

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex

Concord, New Hampshire 03301

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Appeal of Kevin Maes
Personnel Appeals Board Decision
Response to Request for Clarification
and
Request for Final Order

May 17, 1990

On August 11, 1989, the Board issued an order in the classification appeal of Kevin Maes, an employee of New Hampshire Hospital, who had appealed from a decision of the Director of Personnel to deny him compensation at title Education Director, salary grade 23, and to reclassify his position to the title of Supervisor of Therapeutic Activities, salary grade 20. In its earlier order, the Board found that Appellant had not supported his request for classification or compensation as Education Director, salary grade 23. However, the Board also found that the Director of Personnel had erred in classifying Appellant as Supervisor of Therapeutic Activities, salary grade 20.

The Board noted that under the provisions of RSA 21-I:46, VIII-a, it lacked the authority to create "new job classifications or job titles", and that the Board had therefore been given little choice but to allow the present title of Education Director to stand, or to order Appellant reclassified to Supervisor of Therapeutic Activities. The Director of Personnel was ultimately directed to implement this Board's findings with respect to the education attribute, and if impossible to accomplish such amendment to Appellant's classification within the framework of the existing classification system, then to compensate Appellant at salary grade 23, consistent with the title of Education Director.

On September 13, 1989, the Director of Personnel requested that the Board clarify its order, attaching to that request the pointspread for both the title of Education Director and Supervisor of Therapeutic Activities. The Director also questioned why the Board had addressed the Working Conditions attribute when no adjustment of that attribute had been requested by Appellant. The State Employees' Association responded to the Director's request on October 23, 1989, asking that the Board act on its August 11th order and classify the Appellant as Education Director Salary Grade 23.

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The Director, in her letter of September 13th, points out several errors in the Board's original order, and the Board stands corrected. Mr. Maes' position prior to review was allocated at 65 points for Experience, rather than the 80 points as the Board had stated. For the attribute of Initiative, Appellant's position was rated at 60, not 80 points. The degree cited was, however, correct.

The Director questioned the Board's finding that Appellant's position warranted increase in the Education attribute in isolation of the remaining minimum qualifications, referring to the equivalency allowed in the specification for education and experience for the position of Supervisor of Therapeutic Activities. The State Employees' Association asks the Board to consider the effective date of those specifications, noting the revision date of April 5, 1989, after the Maes hearing was concluded.

In order to consider Appellant's position as it existed at the time of the reclassification to Supervisor of Therapeutic Activities, and at the time of his initial request for increased compensation, the Board reviewed Appellant's initial written submissions. Appellant described his major job function as being the assurance "that all patients at New Hampshire Hospital have the opportunity to participate in an Educational program which meets the standards set forth by the Rehabilitation Services Department, as outlined by the administration of New Hampshire Hospital". (Appellant's Exhibit VIII) The Classification Questionnaire completed by Janis Kingsley, Education Director at YDC (Appellant's Exhibit VII) describes the position's function as "assuming full responsibility of structuring the education department to be in harmony with the State Agency's goals, Parole Board's goals, State Department of Education mandates". Ms. Kingsley's questionnaire also referred to the requirement for a master's degree in the position of education director to assure continued program approval through the State Department of Education, Special Education component. No comparative program approval or educational program accreditation requirement appears in Mr. Maes' classification questionnaire.

Appellant depends heavily upon the content of the Kingsley review and subsequent appeal decision to support his request for upgrading, arguing that if one position so titled was increased by three salary grades, then all similarly titled positions must be equivalently compensated. While this argument is sound on its face, it must reasonably follow that the positions be sufficiently similar in function and scope to receive the same level of compensation. Otherwise, the Director of Personnel would be obligated to reclassify any position so titled if such position were deemed to be substantially different.

To determine whether or not the Director was correct in reclassifying Mr. Maes

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position, the Board must look to the points allocated to the position of Education Director when it was allocated at salary grade 20, the current point allocations for the position of Education Director at salary grade 23, and the allocation of points for the position of Supervisor of Therapeutic Activities. Such review must also consider those attributes which Appellant requested increased both in his classification questionnaire and the documents he filed on appeal.

In his classification questionnaire, Appellant only requested an increase in two attributes, Complexity of Duties (6th to 7th degree) and Supervision (4th to 5th degree). His written arguments submitted as part of his appeal address three entirely different attributes, Errors, Initiative and Education. The discrepancy between these two submission accounts in part for the apparent confusion in the Board's August 11th order.

The Board now finds that a comparison of the points allocated to Education Director (salary grade 20), Supervisor of Therapeutic Activities (salary grade 20) and requested Education Director (salary grade 23) to be the most effective way of considering Mr. Maes' appeal.

