

State of New Hampshire

WPPID1026



PERSONNEL APPEALS BOARD

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

Appeal of Robert Nagle Docket #90-0-10 Response to Appellant's Motion for Reconsideration

December 21, 1992

A quorum of the New Hampshire Personnel Appeals Board (Bennett and Rule) met Wednesday, December 9, 1992, to review the November 2, 1992 Motion for Reconsideration filed by SEA Field Representative Margo Hurley on behalf of Robert T. Nagle. By order dated October 15, 1992, the Board denied Mr. Nagle's appeal of the Department of Postsecondary Education's decision to reduce his work schedule from 12 to 10 months per year (A234 to A180).

In its Motion for Reconsideration, the State Employees' Association argued that reduction of the appellant's work schedule from 52 to 40 weeks per year was accomplished solely for the purpose of saving the agency money, and that "Mr. Nagle was singled out for treatment not allowed or even contemplated by the rules". Ms. Hurley also argued the appellant worked through the summer months, continuing to function as the head of the Pulp and Paper Technology program. She stated, "Mr. Nagle was put on a lesser schedule, from an A234 to an A180, with no reduction in his responsibilities as head of the program".

That argument is unsupported by the record. Mr. Nagle offered the following sworn testimony concerning his usual summer duties during the February 5, 1992 hearing, under direct examination by Ms. Hurley:

Nagle: "My normal duties, you asked, were in curriculum development, coordination of the program with industry, developing communications, things of that nature."

Hurley: "Did you continue to do that through the summer?"

Nagle: "No, President Twitchell had, in writing, advised me not to make any communications with the paper industry, that he would be the sole, the one and only voice of the college."

Ms. Hurley also argued that the appellant had suffered financial loss, having taken the position as head of the Pulp and Paper Technology Department in reliance on the program providing year-round employment. She argued that any change in the position should not have taken place until the beginning of the next academic year, not at the end of the spring semester, stating the following: "There was no reason to change his pay schedule, except to save money and at Mr. Nagle's expense. ..."

Appeal of Robert Nagle
Docket #90-0-10
Response to Appellant's Motion for Reconsideration
page 2

As the Board found in its October 15, 1992 decision in this matter:

"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. . . .

"The Board found the Department lawfully exercised its discretion in reducing the appellant's schedule and moving him from the A234 to A180 pay scale."

The Board fully appreciates the fact that the appellant suffered financially from the decision to reduce his position from a 12-month per year to a 10-month per year position. Loss of salary and/or benefits is the unfortunate but inevitable result of any lay-off or reduction in force. However, that fact alone does not alter an agency's authority to reduce assignments and program costs when an agency undertakes a reduction in force because of change in organization, lack of work, insufficient funds, or like reasons.

Having failed to persuade the Board its decision was unreasonable or unlawful, the Board voted unanimously to deny the appellant's Motion for Reconsideration and to affirm its decision denying Mr. Nagle's appeal.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett



Lisa A. Rule

Karen S. McGinley

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

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF ROBERT T. NAGLE
Department of Postsecondary Technical Education
New Hampshire Technical College/Berlin
Docket #90-O-10

October 15, 1992

The New Hampshire Personnel Appeals Board (Bennett, Rule and McGinley) met Wednesday, February 5, 1992, to hear the appeal of Robert T. Nagle, an employee of New Hampshire Technical College in Berlin, New Hampshire. Mr. Nagle was represented at the hearing by SEA Field Representative Margo Hurley. Sarah Hopley, Human Resource Administrator for the Department of Postsecondary Technical Education appeared on the State's behalf.

On January 15, 1992, Dr. H. Jeffrey Rafn, Commissioner of Postsecondary Technical Education, filed a Motion to Dismiss Mr. Nagle's appeal, arguing that the college had not dismissed Mr. Nagle from his employment at the Berlin Technical College, although it had reduced his work schedule from 52 to 40 weeks per year because of lack of work. The Board held Commissioner Rafn's Motion in abeyance.

