

State of New Hampshire

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PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF LAWRENCE BRALEY

Docket #91-0-11

November 13, 1990

The New Hampshire Personnel Appeals Board (Bennett, Johnson and McNicholas) met Wednesday, November 7, 1990, to review an October 11, 1990 appeal from SEA Director of Operations Thomas Hardiman filed on behalf of Lawrence Braley relative to his placement on the recall list implemented by HB 1506.

Mr. Hardiman alleges that the Director of Personnel has violated Chapter 216:1 relative to the rehiring of laid off state employees. Specifically, Mr. Hardiman argues that the appellant was recalled into a position which Mr. Braley believed to have "some requirements that he felt he could not perform. In his honesty, he notified the state of his concerns and did not take the position." He then indicates that "a second position became available and Mr. Braley, in a written statement, expressed his desire to work in the new position. While undertaking the training program, Mr. Braley realized that this position was causing him some concern and he sought a medical opinion. A doctor certified that Mr. Braley should not be working in the position. Mr. Braley notified the state of this medical decision."

Mr. Hardiman asks that the Board, under Per-A 102.02, Petitions for Declaratory Ruling, issue "an immediate cease and desist order to the Division of Personnel".

Per-A 102.02 of the Rules of the Personnel Appeals Board provides that the Board may issue a declaratory ruling "...as to the specific applicability of any statutory provision or of any rule or order of the Board". However, Per-A 102.02 must be read in conjunction with PART Per-A 201 Jurisdiction.

Per-A 201.01 Proceedings included. Except as provided in Per-A 201.02, the jurisdiction of the Board shall extend to the following persons and matters.

- (a) Any permanent employee who is dismissed, demoted, or suspended, or otherwise affected by any action of the appointing authority or the division of personnel.
- (b) Any employee or department head, or both, dissatisfied with the decision of the director of personnel regarding the allocation of a position in a classification.

- (c) Any employee or appointing authority dissatisfied with a decision arising out of the application of rules adopted by the director of personnel.

Mr. Braley is not a "permanent employee...affected by any action of the appointing authority or the division-of personnel". In the Appeal of Carol Higgins-Brodersen and William McCann, __NH__, August 27, 1990, the New Hampshire Supreme Court ruled that

"RSA 21-I:46 grants the Board general authority to hear and decide 'appeals arising out of the rules adopted by the director of personnel'" RSA 21-I:46 . . . Upon review, we conclude that the petitioners' claims are founded upon RSA 98-A:6 (Supp. 1989) and do not arise out of an application of the personnel rules. We therefore hold that the Board's conclusion, that it lacked jurisdiction to hear their appeals under RSA 21-I:46, was both legal and-reasonable. See Appeal of Tamm, 124 H.H. at 110-11, 469 A2d at 1293."

In the instant appeal, Mr. Braley's claims arise out of the application of Chapter 261:1, Laws of 1990, and not out of the application of a personnel rule. Accordingly, the Board finds that it lacks subject matter jurisdiction in the matter.

Appellant's appeal and request for the issuance of an order to cease and desist, and an order for reinstatement to the list of laid-off employees as defined by HB-1506 (Chapter 261, Laws of 1990) is dismissed.

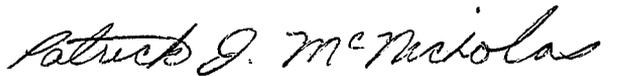
THE PERSONNEL APPEALS BOARD



Mark J. Bennett



Robert J. Johnson



Patrick J. McNicholas, Chairman

cc: Thomas F. Hardiman, SEA Director of Field Operations
Virginia A. Vogel, Director of Personnel
Civil Bureau, Office of the Attorney General