	Ed. Director (SG 20)	Sup. Therapeutic Activities (SG 20)	Ed. Director (SG 23)
Complexity	100	100	100
Education	80	80	100
Experience	65	65	65
Initiative	60	60	80
Errors	40	60	60
Relationships	50	50	50
Supervision	40	40	40
Phys. Effort	10	10	10
Working Cond.	20	10	10
Total	465	475	525
Grade	20	20	23

The Education attribute is the first which would require change were Appellant to be upgraded to salary grade 23. Although Appellant did not initially request any increase in this attribute in his classification questionnaire, he and his supervisor did express the belief that the position should require a bachelor's degree plus 15 credit hours of approved graduate work, with the proviso that each additional year of approved formal education may be substituted for one year of required work experience. The appellant also suggested in his questionnaire that each additional year of work experience could be substituted for the formal education required by the job description.

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Neither the current, nor the former specification for the position of Education Director allowed for any equivalent combination of education and experience. The specification for Supervisor, Therapeutic Activities does allow a Master's degree to be substituted for up to two of the four years of experience required by the specification (Appellant's Exhibit XII).

In the absence of a requirement for possession of a Master's degree in order to satisfy Department of Education program certification standards, and in consideration of equivalencies provided for education and experience in both the Questionnaire and the specification for Supervisor of Therapeutic Activities, the Board concedes that the Director of Personnel was correct in refusing to increase the Education attribute consistent with the current specification for Education Director, salary grade 23.

By reclassification to Supervisor of Therapeutic Activities, Appellant was awarded 10 additional points total, with those points being assigned an increase in the attribute of Errors from 40 to 60 points, and a reduction in the Working Conditions attribute from 20 to 10 points. Overall, however, the evaluation of Appellant's position was increased 10 points. Inasmuch as the Board already found Appellant's position properly allocated in the attributes of Initiative, and the reduction of the Working Conditions attribute was not addressed, the only effect of increasing the Education attribute to reflect Appellant's requested addition of 15 approved graduate credit hours could, at best, result in an increase of the Education attribute by 10 points (80 to 90). Regardless of the point configuration, the end result would be a total of 475 points, equating to salary grade 20.

In its August 30, 1989 decision in the matter of Dexter Howe, the Board noted that enactment of Chapter 269:2, effective June 29, 1988, effectively prohibited the Board from ordering the creation of any new job titles or classifications. In the Board's order in that appeal, it stated:

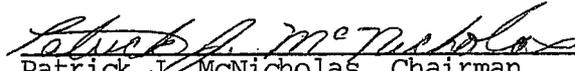
"While it is apparent that Mr. Howe's responsibilities as presented differ from the actual point configuration for the specification it is equally apparent that the Board's alteration of that configuration, and the total points assessed, would result in a lower salary grade than that recommended by the Division of Personnel in its review of the position."

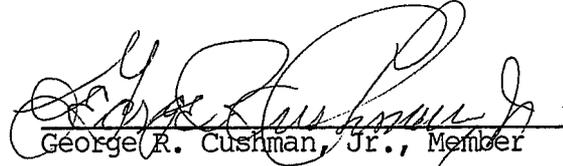
The same principle applies here. The attributes, reviewed in isolation, may be incorrect. As a whole, however, they reflect the appropriate salary grade for his duties and responsibilities. The reclassification of his position is consistent with the requirement that the Director of Personnel classify positions based upon their duties and responsibilities. In the absence of Chapter 269:2, the Board might have recommended creation of a new title and point configuration reflective of Mr. Maes' specific responsibilities. In this instance, however, it may in fact be true that Supervisor of Therapeutic

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Activities does in a general sense define the nature of his work, and the salary grade assigned to that title an appropriate level of compensation for his duties.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George R. Cushman, Jr., Member

cc: Chris Henchey, Director of Operations
State Employees' Association

Virginia A. Vogel
Director of Personnel

Sharon Sanborn, Human Resources Coordinator
New Hampshire Hospital

State of New Hampshire



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PERSONNEL APPEALS BOARD DECISION

In the Matter Of:
KEVIN MAES - New Hampshire Hospital

August 11, 1989

The Personnel Appeals Board (Commissioners McNicholas, Cushman and Scott.) met on Wednesday, March 1, 1989, to hear the classification appeal of Kevin Maes, an employee of New Hampshire Hospital. Mr. Maes was represented by SEA Field Representative Ann Spear. Virginia A. Vogel, Director of Personnel and Edward J. McCann, Classification and Compensation Administrator, represented the Division of Personnel.

Appellant. is an employee of the New Hampshire Hospital. Prior to October 12, 1988, Appellant held the position of Education Director at salary grade 20. On October 12, 1988, the Director of Personnel reclassified Appellant to the position of Supervisor, Therapeutic Activities at salary grade 20. See Exhibit 1.

This case really begins in 1987 when the Education Director at the Youth Development Center ("YDC") was reclassified from salary grade 20 to salary grade 23 by this Board. See Exhibit 2. Although the incumbent. at YDC and YDC both requested a change in job title, apparently no change was made.

Besides YDC, two other institutions had an Education Director at the time: The State Prison and New Hampshire Hospital. The Division of Personnel apparently upgraded the position at the State Prison without a desk audit.

