

State of New Hampshire

WPPID1025



PERSONNEL APPEALS BOARD

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

APPEAL(S) OF PAUL INGERSOLL  
Docket #91-0-7 and #92-0-2  
91-0-907  
Postsecondary Technical Education  
Response to Requests for Reconsideration

December 21, 1992

By letters dated October 28, 1992 and November 2, 1992, SEA Director of Operations Thomas Hardiman and SEA Field Representative Margo Hurley requested reconsideration of the Board's October 15, 1992 decision denying the above-captioned appeals.

Having considered the Motions in conjunction with the Board's October 15, 1992 decision, the Board voted unanimously to deny both Motions and to affirm its decision in both cases.

91-0-7

In her November 2, 1992 letter to the Board, Ms. Hurley argued the appellant's date of hire as an Associate Professor in the Tractor Trailer Program preceded that of all other employees of the program. She stated that the Board's decision failed to make any reference to Mr. Ingersoll's employment in the program during the summer of 1989, and argued the College should have recalled him to that position in the summer of 1990, to return him to year-round employment.

In support of her Motion, Ms. Hurley offered the following:

"The College recalled someone with less experience and seniority with the Program and the College to work for the summer of 1990. This effectively reduced Mr. Ingersoll from a year-round employee to an academic-year employee."

Mr. Ingersoll was the "logical employee to be recalled to work for the summer of 1990".

"...[T]he College acted in an arbitrary manner in recalling an employee with less seniority than Mr. Ingersoll for the position he held the previous summer...".

There was no dispute the appellant worked through the summer of 1989 under a U.S. Department of Education grant. There was no dispute Mr. Ingersoll had been employed in an academic year (A180) position to which he was recalled in

the fall of 1990, but that the appellant left that position on a combination of paid and unpaid sick leave on September 4, 1991. There was also no dispute the A180, ten-month per year position Mr. Ingersoll occupied was never converted to an A234 position.

Ms. Hurley offered no argument which would support a finding that Mr. Ingersoll's employment through the summer of 1989, in the Department of Education grant funded position, somehow obligated the Department to consider him a year-round, A234 employee. None of the above grounds offered by Ms. Hurley on the appellant's behalf satisfy the requirements of Per-A 204.06 (b) of the Rules of the Personnel Appeals Board, that a motion for rehearing "...shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable". Accordingly, the Board voted to deny the Motion for Reconsideration.

92-0-2

In its October 15, 1992 decision, the Board found it lacked subject matter jurisdiction to review Mr. Ingersoll's appeal concerning possible entitlement to reemployment and health insurance benefits authorized by enactment of Chapter 261, Laws of 1990. The Board dismissed the appeal consistent with the Court's ruling in the Appeal of Higgins-Broderson, 133 NH 576,578 A2d 868 (1990). In his Motion for Reconsideration dated October 28, 1992, Mr. Hardiman argued the Board did have jurisdiction to hear and decide the instant appeal. He stated, in part:

"The Personnel Appeals Board does have the authority to rule on this appeal. The Board's authority derives from its inherent powers and duties under RSA 21-I:46 and 58, the Personnel Rules in effect at the time, and the whole classified personnel scheme."

"Mr. Ingersoll's right to health care and re-employment only arose because of the application of a personnel rule, namely layoff. Only after he was laid off under the Rules of the Division of Personnel did he become eligible for benefits extended by the legislature. ..."

"...Chapter 261, Laws of 1990 gave the control of the process to the Division of Personnel through the Director of Personnel. This document clearly points out that the benefits are to be extended to the employees who are laid off in accordance with the layoff rules." (See October 28, 1992 Request for Reconsideration)

Contrary to the appellant's claim, the plain language of the statute refers to employees "...laid off as a result of the layoff process pursuant to 1990, 1:16, or any other state law..". Similarly, 261:2, Laws of 1990, provides continuation of medical and health care coverage to "[a]ny full-time state employee who was laid off pursuant to 1990, 1:16 or any other state law" (emphasis added).

APPEAL(S) OF PAUL INGERSOLL  
Docket #91-0-7 and #92-0-2  
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page 3

The Board found, and continues to find, Mr. Ingersoll's appeal arises from the interpretation of an alleged statutory entitlement, not the application of a personnel rule. Accordingly, the Board voted to deny the appellant's Motion for Reconsideration and to affirm its October 15, 1992 decision in this matter.

THE PERSONNEL APPEALS BOARD

  
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Lisa A. Rule

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Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel  
Dr. H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education  
Margo Hurley, SEA Field Representative  
Thomas Hardiman, SEA Director of Field Operations

# State of New Hampshire

WPPID902



PERSONNEL APPEALS BOARD  
State House Annex  
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APPEAL OF PAUL H. INGERSOLL, SR.  
Department of Postsecondary Technical Education  
New Hampshire Technical College/Berlin

Docket #91-O-7 and #92-O-2

October 15, 1992

The New Hampshire Personnel Appeals Board (Bennett, Rule and McGinley) met Wednesday, February 5, 1992, to hear the appeal(s) of Paul Ingersoll, an employee of the Department of Postsecondary Technical Education at the Technical College in Berlin. Sara Hopley, Human Resource Coordinator, appeared on behalf of the Department of Postsecondary Technical Education. Mr. Ingersoll was represented at the hearing by SEA Field Representatives Hardiman and Hurley.

