

State of New Hampshire



PERSONNEL APPEALS BOARD

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Appeal of Rene Pelletier

Docket #94 - C-13

Department of Environmental Services

January 18, 1996

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, September 13, 1995, under the authority of RSA 21-I:57, to hear the appeal of René Pelletier, an employee of the Department of Environmental Services. Mr. Pelletier, who was represented at the hearing by John Dabuliewicz, Esq., was appealing the Division of Personnel's December 28, 1993, decision and February 11, 1994, reconsideration response denying his request for reclassification from Administrator III, salary grade 30, to Administrator IV, salary grade 32, in the Water Supply Engineering Bureau of the Division of Water Supply and Pollution Control. The appellant argued that the Division of Personnel had given too little consideration to the technical and administrative responsibilities of his position, particularly in terms of the "Supervision" and "Impact" evaluation factors. He also argued that the Division of Personnel had failed to justify its decision that his position was properly classified as an Administrator III and was not sufficiently similar to other Administrator IV positions in his division to warrant upgrading to salary grade 32.

Mr. Dabuliewicz argued that if the Board were to compare the appellant's supplemental job description with that of Administrator IV incumbents in the Wastewater Engineering Bureau, the Permit, Compliance and Water Quality Bureau, and the Groundwater Protection Bureau, it would find that the appellant's level of responsibility is consistent with that of an Administrator IV. He argued that there was a "serious and inexplicable discrepancy between the classifications assigned these extraordinarily similar positions." (3114194 Written Argument submitted by DES). He also argued that the Division of Personnel overlooked changes in the appellant's position which had occurred in 1991 when his bureau became responsible for copper monitoring and overseeing \$80 million in public water supply upgrades. He argued that the Division of Personnel was incorrect in its assertion that changes in the appellant's duties were "quantitative" rather than substantive.

Mr. Dabuliewicz argued that the appellant has full responsibility for implementing all aspects of the State's Safe Drinking Water Program, and for planning and directing the bureau's work to achieve the goals of the Water Supply Engineering Bureau. He argued that the appellant's technical and administrative duties were best described by the sixth level for the "Impact" factor, as the appellant has "overall administrative responsibility for achieving agency objectives by directing all aspects of operations management."

Mr. Dabuliewicz asserted that the appellant's duties in supervising a large, complex bureau also warranted an increase in the "Supervision" factor from the fifth to the sixth level. He argued that the Water Supply Engineering Bureau is the functional equivalent of an agency, and that the appellant therefore exercised "agency-wide administrative supervision." He argued that Mr. Pelletier, with other Bureau Administrators, was responsible for developing policy in his own bureau on a regular basis, as well as reviewing and commenting on department wide human resource policy developed by the H.R. Administrator and finally approved by the Commissioner.

Virginia Lamberton, Director of Personnel, argued that the appellant's position had not changed sufficiently since the last review in 1989, or appeal in 1991, to warrant reallocation to Administrator IV. She said that while staff had been added and some program changes had occurred, those changes did not increase the complexity or scope of the work sufficiently to justify upgrading the position to salary grade 32. Ms. Lamberton also argued that contrary to the appellant's assertion, his was not the only salary grade 30 Administrator III assigned to the Water Supply and Pollution Control Division. She asserted that some of the Administrator IV positions which the appellant used as a comparison to support his request for upgrading were from the old agency organizational structure, and that establishing the salary grade for some of those positions was a result of "grandfathering" the incumbent at a rate of pay from the unclassified system into a comparable range in the classified system salary scheme. She said that grandfathering did not take into consideration the duties and responsibilities of the position, and some of the incumbents in some of those positions were legislatively protected from changes in their salary, regardless of their level of responsibility, and that the classification of those positions probably would not be reviewed until the positions became vacant.

At the conclusion of the hearing, Director Lamberton submitted proposed findings of fact and rulings of law. The appellant filed his response to those proposed findings and rulings within five days of the hearing. While the Board is mindful of its obligations to respond to proposed findings of fact and rulings of law, and finds them helpful in focusing the Board's review on the material facts in dispute, detailed, compound findings which do not allow the Board to focus on the issues are not helpful in reaching a decision. Accordingly, the Board will make its own findings in this case. To the extent that the Director's proposed findings and rulings are consistent with the Board's decision below, they are granted. Otherwise, they are denied.

Among the documents submitted by the Director for the Board's review were several organizational charts, including the Division of Water Supply and Pollution Control dated 10/10/91, the Groundwater Protection Bureau dated October, 1991, and the Water Supply Engineering Bureau dated 10/10/91. The organizational chart for the Groundwater Protection Bureau showed that the Bureau Administrator was responsible for managing 42 positions, 4 of

which were vacant when the organizational chart was prepared. The chart showed the bureau divided into five main sections: Administrative, Planning and Development, Groundwater Remediation and Permits (including subsections for Waste Site Reviews and Permits, and Pease Air Force Base), Petroleum Remediation (including subsections for Remedial Action, Remedial Investigation and Petroleum Fund Management) and Oil Compliance (including subsections for L.U.S.T. Compliance, Emergency Response and A.S.T. Compliance). It also showed an additional four positions proposed in A.S.T. Compliance.

