

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
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APPEAL OF HEALTH AND HUMAN SERVICES EMPLOYEES

DOCKET #98-O-9 through 98-O-20 (LISTED BELOW)

March 3, 1999

Appellant	Docket Number
GERALDINE O'CONNOR	98-O-9 ✓ 109
PETER PRESCOTT	98-O-10 ✓ 110
SUSAN MORRISON	98-O-11 ✓ 111
NATHAN SANBORN	98-O-12
THOMAS FLYNN	98-O-13
BETTY J. RIORDAN	98-O-14
CHRISTINE MOORE	98-O-15
DALIA M. VIDUNAS	98-O-16
ROBERT LETELLIER	98-O-17
N. LYNETTE ROSE	98-O-18
CAROL CORDERO	98-O-19
GEORGE GOULET	98-O-20

The New Hampshire Personnel Appeals Board (Bennett, Johnson, Wood, Rule and Barry), met on January 7, 1998, under the authority of RSA 21-I:58, to hear the appeals of twelve former employees of the Department of Health and Human Services who were appealing the Department's decision to lay them off, effective November 30, 1997. The appellants were represented at the hearing by Thomas Hardiman, SEA Director of Field Operations and SEA Field

Representative Linda Chadbourne. Peter Odom, Chief Staff Attorney for the Department of Health and Human Services, appeared for the State.

In their notices of appeal, the appellants alleged that the department failed to effect the lay-offs in conformance with Chapter Per 1100 of the Rules of the Division of Personnel, particularly with respect to their seniority within the department. Specifically they alleged that:

"Under HB 32, divisions under Health and Human Services were abolished. No new divisions have been created pursuant to RSA 126-A:4 II. Therefore, seniority must be viewed on a department-wide basis rather than division-wide."

The appellants alleged that they were not the least senior employees within their respective classifications within the Department and therefore should not have been selected for lay-off when more junior employees have been retained. They also alleged that the State did not attempt to reassign them into vacant positions or demote them in lieu of lay-off.

The appellants requested a "full evidentiary hearing." However, in making that request, they also indicated that they had filed formal grievances and asked, "...that no hearings be held, if at all, until after arbitration."

After reviewing the parties' pleadings, the Rules of the Division of Personnel and the relevant language of the Collective Bargaining Agreement, the Board determined that it had jurisdiction to hear and decide the appeals regardless of the outcome of the appellants' outstanding requests for arbitration. Accordingly, the Board scheduled these matters for hearing on offers of proof by the representatives of the parties.

On the date of the hearing, the appellants argued that during the last contract negotiations, the State and the State Employees' Association had agreed to include lay-off language in the Collective Bargaining Agreement, incorporating by reference the Personnel Rules related to lay-off. They argued that under the current contract language, the propriety of the lay-offs themselves

had become a proper subject for arbitration. The appellants argued that the Board should stay any proceedings until the arbitration was concluded.

The State disagreed, arguing that the contract language provided an entitlement to state-paid health and dental insurance for an additional nine months for employees whose bumping privileges had been suspended by statute. Beyond that, the State argued, the contract language merely represented an agreement by the State not to amend the lay-off rules in effect on May 16, 1997, for the term of the contract. The State argued that the language of the Agreement permitted the appellants to grieve an alleged violation of the contract, but would not permit the grievance to be arbitrated at a substantive level on the propriety of the lay-offs themselves.

The State argued that even if the appellants had rights to substantive arbitration, it would have no practical effect on the Board's authority to hear and decide the appeals. Therefore, the State argued, the Board should proceed with the scheduled hearing. The appellants argued that the State would suffer no harm by delay, whereas the appellants would be unfairly prejudiced by an adverse finding by the Board prior to arbitration.

After considering the arguments offered by the parties, the Board voted to grant the appellants' request to stay the proceedings pending the outcome of arbitration with their agreement on the following conditions:

1. The Board has statutory jurisdiction to hear appeals of decisions by the appointing authority or the Director of Personnel arising out of the application of rules adopted by the Director. The Board does not find that there is an overlap in jurisdiction, and agreed to grant the stay solely for purposes of judicial economy.
2. Whereas both the State and the Board were ready to proceed, any delay in hearing the appeal is attributable solely to the appellants, any potential award involving monetary relief would not include the period of the stay
3. The appellants would provide a status report within 90 days in order to facilitate scheduling of the appeal for hearing.

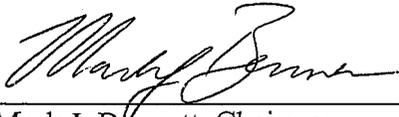
4. On or before the date of the arbitral award, the parties would file stipulations of fact so that the issues would be more clearly focused when the appeal is heard.
5. The Board reserved the right to amend its order as justice and equity might require.

In reviewing its records for the purpose of scheduling any outstanding appeals, the Board found that the appellants had not filed a status report on the progress of their grievance although that report was due on or about April 7, 1998. The Board also found that the parties had not filed any stipulations to narrow the factual issues. When the Board inquired about the status of the grievances filed through the Bureau of Employee Relations, the Board was advised that the grievance was heard on May 5, 1998, and that the Arbitrator issued an opinion and award approximately nine months ago, on or about June 30, 1998.

In consideration of the foregoing, the Board voted to schedule the matter for a hearing on the merits on Wednesday, April 21, 1999, at 9:00 a.m. in Room 411, State House Annex, 25 Capitol Street, Concord, New Hampshire. The appeals shall be made on offers of proof by the representatives of the parties, or the parties. The Board has permitted one hour for the hearing, with each party being permitted thirty minutes in which to submit documentary evidence, present oral argument and make offers of proof. If the Board should then determine that it has insufficient evidence to fairly decide the appeal, the Board, upon its own motion or on the motion of a party, may vote to compel the production of additional evidence, up to and including the testimony of witnesses.

Motions for postponement or special scheduling will only be considered for exceptional circumstances and must be made in writing to the Personnel Appeals Board within ten (10) calendar days of the date of this order to be considered. Untimely requests will be denied, except in the event of a *bona fide* emergency. Except for good cause shown, failure of an appellant to appear as scheduled shall result in dismissal of the appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman

Robert J. Johnson, Commissioner



Patrick H. Wood, Commissioner



Lisa A. Rule, Commissioner



James J. Barry, Commissioner

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