

State of New Hampshire



PERSONNEL APPEALS BOARD

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Appeal of Gail A. Bartlett

Public Utilities Commission

Docket #99-O-5

May 4, 1999

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Wood) met on Wednesday, March 24, 1999, under the authority of RSA 21-I:58, to hear the appeal of Gail A. Bartlett, an employee of the Public Utilities Commission. Ms. Bartlett, who appeared pro se, was appealing the Division of Personnel's decision that she did not meet the minimum qualifications for certification for the classification of Utility Rate Analyst I. JoAn Bunten, Certification Specialist and Virginia Larnberton, Director, appeared on behalf of the Division of Personnel.

The appeal was heard on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of the 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, and documents admitted into evidence as follows:

State's Exhibits

- A. Copy of PART Per 405 Certification, Rules of the Division of Personnel
- B. Class Specification for Utility Rate Analyst I
- C. Supplemental Job Description for position #19593, Utility Rate Analyst I, Consumer Affairs Division, Public Utilities Commission
- D. State of New Hampshire Application for Employment submitted by Gail Bartlett for position #19593

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- E. Letter dated December 9, 1998, from Gail Bartlett to Ms. Wallace
- F. Letter dated December 22, 1998, from Gail Bartlett to Personnel Director Lamberton
- G. Letter dated January 18, 1999, from Ms. Bunten to Ms. Bartlett
- H. Letter dated January 22, 1999, addressed to Mary Ann Steele, Executive Secretary, Personnel Appeals Board
- I. Class Specification for Legal Aide
- J. Supplemental Job Description for position #18945, Legal Aide

Appellant's Exhibits

- 1-GB Sworn statement of Gail Bartlett quoting Inspector Paveglio of the New Hampshire Department of Labor
- 2-GB Division of Personnel rule defining part time employee
- 3-GB U.S. Code of Federal Regulations 785: 15, 17, 21, 22 and 23
- 4-GB Letter from G. N. David, Hill Selectman and Water Commissioner
- 5-GB Sworn statement of Gail Bartlett describing how work performed exceeds job description
- 6-GB First written annual job review performed by General Counsel A. Zibelman
- 7-GB Work sample of tracking legislation with attachments
- 8-GB Work sample of rulemaking and attachments
- 9-GB Work samples of clerking with attachments

In her notice of appeal to this Board Ms. Bartlett argued:

- 1. That the work she performs for the Public Utilities Commission far exceeds the level of responsibility outlined in her job specification, that 2/3 of her time is spent working out of her classification, and that her 9 years of experience at the Public Utilities Commission should entitle her to credit for 6 years of relevant experience;
- 2. That although she did not work full time in the conventional sense during her 3 years as a Selectman, she was on-call 24 hours a day and the work therefore should qualify as 3 years of relevant experience; and

3. That although she did not work full time in the conventional sense during her 4 years as a Water Commissioner, and although she was unable to devote as much time to the job as it required, she was on call 24 hours a day and the work, therefore, should qualify as 2 1/2 years of relevant experience.

Ms. Bunten argued that the term "year of approved work experience" means full-time work as defined by the Personnel Rules at a level consistent with the requirements of the position specification. She stated that in order to have received credit for her work as a Selectman or as a Water Commissioner, the appellant would have needed to provide more detailed information about the kind of work she performed while she held each of the offices, and how many hours per week she worked performing those tasks. Ms. Bunten stated that the Division could have counted that experience toward the education and experience required for certification, but Ms. Bastlett had never provided the necessary documentation. She also argued that if Ms. Bartlett's work at the P.U.C. exceeded the level of responsibility described in her class specification and supplemental job description; she first should have addressed those discrepancies through the classification process.

Ms. Bartlett argued that during her nine years working for the Public Utilities Commission, a number of duties were added but never re-evaluated. She offered to prove that she is responsible for monitoring legislation, assisting in rulemaking and clerking at hearings, duties generally assigned to positions with a substantially higher salary grade. She also argued that because she had not participated in the development of her supplemental job description, had not signed the document, and did not agree that it described her current duties, it should not be used to evaluate her qualifications for certification as a Utility Rate Analyst I.