The chart for the Water Supply Engineering Bureau shows the Administrator supervising 26 positions, including 5 which were part-time and 2 which were vacant. That Bureau was divided into seven sections: Administrative Support, Enforcement and Monitoring, Municipal Systems, Commercial/Non-Commercial Systems, Data Management, Certification and Training, and Grants Management. According to the information contained in the organizational charts for these two bureaus, in addition to being 38% larger than the Water Supply Engineering Bureau, the Groundwater Protection Bureau manages three separate programs for Groundwater Remediation, Petroleum Remediation and Oil Compliance, and it has a substantially higher percentage of professional positions reporting to the Administrator.

In Groundwater Protection, 3 of the 42 positions reporting to the Administrator, are allocated at salary grade 31. There are no positions at that salary grade reporting to the Administrator in the Water Supply Engineering Bureau. In Groundwater Protection, 23 of the 42 positions, roughly 55%, are professional positions compensated at salary grade 25 and above, whereas only 7 of the 26 positions in the Water Supply Engineering Bureau, approximately 27%, are compensated as professionals at salary grade 25 and above. In the Groundwater Protection Bureau, there are another 7 technical positions compensated between salary grades 20 and 24, compared to 1 in the Water Supply Engineering Bureau.

The supplemental job descriptions which the appellant supplied in support of his request for reclassification do not provide evidence that the appellant's position is improperly classified as an Administrator III. For instance, the class specification for Administrator IV includes responsibility under the factor "Supervision" for developing and evaluating internal personnel policies, and having responsibility for administrative management of a program which affects more than one agency, including overseeing the interaction of agency employees or policies to accomplish organizational objectives or goals. For the classification Administrator III, the specification describes the supervisory responsibilities as delegating supervisory or program responsibilities to subordinate managers, with overall accountability for hiring employees and approving program policies. The classification also calls for the supervisor to assume responsibility for an organizational unit, including developing long-range plans, analyzing staffing requirements, and formulating system-wide policies and procedures.

Mr. Pelletier's classification questionnaire submitted as Personnel's Exhibit #2, and the memos dated August 20, 1991, June 8, 1990, and May 21, 1991, submitted collectively as Appellant's Attachment #7, demonstrate that the appellant's authority to hire is limited to positions below salary grade 15, and he has no authority to dismiss an employee of his bureau. The May 21, 1991, memo from Edward J. Schmidt to the Bureau Administrators in the Division of Water Supply and Pollution Control also offers evidence that duty for establishing personnel procedures remains the responsibility of the Division Director. Mr. Dabuliewicz asserted in his March 14, 1994, written arguments that the appellant is responsible for establishing "bureau policy." However, the appellant offered no evidence or supporting documentation to indicate what "bureau policy" entails. The appellant's assertion that he is responsible for developing internal personnel policy is also unsupported by record, as Mr. Dabuliewicz stated, "...human resource policy is developed by the Human Resources Administrator, reviewed and commented upon by Division Directors and Bureau Administrators and finally approved by the Commissioner."

On the evidence and oral argument offered by the appellant, the Board was not persuaded that the addition of copper or lead monitoring to the monitoring programs already in place have substantially altered the scope of the appellant's duties and responsibilities sufficiently to warrant reclassification from Administrator III, salary grade 30, to Administrator IV, salary grade 32. Similarly, the Board did not consider the reported increases in the Water Supply Engineering Bureau budget or staff to be credible evidence of expanded program responsibility requiring reclassification of the incumbent to Administrator IV.

The appellant argued that the Director's had failed to prove that Mr. Pelletier's assignments did not support the sixth level for the factors of "Impact" and "Supervision," or that his responsibilities were not at the level of other Administrator IV incumbents in the Division of Water Supply and Pollution Control. In fact, it is the appellant, not the Director who has the burden of proof.

RSA 21-I:57 provides the following:

"Allocation Review. The employee or 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 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

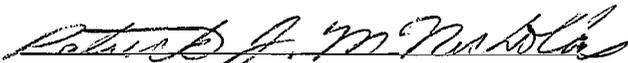
individual is not properly classified in accordance with the classification plan or the director's rules, it shall issue an order requiring the director to make a correction."

Per-A 208.02 of the Board's rules, adopted under RSA 541-A, for the hearing of classification appeals states:

- (a) Within twenty (20) days after filing his appeal, the appellant shall file with the Board an original and three (3) copies of any evidence (including all documents or affidavits) that he believes support his position together with any written argument that he wishes the Board to consider. This submission shall cover all aspects of the appeal.
- (b) If it is an evaluation appeal, the appellant shall cite those attributes and degree allocations that are believed improper along with supporting justification.
- (c) If it is a classification appeal, a full explanation must be given as to why the position is incorrectly classified.

The Board heard no evidence which would persuade it that there has been significant change in the nature, complexity or scope of the appellant's responsibilities to warrant reallocation of the position. Accordingly, the Board voted unanimously to deny Mr. Pelletier's appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
John Dabuliewicz, Esq., Cook and Molan P.A.
Joy Dean O'Connor, H.R. Administrator, Environmental Services