functions as a traditional law enforcement agency with a chief, assistant chief, sergeants, and investigators. He

said that officers attend the Police Academy, complete the same requirements as every other police officer, and have duties and liabilities that are identical to those of other police officers. He argued that Liquor Law Enforcement Officers undergo the same hiring process and background investigations as their fellow officers and they have the same police powers to enforce Title XIII and any law in the State of New Hampshire. He said that the only difference between their positions and the more traditional police positions is the title of law that they have primary responsibility to enforce.

Mr. Moore argued that a single grade increase in the positions under review was not adequate to address the increased responsibilities in their positions. He argued that the appellants were seeking recognition of the fact that they are “law enforcement” personnel. He said that without the requested reallocation, they would continue to be the lowest-paid law enforcement officers in the state. He asked the Board to consider the propriety of such an outcome when Liquor Investigators are required to stand at the same sobriety checkpoints as State Police Troopers, experiencing the same job in the same weather and facing the same hazards, yet they have never been able to achieve pay parity. He said that was a difficult distinction to explain when trying to hire and retain qualified personnel.

Mr. Manning said that the original position review request was submitted in response to the Commission’s request to enhance salaries, ostensibly for the purpose of improving recruitment and retention. He said that the Commission did not believe the position responsibilities themselves had changed significantly and therefore did not request a reclassification. Instead, he said, they requested a reallocation of the positions based on their belief that in comparison to other law enforcement titles, the positions were not correctly allocated within the classified system. Mr. Manning said that by its very nature, a request to increase the allocation of a position by three salary grades would be very rare. Doing so would require a finding that there had been very substantial change in the positions’ duties and responsibilities.

Mr. Ahlgren directed the Board’s attention to Appellant’s Exhibit E concerning changes in minimum qualifications designed to attract more candidates. When you change minimum qualifications, he said, one must look at Skill (experience) and Knowledge (education) to

determine whether an adjustment should be made in the corresponding factors. He said that on the one hand, the agency was looking to decrease the amount of education and experience a candidate would need to apply for a position in Liquor Law Enforcement. On the other, however, they were seeking increases in the salary grades assigned to those jobs. He said it was difficult to decrease the job requirements but increase the labor grade. Mr. Ahlgren said that while the Liquor Commission has a serious job, it simply does not compare to the nature or scope of assignments handled by State Police Officers and Conservation Officers. Therefore, he argued, because they are very different jobs, it is only reasonable to believe that they also could have different salary grade assignments.

Having considered the documentary evidence, arguments, and offers of proof made by the parties, the Board made the following findings of fact and rulings of law:

#### Findings of Fact

1. The Evaluation Manual published by the NH Division of Personnel defines skill as “job training time and specific vocational preparation necessary to perform specific job functions.” Level 4 generally represents 3 to 6 years of experience, while level 3 generally represents 2 to 4 years of experience.
2. The current job specification for Liquor Investigators establishes 2 years as the minimum requirement for work experience, consistent with level 2 for the “Skill” factor.
3. Liquor Investigators provide partial supervision of trainees and other investigators, supporting the reallocation of the “Supervision” factor from level 1 to level 2, described by the Evaluation Manual as requiring “partial supervision of other employees doing work which is related or similar to the supervisor, including assigning job duties, providing training, giving instructions and checking work.”
4. The Evaluation Manual defines “Working Conditions” as “physical conditions to which a worker is exposed while performing assigned duties and tasks. This factor relates environmental conditions as important to the successful performance of a required job function if... (1) The worker is exposed to an environmental working condition an estimated 20% or more of the time during the basic workweek [or] (2) The condition is hazardous, in that it causes bodily injury or danger to life and health during the basic workweek.”

5. Before the review the Investigator positions had been rated at level 4 for “Working Conditions,” which includes “an adverse working environment containing a combination of disagreeable elements which impact significantly upon the employee’s capacity for completing work assignments. This level includes work-related accidents and assaults.”
6. Although there was no evidence of substantial change in the nature of the work performed by Investigators, the Division of Personnel approved an increase in the “Working Conditions” factor for Investigators and Sergeants to level 5, which involves work performed “in an adverse working environment involving a variety of unpredictable elements or hazards, including exposure to injuries or hazardous materials which result in partial disability.”
7. The appellants offered no additional evidence to support their request for reallocation to level 6, which entails performing regular job assignments “in an extremely disagreeable or dangerous working environment with continuous exposure to an uncontrollable number of hazardous elements including occupational accidents, injuries, or diseases which result in total disability or death.”
8. In reviewing the position of Assistant Chief, the Division of Personnel approved an increase in the allocation of the Working Conditions factor from level 3 to level 4 and an increase in the Communications factor from level 4 to level 5.
9. The appellants requested an increase in the “Knowledge” factor for the classification of Assistant Chief from level 3 to level 4.
10. The Evaluation Manual defines knowledge as “the combination of preparation and learning through formal education or through experience in a position which requires formal education necessary to perform specific job functions. This factor measures the educational background or technical knowledge required to meet the minimal job performance standards.”
11. Level 4 of the “Knowledge” factor “requires logical or scientific understanding to analyze problems of a specialized or professional nature in a particular field,” and generally reflects the requirement for an applicant to possess a Bachelor degree.
12. The classification of Assistant Chief currently requires applicants to possess an Associate degree, consistent with the allocation of level 3 for the “Knowledge” factor.
13. In reviewing the position of Chief of Liquor Law Enforcement, the Division of Personnel increased the allocation of the “Communications” factor from level 5 to level 6.