Ms. Hurley's letter of August 28, 1990, alleged the Department of Postsecondary Technical Education had improperly reduced the appellant's schedule from 52 to 40 weeks per year (Docket #91-0-7). In a subsequent letter dated March 28, 1991, Ms. Hurley stated:

"Mr. Ingersoll ... had been hired through the previous summer to help coordinate the [Tractor Trailer] program and do related work. This summer position was not offered to Mr. Ingersoll who had been performing it, but to the other employee, who had not been hired by New Hampshire Technical College - Berlin until August 29, 1989 or just before the fall program began. In effect, Mr. Ingersoll was not rehired to his former position, a position that had expanded his A180 status to a 12 month position."

In oral argument, Ms. Hopley asked that the appeal be dismissed. She reviewed the appellant's work history since his date of hire on October 12, 1987, offering evidence the appellant had never held an A234 (12 month/year) position since his date of hire.

In reviewing the evidence submitted by the parties in conjunction with Docket #91-0-7, the Board found Mr. Ingersoll had been assigned to a full-time A-180 position (40 weeks per year) and therefore had no grounds upon which to claim a reduction from 52 week per year (A-234) schedule. Further, although Mr. Ingersoll may have had the earliest date of hire of any of the employees in the Tractor Trailer program, he did not have five or more years of continuous

full-time employment at the time of lay-off. Per 308.05 (b) of the Rules of the Department of Personnel, in effect at the time of lay-off, states the following:

"Order of layoff. Except for very infrequent instances of outstanding ability, seniority will govern the order of layoff for employees having 5 or more years of state service. Employees having less than 5 years of service shall be laid off generally on the basis of ability." (Emphasis added)

As the record reflects, Mr. Ingersoll was initially hired in an A180, temporary part-time position, working 20 hours a week, through February 25, 1988. On February 26, 1988, his schedule was increased to 30 hours per week through April 26, 1988. He was "reactivated" on August 26, 1988 through June 1, 1989, working a temporary full-time schedule in the Tractor Trailer Driver program under the JTPA grant. On June 2, 1989, the program fell under the federal, state-wide Tractor Trailer program in which Mr. Ingersoll worked until May 31, 1990. As with other A180 faculty, he was scheduled to return to work on August 24, 1990. He did return on August 27, 1990, but became ill and left work on September 4, 1990.

By letter dated September 19, 1990, the Department notified Mr. Ingersoll, who was hospitalized at the time, that the tractor trailer program had insufficient enrollments to support two full-time staff and that Phil Slocum had been assigned the duties of full-time instructor for the nine students enrolled in the course. Mr. Ingersoll was also advised that unless enrollments increased, the college could not offer him full-time employment for the spring semester.

On all the evidence, the Board found the Department of Postsecondary Technical Education was under no obligation to return Mr. Ingersoll full-time employment when he was again able to work. Although seniority was a consideration in deciding which employees to lay-off, neither Mr. Ingersoll nor Mr. Slocum had five years of continuous, full-time service at the time of lay-off. Inasmuch as Mr. Ingersoll was physically not available for full-time work, the Department acted reasonably in employing another employee to offer full-time instruction in the program.

After considering the evidence and oral argument, the Board voted unanimously to dismiss Mr. Ingersoll's appeal (Docket #91-0-7).

The second appeal, filed by Mr. Hardiman on August 20, 1991, (Docket #92-0-2) argued the appellant had been denied the benefits available to laid-off employees under the provisions of Chapter 261, Laws of 1990. Per 308.05 of the Rules of the Division of Personnel, in effect on the date of the action under appeal, provides that an appointing authority may lay off an employee

within his department whenever necessary by reason of abolition of a position, because of change in organization, lack of work, insufficient funds, or like reasons. Reduced enrollments coupled with a change in funding for the program caused the Department to alter its staffing to meet programmatic and fiscal constraints. In light of Mr. Ingersoll's illness and resulting unavailability for work at the beginning of the fall term in 1990, the Department acted reasonably in appointing another employee from the program to act as the single full-time instructor.

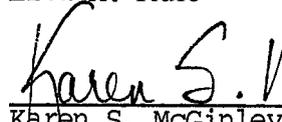
In his letter of August 20, 1991, Mr. Hardiman argued, "We especially feel that under RSA 21-I:58 I, there has been a violation of State law [HB 1506-FN, Chapter 261, 261:1, III]." Mr. Hardiman asked the Board to find that the appellant was a laid-off employee as defined by Chapter 261, Laws of 1990, and therefore was entitled to work all available part-time hours so that he might increase his earnings as nearly as possible to his rate of pay prior to the lay-off.

RSA 21-I:58, which the appellant cites as the authority under which his appeal might be heard, clearly limits the Board's jurisdiction to appeals by "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." The Board found Mr. Ingersoll's appeal is not based upon the application of a personnel rule, but upon the interpretation of an alleged statutory entitlement. Therefore, the Board voted to dismiss the appeal (Docket #92-0-2), finding it lacks subject-matter jurisdiction to hear and decide the instant appeal. [SEE: Appeal of Higgins-Brodersen (1990) 133 NH 576, 578 A2d 868]

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