

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 89-421.. Appeal of Murray Howlett & a.....  
the court upon .....December 19, 1989..... made the following order:

State's motion for summary affirmance is denied. Decision below is summarily affirmed in accordance with Rule 25(1)(c).

Distribution:

Personnel Appeals Board  
Michael C. Reynolds, Esquire  
Attorney General  
Donna R. Craig, Supreme Court  
File

Auto Mechanics  
D. O. T.

Ralph H. Wood,

Clerk

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DIVISION OF  
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# State of New Hampshire



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

## RULING ON MOTION FOR RECONSIDERATION Auto Mechanics - Department of Transportation

August 18, 1989

By letter dated July 14, 1989, SEA Director of Field Operations Chris Henchey requested the Board reconsider its decision of June 21, 1989, that the appeal for retroactive compensation filed April 28, 1989 on behalf of the above-named appellants was untimely. In their motion for reconsideration, Appellants argued that "the decision giving rise to this appeal occurred on April 20, 1989". Appellants stated:

"Those discussions [between the SEA and the Director of Personnel prior to April 20, 1988] focused not on the reclassification decision itself (dated December 20, 1988) but on the inaction on the part of the Director of Personnel related to decisions and events of a former Director of Personnel, the former Personnel Commission and the affirmative duty required of the Division of Personnel through the person of its Director."

In considering Appellants' Motion for Reconsideration, the Board reviewed the materials submitted to date to determine if, for good cause shown, the Board should waive the issue of timeliness and hold a hearing to take testimony or hear argument on the merits of this appeal.

The Board found that there are no material facts in dispute. The decision to upgrade Auto Mechanics in the Department of Transportation was transmitted to Highway Administrative and Personnel Officer Raymond J. Lemieux on December 20, 1988. That decision was based upon a completed request for reclassification received by the Division of Personnel in November, 1988. Prior to November, 1988, there was no request pending for reclassification or reallocation of positions of Auto Mechanics in the Department of Transportation. In their appeal, dated April 28, 1989, Appellants did not question the salary grade assigned to their positions, but requested that their upgrading be made retroactive "...to a point in 1984 where they would have and should have been upgraded."

In their Motion for Reconsideration, Appellants argued that the Director of Personnel "has an affirmative duty established by 98:13 XIII and RSA 21-I:42 II that, if properly completed, would have applied "...the same schedule of pay may be equitably applied to, all positions in the same classification."

RULING ON MOTION FOR RECONSIDERATION  
Appeal of DOT Auto Mechanics

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On December 28, 1988, the Personnel Appeals Board denied the appeals of Harlow, Barker, Hansen and Wheeler, Occupational Therapists at Laconia Developmental Services (formerly Laconia State School). In that case, the Board found that absent a completed request for reclassification, the appellants were not entitled to additional compensation for any period prior to a decision by the Director that those positions should be upgraded.

Subsequently, Appellants filed a Motion for Reconsideration, wherein Appellants agreed that there had not been a pending request for reclassification. Rather, they contended that the Director, under the provisions of RSA 21-I:42, was "responsible for: 'preparing maintaining and periodically revising a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed so that the same qualifications may be reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same classification'." (See Appeal of Occupational Therapists, Appellants' Request for Reconsideration, January 17, 1989, p. 2)

The Board affirmed its decision on March 15, 1989, (Appeal of Occupational Therapists, Motion for Reconsideration) finding there was no justification for award of retroactive compensation absent a pending request for reclassification for the period in question.

Appellants then filed an Appeal by Petition Pursuant to RSA 541:6 with the New Hampshire Supreme Court (No. 89-150) Appeal of Roanne Harlow & a., presenting one question for review:

"1. Whether the Board erred as a matter of law or clearly acted unjustly and unreasonably in denying the appellants retroactive pay after an upgrade, when such retroactive pay was awarded to other employees in the same classification? RSA 21-I:42, II; Petition of State Employees' Association and Robinson, 129 NH 54 (1987). (This issue was raised in the appellants' January 17, 1989 request for reconsideration, Appendix, page 29)."

On July 24, 1989, the Supreme Court summarily affirmed the Board's decision.