In its amended notice of appeal, the State Employees' Association argued on Mr. Nagle's behalf that the reduction of his work schedule from 52 to 40 weeks per year should be deemed a "demotion" because paying him on an A180 salary schedule for 10 months work instead of the A234 scale for 12 months work was the same as transferring him "...from a position in one class to a position in another class having a lower salary grade". The appellant modified that position somewhat later in the amended notice stating, "Although it could be argued that Mr. Nagle's salary grade was not changed, he did suffer a loss in compensation attributed to his change to A180."

On the evidence, the Board did not find the reduction in Mr. Nagle's work schedule and the resulting reduction in his pay constituted a demotion. Neither his title nor his salary grade were changed. His work schedule was reduced from 12 months per year to 10 months per year as part of a reduction in force, and his appeal on the merits will be reviewed within that context.

The Board made the following findings of fact:

The Department of Postsecondary Technical Education created a Pulp and Paper Technology program at the College in Berlin during the summer of 1986. The appellant initially was not interested in accepting employment because of the proposed salary level. Negotiations between the appellant and college officials concluded in November, 1986, with the appellant agreeing to join the academic staff in January, 1987, as a full professor at the maximum step of the salary grade in a 12 month per year position. The appellant was also allowed to perform outside consulting work with the James River Company as a supplement to his salary.

The decision to reduce the appellant's position from a 52 week per year to a 40 week per year position was predicated upon decreasing enrollments in the Pulp and Paper Technology program and mandated budget reductions throughout the department affecting all the colleges in the system. Because of the enormous capital investment in equipment for the pulp and paper program, Commissioner Rafn decided to allow the program another year of operation in the hope enrollments might increase. However, from a budgetary perspective, he decided to reduce the appellant's position from a 12 to 10 month per year position to cut some of the program costs. Then, as now, the appellant was the only employee of the program.

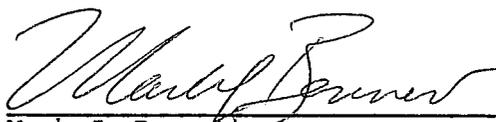
The appellant argued that the State did not have the authority by rule or law to reduce his work schedule and salary solely for the purpose of reducing program costs, and that its decision to do so violated the spirit and intent of the Personnel Rules which have, as part of their purpose, making State employment attractive as a career. The State argued that implementing a reduction in force, whether through reduction in employees' work hours or completely separating employees from service through lay-off, is within management's discretion.

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. Clearly, the Department of Postsecondary Technical Education was faced with change in organization, lack of work within the appellant's program, and insufficient funds as a result of mandated budget cuts. Therefore, the Board found the Department had the authority to completely separate Mr. Nagle from his employment as a professor in the Pulp and Paper Technology program at Technical College in Berlin, or to reduce his hours by placing him on a 10 month per year rather than a 12 month per year schedule.

No similar positions existed within the department into which the appellant might have been transferred, and had the employee been notified of complete separation from service, he lacked the five years of continuing full-time service which might have allowed him to "bump" another employee of the Department if he qualified for that employee's position and had more seniority than that employee. The Board found the Department lawfully exercised its discretion in reducing the appellant's schedule and moving him from the A234 to A180 pay scale.

Accordingly, Mr. Nagle's appeal is denied.

THE PERSONNEL APPEALS BOARD



Mark J. Bennett



Lisa A. Rule



Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel
Dr. H. Jeffrey Rafn, Commissioner, Postsecondary Technical Educatio'n
Margo Hurley, SEA Field Representative

State of New Hampshire

WPPID584



PERSONNEL APPEALS BOARD

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APPEAL OF ROBERT T. NAGLE Department of Postsecondary Technical Education Docket #90-O-10

August 13, 1990

The New Hampshire Personnel Appeals Board (McNicholas, Cushman and Johnson) met Wednesday, July 25, 1990, to consider the appeal of Robert T. Nagle, an employee of the New Hampshire Technical College at Berlin. By letter dated June 18, 1990, SEA Field Representative Margo Hurley filed a request on Mr. Nagle's behalf for a hearing before the Personnel Appeals Board to appeal his "termination as a 52 week employee (Per 308.04...)". Appellant argues that he had been informed that he will be a 40 week employee as of September 1990, and that without prior notice, he was informed on June 8, 1990 that he would have to take his accrued annual leave in a lump sum check, rather than leave it until his retirement, and that his last pay check would come at the end of June. He further argues that he had budgeted for paychecks through the summer.

