

State of New Hampshire



PERSONNEL APPEALS BOARD

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APPEAL OF ANDREW ROY

Department of Health and Human Services
Division for Children Youth and Families - Tobey School

Docket #94 -O-4

December 27, 1994

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, December 7, 1994, to hear oral argument on a pending Motion to Dismiss filed by Assistant Attorney General William McCallum with reference to the above-captioned appeal. Stephen J. McCormack, SEA Field Representative appeared on behalf of the appellant. Mr. McCallum and Personnel Director Virginia Lamberton appeared on behalf of the State. Mr. Roy was appealing the Personnel Director's refusal to include his position of Media Generalist in the general upgrading and salary enhancements for teachers at the Tobey School as part of the implementation of the federal consent decree in James O. v Marston, U.S. Dist. Ct. No. 86-0006-S.

The decision from which the appeal arose was conveyed in a letter dated January 5, 1994 from Personnel Director. Virginia Lamberton, to Mr. Roy in which she stated:

"The classification of your position is Media Generalist at a labor grade 16. At no time was the classification of Media Generalist discussed or proposed to be included in the establishment of the new class series Teacher I, II or III. Further, at no time was there a discussion, proposal or survey to recommend a salary enhancement for the classification of Media Generalist. Additionally, the class specification for Media Generalist does not require certification as a teacher.

"You have stated that the Governor and Council approved a reclassification and salary enhancement for your position. I would respond with the following comments. At no time was the classification Media Generalist considered or approved by me for a reclassification or salary enhancement. The fact that the agency put your position number on the attachment to the Governor and Council item, does not supersede my authority to approve or disapprove reclassifications. The Governor and Council are limited, by law, to approving the establishment of new classification titles. The actual audit and approval of which positions are reclassified or reallocated is under the responsibility and authority of the Director of Personnel. Your department could have listed many position numbers and classifications, however, they too would not have been changed as we audited and approved the reclassification of Teacher positions.

Further, the requested action limited the request to the classification Teacher. If your department had my approval to include the classification Media Generalist, that title would had to have been identified in the text of the letter.

"If you would like to have your position reviewed, you are welcome to do so. The process for a position review is outlined in Per 303.02 of the Rules of the Division of Personnel."

Mr. Roy did not submit a request for reclassification or reallocation to the Director of Personnel. Instead he filed an appeal with this Board, arguing that he had been affected by the application of a decision of the Director of Personnel and was therefore entitled to appeal under the provisions of RSA 21-I:58. On April 26, 1994, the State submitted its Motion to Dismiss. An objection to that Motion was filed by the appellant's representative, Stephen J. McCormack, on May 10, 1994.

Having carefully reviewed the pleadings filed to date by the parties, and in consideration of the oral arguments presented by the parties at its meeting of December 7, 1994, the Board voted to grant the State's Motion to Dismiss.

The relief requested by Mr. Roy and the manner in which that request was presented to the Board place it outside the Board's jurisdiction. The Consent Decree central to Mr. Roy's request for increased compensation requires the parties to negotiate in good faith should either party have questions concerning the provisions of the Decree or compliance therewith. As neither Mr. Roy nor his representative, the State Employees' Association, are parties to the consent decree, they appear to lack standing to challenge implementation of the decree. Even if Mr. Roy were considered a party with standing, the Board agrees with the State that there is no authority for the Personnel Appeals Board to interpret or enforce the terms and conditions of the Decree.

If the Board did have jurisdiction to interpret the Consent Decree, it would concur with the Director of Personnel, finding that Mr. Roy's position does not appear to be one of kinds of positions contemplated for inclusion in the Decree. The Board does not believe that Mr. Roy's own certification as an "Experienced Educator" is dispositive in this instance. As the Director noted in her letter of January 5, 1994, while Teacher Certification may be used toward Alternative 3 or 4 certification as a Media Generalist, it is not required. Completion of 4 professional library courses may be used to meet that requirement as well.

The Decree has been in place since August 26, 1991. There is no evidence that either the Plaintiffs or the Defendants have undertaken negotiations or have returned to Federal court to challenge omission of the position of Media Generalist from the upgrading or salary enhancements approved for teachers. Therefore, it would be reasonable to believe that the parties are content with the manner in which the Decree has been implemented.