14. The appellant requested that the Division of Personnel also increase the allocation of the “Supervision” and “Independent Action” factors from level 5 to level 6.
15. Level 5 for the “Supervision” factor requires, “delegating supervisory or program responsibilities to subordinate managers, with overall accountability for hiring employees or approving program policies. The supervisor in this position assumes responsibility for an organizational unit, including developing long-range plans, analyzing staffing requirements, and formulating systemwide policies and procedures.”
16. An increase from level 5 to level 6 for “Supervision” would require evidence of agency-wide administrative supervision, responsibility for developing and evaluating internal personnel policies, and administrative management of a program that affects more than one agency.
17. The Chief’s responsibilities do not include administrative supervision agency-wide, and the appellant failed to offer evidence to support his contention that the scope of his responsibilities as head of the Liquor Commission’s Enforcement Bureau was consistent with the supervisory and management responsibilities of the Executive Major in the Department of Safety’s Division of State Police.
18. According to the Evaluation Manual, “Independent Action means the amount of decision making, initiative, and responsible effort required in originating new or more efficient work methods and procedures. This factor measures the type, frequency, and priority of well-defined alternatives and the extent to which instructions or policies guide action in selecting and applying strategies to enhance service delivery of the agency.”
19. Chief Moore’s position is currently rated at level 5 for “Independent Action,” which accurately measures the requirement for him to demonstrate “independent judgment in planning and evaluating work procedures and in supervising the development of professional, technical and managerial standards under administrative direction and according to broad departmental guidelines.”
20. The appellant did not offer evidence that he is responsible for “administrative decision-making in authorizing and monitoring the implementation of major departmental policies and procedures” as required at level 6 for “Independent Action.” Although the appellant has broad authority in Enforcement and increasing responsibility in Licensing, the evidence did not reflect broad authority in establishing departmental policy outside of his own bureau.

## Rulings of Law

- A. 21-I:57 Allocation Review. – “The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation. If a review is requested by an employee, the director shall contact the employee's department head to determine how the employee's responsibilities and duties relate to the responsibilities and duties of similar positions throughout the state. The employee or department head, or both, shall have the right to appeal the director's decision to the personnel appeals board in accordance with rules adopted by the board under RSA 541-A. 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.”
- B. Per-A 101.14 “‘Reallocation’ means a determination by the director of personnel that because of a change in the duties and responsibilities of a class of positions, those positions should be assigned to a salary grade other than the one to which they were assigned previously.”
- C. Per-A 207.12 (f) “In appeals of a position reclassification or reallocation, the board shall determine if the appellant proves by a preponderance of the evidence that:
- (1) The duties of the position have changed sufficiently to warrant reclassification or reallocation; or
  - (2) The position was improperly allocated or classified in accordance with the director's rules or the classification plan.”

## Decision and Order

In reviewing the Liquor Investigator positions, the Division of Personnel made the following changes in the evaluation factors and associated point values:

Skill – from level 4 to level 3, a reduction of 20 points

Supervision – from level 1 to level 2, an increase of 5 points

Working Conditions – from level 4 to level 5, an increase of 15 points

Communication – from level 3 to level 4, an increase of 15 points

The review yielded a net increase of 15 points for the Liquor Investigator classification resulting in a reallocation from salary grade 15 to salary grade 16. In the case of Liquor Enforcement Sergeants, the Division approved only one change, increasing the “Working Conditions” factor from level 4 to level 5, yielding a net increase of 25 points and a reallocation from salary grade 17 to salary grade 18. The Division approved two changes to the Assistant Chief of Liquor Law Enforcement classification, increasing “Working Conditions” from level 3 to level 4, and

“Communications” from level 4 to level 5. The net effect of those changes was an increase of 25 points resulting in a position reallocation from salary grade 21 to salary grade 22. Finally, the Division of Personnel authorized a change in the “Communications” factor from level 5 to level 6 for the Chief of Licensing and Enforcement, resulting in reallocation of that position from salary grade 26 to salary grade 27.

The Division’s review recognized changes in the positions and in the mission of the Bureau. However, as the Division’s review disclosed, the changes were not so substantial in nature or scope to warrant an increase of more than one salary grade for any of the positions under appeal.

Having carefully considered the evidence, arguments and offers of proof, the Board found that the Division of Personnel conducted a review and properly allocated the positions in the Enforcement Bureau in accordance with the State’s classification plan. Accordingly, the Board voted to DENY the appeals, finding that material changes in the duties and responsibilities of the position were adequately addressed in the course of the review and reallocation.

THE PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Anthony B. Urban, Commissioner

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