

State of New Hampshire



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

APPEAL OF JOHN AVLAS
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DOCKET #99-O-2

February 24, 1999

On September 15, 1998, the Board received Ms. McGovern's request for a hearing on behalf of John Avlas, an employee of the Department of Health and Human Services, concerning an alleged "violation of his seniority rights." The Board received the State's Motion to Dismiss the appeal on September 23, 1998. After reviewing the pleadings, the Board issued a decision dated December 7, 1998, advising the parties that it had voted to hold the State's Motion in abeyance. The Board directed the appellant to show cause why the appeal should not be dismissed as untimely and/or as a matter outside the Board's subject matter jurisdiction. The appellant was directed to provide a detailed description of the action under appeal, the date of that action, and an explanation of why the appellant believed that action was inappropriate. The appellant also was directed to cite the specific statutory authority under which it was claimed that the Board had jurisdiction to hear the appeal. The Board advised the parties that upon receipt of the appellant's submission, the State would have five days in which to file its response.

On December 17, 1998, the Board received Ms. McGovern's response to its December 7, 1998, order. That letter gives no indication that a copy was provided to the State's representative of record so that the agency could submit a timely response. After reviewing the appellant's letter,

however, the Board determined that a further submission by the State was not necessary in order to decide the appeal.

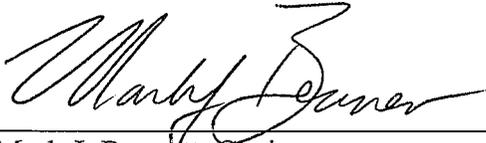
In response to the Board's order, the appellant described the action under appeal as alleged demotions in lieu of lay-off that occurred on October 1, 1997. The appellant argued that the appeal was both timely and within the Board's subject matter jurisdiction. In support of that position, the appellant argued that Mr. Manning's August 25, 1998, letter to SEA Negotiator Brian Mitchell denying a Step III Grievance involving Mr. Avlas' compensation, was the first time the State had characterized the underlying action as a demotion in lieu of lay-off. Therefore, the appellant argued, he had fifteen days from receipt of that letter in which to file a timely appeal of the demotion.

The Board does not agree, and on the pleadings and supporting documents submitted by the appellant, the Board found as follows:

1. The action giving rise to the appeal was a reclassification effected under the authority of Chapter 310, Laws of 1995. The Board's jurisdiction to hear matters related to reclassifications extends only to those reclassification decisions of the Director of Personnel. (See RSA 21-I:57)
2. Even if the Board were to construe the reclassification as a demotion in lieu of lay-off, that action occurred on October 1, 1997. In order to be timely, an appeal of that decision must have been received by the Board within fifteen calendar days, or not later than October 16, 1997.
3. RSA 21-I:46 authorizes the Board to hear and decide appeals "...as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel." Mr. Manning's August 25, 1998, response to a Step III Grievance concerning the appellant's compensation is not a classification decision appealable under RSA 21-I:57, a decision by the appointing authority or the director of personnel appealable under RSA 21-I:58, or a decision arising out of the application of the rules adopted by the director of personnel, and therefore is a matter outside the Board's subject matter jurisdiction.

The Board voted unanimously to DISMISS the appeal as an untimely appeal, and as a matter outside the Board's subject matter jurisdiction.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Patrick H. Wood, Commissioner



James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
Kate McGovern, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303
Sandra Platt, Human Resources Manager, Dept. of Health and Human Services, 6 Hazen
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APPEAL OF JOHN AVLAS
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December 7, 1998

In an undated letter received by the Board on September 15, 1998, SEA Field Representative Kate McGovern requested a hearing on behalf of John Avlas, an employee of the Department of Health and Human Services, concerning an alleged "violation of his seniority rights." Ms. McGovern asserted that on October 1, 1998, Mr. Avlas and others were notified that they would be reclassified to a lower labor grade. She wrote, "The Department has maintained that the demotions were reassignments, but it is our contention that they were part of the layoff, for budgetary and other reasons, and that all seniority rules should apply." Ms. McGovern described the requested remedy as follows:

"We request a ruling that seniority rights under Chapter 1103 of the Administrative Rules of the Division of Personnel should be applied [sic] in these circumstances. Specifically, Mr. Avlas should be reinstated to his former labor grade, 28, step 4 and Mr. Mattil to labor grade 30, step 4, and Mr. Cannack to a labor grade 23, step 4, and that they be compensated for the raise withheld from June 7, 1998. Mr. Beaton has since taken another state position, but we request

that the Department compensate him for the raise withheld from June 7, 1998 to September 4, 1998."

.Ms. McGovern enclosed a copy of an August 25, 1998, letter from Thomas Manning, Manager of the Bureau of Employee Relations, addressed to Brian Mitchell, SEA Negotiator, responding to a Step III Grievance filed under the provisions of the Collective Bargaining Agreement "...for an alleged violation of Article XIX, Section 19.2.2. of the CBA."

By letter dated September 23, 1998, received by the Board on October 2, 1998, Health and Human Services Manger Sandra Platt requested that the Board dismiss the appeal as untimely. In that letter, Ms. Platt argued that Mr. Avlas and others were actually appealing reclassifications that occurred on October 1, 1997, and therefore must have appealed within fifteen calendar days of that date in order for their appeal to be considered timely. Further, Ms. Platt wrote,

"Ms. McGovern seems to be basing the appeal on the content of a letter written by Thomas Manning, Manager of Employee Relations, on August 25, 1998 to the SEA where he indicates the grievants were reduced in labor grade in lieu of lay off. Mr. Manning's assertion is incorrect. The reclassifications which [sic] took place on October 2, 1997, and were actions taken under House Bill 32, not the Rules of the Division of Personnel."

The Board's authority to hear and decide appeals is set forth as follows:

"The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel..." (RSA 21-I:46)

"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." (RSA 21-I:57)

"Any permanent employee who is affected by any application of the personnel rules, except for those rules enumerated in RSA 21-I:46, I and the application of rules in classification decisions appealable under RSA 21-I:57, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal..." (RSA 21-I:58, I)

Based on the pleadings submitted by both parties, it appears that the action giving rise to the appeal occurred on or about October 2, 1997. Whether the Board considers the action a demotion in lieu of layoff, a reclassification, or a reassignment, in order to be timely an appeal of that action must have been received within fifteen calendar days of the action giving rise to the appeal. Ms. McGovern's hearing request was not received until September 15, 1998, some eleven months after the action giving rise to the appeal. If the actual basis for appeal is the alleged "...raise withheld from June 7, 1998," Ms. McGovern's September 15th letter is still untimely. Finally, if the basis for appeal is Mr. Manning's August 28, 1998, decision denying a Step III Grievance under the provisions of the State's Collective Bargaining Agreement, that decision appears to be outside the Board's subject inatter jurisdiction.

The Board voted to hold the State's Motion to Dismiss in abeyance, and to allow the appellant ten days from the date of this order in which to show cause why the instant appeal should not be dismissed as untimely and/or as a matter outside the Board's subject matter jurisdiction.

Minimally, that response must include a detailed description of the action under appeal and why the appellant believes that action was inappropriate. If, for instance, the appellant wants to claim a "violation of his seniority rights," or that "seniority rights under [the Rules of the Division of Personnel] should be applied in these circumstances," he must detail what he believes those rights and circumstances to be, and how he believes the employer violated or deprived him of those rights. Where more than one employee is listed in the notice of appeal, information

pertinent to each employee for which relief is sought must be provided as well. The response also shall set forth specifically the date upon which the alleged action occurred and the manner in which the appellant had notice of that action. Finally, the appellant shall cite the specific statutory authority under which it is claimed that the Board has jurisdiction to hear the appeal. Upon receipt of the Appellant's response to this order, the State shall have five days in which to file its response.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Robert J. Johnson



Patrick H. Wood

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301
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