In his objection to the State's Motion to Dismiss (May 10, 1994), Mr. McCormack stated:

"The Department of Justice alleges that the appellant has failed to claim jurisdiction of the Board. This is not true. On January 18, 1994 Margo Hurley, the State Employees' Association Field Representative who filed the stated appeal, on behalf of Andrew Roy, appealed under the provisions of RSA 21-I:58 I. RSA 21-I:58, I, clearly states '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, may appeal to the personnel appeals board within 15 calendar days of the action giving rise to the appeal'. The appeal filed on January 18, 1994 was a direct result of a decision made by Virginia A. Lamberton, Director of Personnel, on January 5, 1994 ...RSA 21-I:58 clearly gives the Board jurisdiction to hear and decide this matter. It is contended that the Director of Personnel erred in her decision not to reclassify position #19457, Media Specialist, from salary grade 16 to salary grade 19 in accordance with the approval and ruling of the Governor and Council..."

The February 19, 1993 reclassification request to Governor and Council (Appellant's Exhibit #6, Attachment A) identifies the "Current Classification" of 48 positions as "Teacher", and seeks approval to reclassify them to "Proposed Classification[s]" of Teacher I, Teacher II or Teacher III. None of the 48 positions are identified as Media Generalist. The record reflects that the action of Governor and Council approved the upgrading of "teachers", as well as salary enhancements of 15% for Teacher I positions, 20% for Teacher II positions, and 25% for Teacher III positions.

Contrary to the appellant's assertion, there is no evidence that the Governor and Council contemplated upgrading or enhancing the salary of any positions other than those which were classified as teachers. Although Mr. Roy's position number may have appeared on the list of positions for which reclassification was being sought, his position classification did not. The request makes no reference to the reclassification of a Media Generalist position, and it would be unreasonable to suggest that the Director of Personnel was under any obligation to implement a reclassification when the position in question was mis-identified in the request which the Governor and Executive Council approved.

If the Board were to adopt the appellant's position that RSA 21-I:54 provides an alternative method for requesting reclassification, which it does not, it would still lack jurisdiction to hear Mr. Roy's appeal. RSA 21-I:46, establishing the powers and duties of the Board, allows the Board to hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of the application of rules adopted by the Director of Personnel. The Board has already found that Mr. Roy's dispute does not arise out of the application of rules adopted by the Director of Personnel, and may not be resolved under the provisions of RSA 21-I:58. RSA 21-I:57 allows employees to appeal classification decisions of the Director which are made under the Director's rules.

Clearly Mr. Roy's appeal relates to the reclassification of a position, subject to review and appeal under the provisions of RSA 21-I:57, which allows an employee or department head, or both, to request a review of a position in accordance with rules adopted by the Director of Personnel. The record reflects that Mr. Roy was given an opportunity to request such a review, but made no such request.

Mr. Roy's denial of reclassification was not the product of a decision made within the framework of the rules, except to the extent that the Director advised him in her letter of January 5, 1994, that his position could be reviewed under the procedures for filing a completed request for reclassification, established by Per 303.02 of the Rules of the Division of Personnel. Having failed to request such a review, and receive a decision from the Director, the Board lacks jurisdiction to consider the propriety of his position classification.

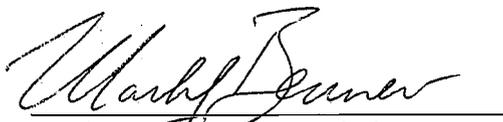
On the pleadings and oral argument, the Board found that Mr. Roy appears to lack standing to challenge the implementation of the Consent Decree central to his request for

reclassification and increased compensation. Even if the appellant had standing as a party to the Decree, the Board lacks jurisdiction to interpret that Decree. There is no authority for the Board to consider Mr. Roy's position classification dispute as an appeal under the provisions of RSA 21-I:58, which specifically excludes from consideration classification decisions of the Director. Insofar as Mr. Roy failed to request a review of his position, the Board also lacks jurisdiction to consider the matter under the authority of RSA 21-I:57.

Based upon the relief sought, and the manner in which that request for relief was presented, the Board does not have jurisdiction to consider the instant appeal. Accordingly, the Board voted unanimously to dismiss the appeal of Andrew Roy, Docket #94-O-4.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Mark J. Bennett, Commissioner


Robert J. Johnson, Commissioner

cc: Virginia A. Lamberton, Director of Personnel
William McCallum, Assistant Attorney General, Department of Justice
Stephen McCormack, Field Representative, State Employees' Association
Sandra Platt, Administrator, Department of Health and Human Services