Ms. Bastlett argued that the Division of Personnel had erred in refusing to allow her credit for her experience as a Selectman and as a Water Commissioner. She argued that although she did not maintain conventional working hours, the Personnel Rules do not specify that experience for purposes of certification must be "full-time" experience. She also argued that the Rules do not address the "required level" of experience for certification purposes. Therefore, she asked the

Board to find that she met the minimum qualifications for certification for the classification of Utility Rate Analyst I.

Ms. Bartlett argued that when she was first elected to the office of Selectman, she found that the town's books and reports were in complete disarray, and she was required to make changes in the Town's accounting and financial reporting structures. When asked to explain the steps she had taken to accomplish those improvements, Ms. Bartlett replied that she participated in the decision to change from "Quickten Books" to a computerized accounting program recommended by the Department of Revenue Administration. She said that the town also obtained a word processing program that was compatible with the ones used by the police and fire departments. In response to questions by the Board about her involvement as a Water Commissioner in any rate-setting decisions or management of the utility, Ms. Bartlett replied that the system in Hill is not a metered system, and the basic rates were already in place. However, the Water Commission did adapt the rates for home-based businesses such as day-cares. She stated that the Commissioners also drew up a billing system, adopted an electronic customer data base, and developed a procedure for collection of back charges.

With respect to ratesetting experience she might have gained working at the Public Utilities Commission, Ms. Bartlett explained that there are work teams to handle each type of utility. As a result, she had no actual experience at the P.U.C. However, she argued, when she clerks hearings, the parties submit proposals for rate setting and supporting documents through her. She stated that she has developed a general understanding of the paperwork involved to enable her to retrieve testimony or exhibits from the record as needed.

The Board asked Ms. Bartlett to explain how she had participated in site examinations and investigations of utilities. Ms. Bartlett replied that she had been sent to Newington Station to look into what had happened when a large screw had fallen behind a turbine plate. She said that in another case, she had gone out to take photographs of some property as part of a telephone rate case. In another instance, she said, she was expected to deliver subpoenas for the Commission.

On the evidence, oral arguments, and offers of proof, the Board made the following findings:

1. Ms. Bartlett has been employed by the Public Utilities Commission as a Legal Aide (salary grade 14) for approximately 9 years.
2. Ms. Bartlett applied for a vacant position of Utility Rate Analyst I at the Public Utilities Commission on November 18, 1998.
3. The "Basic Purpose" of the Utility Rate Analyst I classification found on the class specification is, "To research, investigate, and provide preliminary recommendations on rate structure, services, policies and economic issues regarding the regulation of public utilities."
4. The minimum qualifications for the position of Utility Rate Analyst I as listed on the job specification are as follows:
"Education: Possession of a Bachelor's degree from a recognized college or university with major study in the field of business, mathematics, finance, economics, or engineering. Each additional year of approved formal education may be substituted for one year of required work experience."
"Experience: Three years' experience in the analysis, regulation or management of public or private corporations or the operational phases of public utilities. Each additional year of approved work experience may be substituted for one year of required formal education."
5. Ms. Bartlett holds an Associate's degree in business from Franklin Pierce College and a paralegal certificate from the University of New Hampshire.
6. Ms. Bartlett's work experience, as listed on her employment application for the position of Utility Rate Analyst I, includes almost nine years as a Legal Aide, approximately seven years as a balter, and approximately six years as a Medicare clerk.
7. Ms. Bartlett served as a Selectman for the Town of Hill from 1993 to 1996, as a Town Water Commissioner from 1993 to 1997, as Town Treasurer from 1988 to 1990, as a Supervisor of the Checklist from 1986 to 1991, and as an Ex-officio Planning Board Member.

8. The Division of Personnel reviewed Ms. Bastlett's application on November 25, 1998, and rejected it, finding that the applicant had insufficient experience in the appropriate field(s) to satisfy the minimum qualifications required for the classification.
9. Ms. Bartlett asked her own department to re-evaluate her work experience and certify her as meeting the minimum qualifications for the position. Her application was re-submitted to the Division of Personnel where Certification Specialist JoAn Bunten reviewed it with Human Resources Administrator Sara Willingham and Personnel Director Virginia Lambeston, who agreed that Ms. Bastlett did not meet the minimum qualifications for certification.