By letter dated July 12, 1990, Willis S. Reed, Deputy Commissioner of the Department of Postsecondary Technical Education, filed a response which, requesting that the appeal of Mr. Nagle be dismissed. In support of that motion, Mr. Reed argues that the appellant has alleged neither an application nor a violation of a personnel rule. He further argues that the appellant, in his request for a hearing, has given no reason why the action taken by the department was either inappropriate or unreasonable. Mr. Reed states that Mr. Nagle is still a full-time faculty member at full professor rank with all the benefits and privileges thereof, and as such has not been terminated.

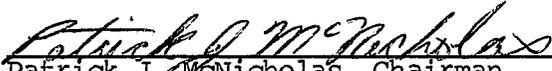
Per 308.04 provides that "Any permanent employee who is dismissed or demoted or who is suspended may, within 15 calendar days after such dismissal, demotion or suspension, appeal to the [Appeals Board] for review thereof." Inasmuch as Mr. Nagle has not been dismissed, demoted, or suspended, the Board declines to hear the matter as a termination appeal.

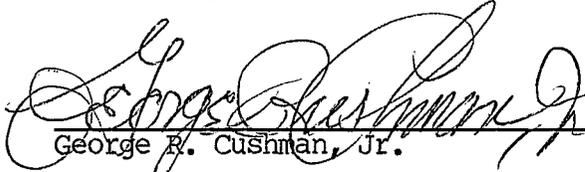
APPEAL OF ROBERT T. NAGLE
Docket #90-0-10

page 2

Based upon the foregoing, the Board voted unanimously to dismiss Mr. Nagle's appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


George E. Cushman, Jr.


Robert J. Johnson

cc: Margo Hurley, SEA Field Representative
Dr. H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education
Willis S. Reed, Deputy Commissioner, Postsecondary Technical Education
Virginia A. Vogel, Director of Personnel
Civil Bureau - Office of the Attorney General

State of New Hampshire

WPPID707



PERSONNEL APPEALS BOARD

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APPEALS OF:

Robert Nagle (Docket #90-0-10) - Response on Reconsideration

Thomas O'Rourke (Docket #91-0-5) - Initial Order

Paul Ingersoll (Docket #91-0-7) - Initial Order - See 91-0-907

Department of Postsecondary Technical Education

March 18, 1991

Personnel Appeals Board Decision

In Re:

Consolidation of the Appeals of Nagle, O'Rourke and Ingersoll

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 13, 1991, to consider the above-listed appeals. Each of the appellants had been employed as an academic employee of the Department of Postsecondary Technical Education. Each of the appellants was notified that because of budget constraints, his position would be reduced from a 52 week per year to a 40 week per year schedule.

The Board, under the authority of Per-A 202.07 (a) of the Rules of the Personnel Appeals Board, voted upon its own motion to consolidate these three appeals. In so doing, the Board recognizes that it had previously dismissed **Mr. Nagle's** appeal, noting specifically, "Inasmuch as **Mr. Nagle** has not been dismissed, demoted or suspended, the Board declines to hear the matter as a termination appeal." As such, the Board will hear these three appeals under the provisions of RSA 21-I:58 I:

"Any permanent employee who is affected by any application of the personnel rules, except for those 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 Board within 15 calendar days of the action giving rise to the appeal."

Before the Board will schedule a hearing on the merits of these consolidated appeals, the appellants, through their SEA Field Representative Margo Hurley,

Robert Nagle (Docket #90-0-10) - Response on Reconsideration
Thomas O'Rourke (Docket #91-0-5) - Initial Order
Paul Ingersoll (Docket #91-0-7) - Initial Order

page 2

shall file an amended notice of appeal, stating specifically which rule(s) they believe to have been improperly applied in reducing their work schedules from 52 to 40 weeks per year or, in the alternative, shall cite specifically that rule which they believe to preclude such a change in schedule. The appellants shall also state specifically the authority under which the Board might order that they be reinstated to a 52 week/year schedule.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc; Virginia A. Vogel, Director of Personnel
H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education
Willis S. Reed, Deputy Commissioner, Postsecondary Technical Education
Michael C. Reynolds, SEA General Counsel