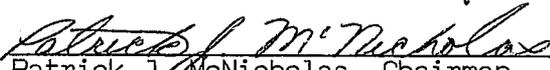
Based upon the foregoing, the Board finds that absent a pending request for reclassification, neither the Director of Personnel nor the Personnel Appeals Board has the legal authority to award retroactive compensation, as confirmed by the NH Supreme Court's decision in the Appeal of Roanne Harlow & a., 89-150, July 24, 1989. Given such a ruling by the Court, the Board sees no purpose in granting Appellants' request for reconsideration or in scheduling a hearing for oral argument on this issue.

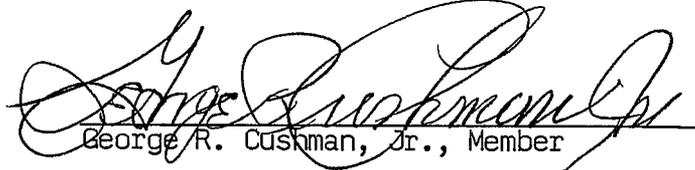
RULING ON MOTION FOR RECONSIDERATION  
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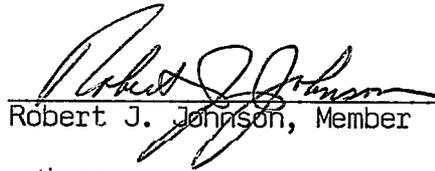
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The Board, at its meeting of August 16, 1989, voted unanimously to deny the request for reconsideration.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
George R. Cushman, Jr., Member

  
Robert J. Johnson, Member

cc: Chris Henchey, Director of Field Operations  
State Employees' Association

Raymond J. Lemieux, Administrative and Personnel Officer  
Department of Transportation

Virginia A. Vogel  
Director of Personnel

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### AUTO MECHANICS - DEPARTMENT OF TRANSPORTATION Appeal for Award of Retroactive Compensation

On April 28, 1989, SEA Director of Operations Chris Henchey filed with the Personnel Appeals Board an appeal for award of retroactive compensation for employees of the Department of Transportation classified as Auto Mechanics. That request for hearing, Mr. Henchey identifies the decision from which this appeal arises as the Director's letter of April 20, 1989.

On May 8, 1989, Director Vogel wrote to the Board requesting that the appeal be dismissed as untimely. Mr. Henchey responded on the appellants' behalf by letter to the Board dated May 29, 1989, received May 31, 1989. That letter did not address the Director's motion that the appeal be dismissed as untimely.

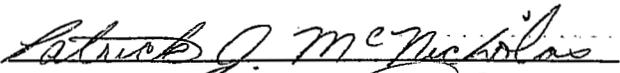
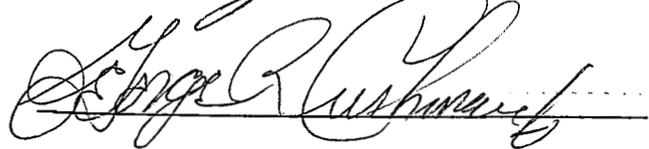
In consideration of the documents filed on behalf of the appellants, the Personnel Director's motion for dismissal, and the response from the State Employees' Association, the Board has voted to dismiss this appeal as untimely.

The Board finds that the applicable statute in this instance is RSA 21-I:57 (effective April 30, 1988): "The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation..." (Emphasis added.) Such rules were adopted by the Board under RSA 541-A, effective 10/7/86, which require that "Any notice of appeal shall be filed in writing within fifteen (15) days of the action giving rise to the appeal." [Per-A 202.01(a)]

The record before the Board would indicate that the decision regarding upgrading of positions of Auto Mechanic at the Department of Transportation was transmitted in a letter to Raymond J. Lemieux, Highway Administrative and Personnel Officer dated December 20, 1988. (SEA Attachment II). Pursuant to both statute and administrative rule, appeal from that decision should have been made no later than January 4, 1989. The issue of retroactive compensation had previously been addressed in a letter to the appellants themselves dated December 12, 1988, from Director Vogel. (SEA Attachment VI) Appeal of that decision, in order to be timely, must have been made not later than December 27, 1988.

Based upon the foregoing, and in consideration of Mr. Henchey's failure to address the question of timely filing, or why the Board should waive the requirements for timely filing, the Board voted to dismiss this appeal.

THE PERSONNEL APPEALS BOARD

(Commissioner Scott did not participate)

cc: Chris Henchey, Director of operations  
State Employees' Association

Virginia A. Vogel  
Director of Personnel

Raymond J. Lemieux, Personnel Officer  
Department of Transportation

6/21/89