Rulings of Law

- A. "The Director shall review all applications for employment filed under Per 401 and certify in writing to the appointing authority whether the applicants meet the minimum educational, experience, and examination requirements which are stated in the class specification and/or supplemental job description required by Per 301.03." [Rules of the Division of Personnel, Per 405.01 (a)]
- B. "The review under paragraph (a) shall take into account the following criteria: (1) The relevancy of the applicant's stated education, including whether the applicant's academic credits on the college transcripts fulfill the educational requirements as stated in the specification and supplemental job description; (2) The relevancy of the applicant's stated work experience; and (3) Any requirements for the equivalent substitution of education and experience such as: a. If the specification and supplemental job description allow related experience to be substituted for a required degree, then each year of related experience shall equal one year of required education; and b. If the specification and supplemental job description allow related education to be substituted for experience, then each year of related education shall equal one year of required experience." [Rules of the Division of Personnel, Per 405.01 (b)]

Decision and Order

Having considered the evidence, oral arguments and offers of proof, the Board voted unanimously to DENY Ms. Bartlett's appeal. The appellant failed to provide evidence that her combined education and experience were equivalent to a Bachelor's degree in business, mathematics, finance, economics or engineering, plus three years' experience in the analysis, regulation or management of public or private corporations or the operational phases of public utilities.

There is no dispute that Ms. Bartlett would have been entitled to some credit for the work she performed as a Selectman and as a Water Commissioner. However, the appellant failed to provide information that would have allowed the Division of Personnel to evaluate the level of experience or quantify the amount of time spent in performing those duties to determine how much of that experience should be counted toward the total number of years of experience required for certification. The appellant's argument that around-the-clock availability should qualify as full-time service for purposes of certification is unpersuasive. Performing a task provides experience; being available to perform a task does not.

In Exhibit 1-GB, the appellant quoted Labor Inspector Paveglio, stating that there was no definition for full time work, and that "full time and part time were whatever number of hours the employer of that job held it to be." Within the classified service, the State of New Hampshire considers full-time work to be work performed 37.5 or 40 hours per week, depending upon the classification of the position held. It is unreasonable to conclude that the State, for purposes of certification, should be required to adopt another employer's definition of "full time" rather than applying its own standards in determining how much actual experience a candidate needs in order to satisfy the minimum entrance requirements for a classification.

Although Ms. Bartlett offered evidence that she has a number of job duties that are not listed on her class specification or supplemental job description, the appellant failed to provide evidence to support her claim that 2/3 to 3/4 of those assignments exceed the level of responsibility for her

current classification of Legal Aide. Furthermore, the appellant failed to provide evidence supporting her assertion that her duties as a Legal Aide, in combination with her experience as a Selectman and Water Commissioner, should be considered the equivalent of 5 years experience, "...in the analysis, regulation or management of public or private corporations or the operational phases of public utilities," as described by the class specification for Utility Rate Analyst I.

Accordingly, the Board voted to DENY Ms. Bartlett's appeal. In so doing, the Board found that the Division of Personnel conducted its review of her qualifications in accordance with Per 405.01 (a) and (b) of the Rules, and that on the basis of the information supplied with her application, the Division correctly determined that Ms. Bartlett does not meet the minimum qualifications for certification for the classification of Utility Rate Analyst I. This decision does not preclude a review of Ms. Bartlett's existing position in light of her presentation concerning changed or increased duties and a potential re-evaluation of that position in light of the State's classification system.

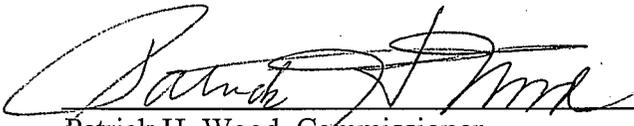
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman



Robert J. Johnson, Commissioner



Patrick H. Wood, Commissioner

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