Since Appellant occupies a class 50 (temporary) position, however, his position did not show up on the Division's computer records. Accordingly, the Division took no action on Appellant's position.

In early December, 1987, a few weeks after the Board reached its decision in the YDC case, Appellant contacted his supervisor to see if he could find out "how my position is effected [sic] by this recent decision". See Exhibit V. The request made its way through channels, and the Division of Personnel sought a desk audit of Appellant's position. Following the audit, the Director made the reclassification described above.

In his appeal, Appellant acknowledges the authority of the Director to undertake a desk audit, and to make any resulting reclassification, if warranted. Appellant questions why the Division ordered a desk audit in his

case, but not in the case of the State Prison. Appellant also notes that he did not request a reclassification, as evidenced by his failure to complete the reclassification portion of the questionnaire.

The Board affirms the authority of the Division to undertake the review and the power of the Director to make a reclassification. Based on the evidence presented, however, the Board declines to affirm the Director's decision in this case.

In her October 12, 1988, decision, the Director offers the following in support of her conclusion:

After comparing the information provided by Mr. Maes with all of the review material submitted for the Education Director position at YDC, I do not see the position at your institution at the same level of responsibility from either a supervisory or programmatic standpoint. As such, it is no longer appropriate to have Mr. Maes' position classified as an Education Director, since in my opinion, he does not have the same level of responsibility as other Education Directors.

Exhibit 1 at p.3. As Appellant points out, however, the supervisory issue has no real bearing on this matter since both Education Director and Supervisor of Therapeutic Services have the same number of points for supervision.

The Director may be referring to the differing needs of the populations at the various institutions. The YDC is "a juvenile correctional facility". RSA 621:1,I. The State Prison is its adult counterpart. See RSA Ch. 622. New Hampshire Hospital handles mentally ill individuals, typically adults. RSA 135-C: 4.

By way of comparison, the Philbrook Center handles children who are mentally ill or who may ultimately find placement at the YDC. RSA 170-G:10. The Philbrook Center has a Supervisor of Therapeutic Services in charge of its educational program.

Simply comparing institutions, the Board would be inclined to believe that New Hampshire Hospital has more in common with the Philbrook Center than either the State Prison or YDC. Appellant, however, has offered some support for his position with respect to the specific attributes that need to be raised in order to defeat the reclassification.

Experience. Both prior to and after reclassification, Appellant was awarded the 5th degree (80 points). The original posting for Appellant's position supports this level. See Exhibit III. In Appellant's questionnaire, however, Appellant's supervisor recommends the education attribute at the 6th degree (90 points). Appellant seeks the 7th degree (100 points). In support of this, Appellant's points out that the Education Director at the State Prison has the same education requirements as Appellant.

Initiative. Both prior to and after reclassification, Appellant was awarded the 4th degree (60 points). The Board has reviewed the documentation presented by Appellant and can find insufficient justification for an increase in the attribute for initiative to the fifth degree.

Working Conditions. The Board notes that no request was made to raise this attribute from the 2nd degree (10 points) to the 3rd degree (20 points). Without such an increase, however, Appellant could be awarded no higher than salary grade 22.

The Board finds that Appellant has not supported his request to be classified as Education Director, salary grade 23. The Board also finds, however, that the Director improperly reclassified Appellant as Supervisor of Therapeutic Services.

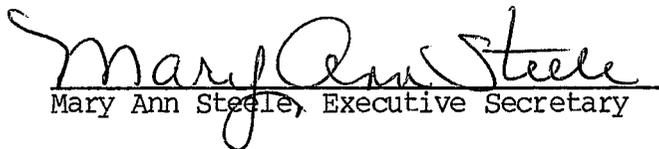
The Board finds that Appellant is entitled to the 6th degree for the attribute Education. If Appellant can substantiate his claim that the Education Director at the Prison requires the same level of education, Appellant shall be entitled to the 7th degree. This latter increase will not affect his salary grade at this time, however.

The Board is without the power, however, to create "new job classifications or job titles." RSA 21-I:46, VIII-a. The Board has been given little choice but to choose between Education Director, salary grade 23, and Supervisor of Therapeutic Services, salary grade 20. The Board does not want to do so, unless presented with no alternative.

The Director is ordered to implement the findings with respect to education. If the Director finds this impossible to do within the framework of existing classifications and other restraints, the Board will order Appellant's classified as Education Director, salary grade 23, so that he will not be prejudiced.

The Board declines to rule on the Director's Requests for Findings of Fact, since these seem more accurately characterized as rebuttal evidence.

FOR THE PERSONNEL APPEALS BOARD
Patrick J. McNicholas, Chairman
George R. Cushman, Member
Peter C. Scott, Alternate


Mary Ann Steele, Executive Secretary

CC: Ann Spear, SEA Field Representative
Sharon Sanborn, Human Resource Coordinator
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