

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Brian Coulombe – Docket #2010-L-034

NH Department of Corrections

March 30, 2011

The New Hampshire Personnel Appeals Board (Wood, Bonafide and Johnson) met in public session on Wednesday, February 16, 2011, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Brian Coulombe, a former employee of the New Hampshire Department of Corrections. Mr. Coulombe, who was represented at the hearing by SEA General Counsel Michael Reynolds, was appealing his October 14, 2009, layoff from employment as a Supervisor I at the department's North Country Facility. Assistant Attorney General Rosemary Wiant appeared on behalf of the State.

The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audio tape recording of the hearing on the merits of the appeal, and documents admitted into evidence and identified by the parties as follows:

State's Exhibits

1. Notice of Layoff, October 14, 2009
2. Letter from Department of Corrections to Jeffrey Brown and Mary Ann Steele re: Brian Coulombe, February 1, 2010
3. Seniority List, Commissioner Division, October 14, 2009
4. Seniority List, Administration Division, October 14, 2009
5. 2008 Organizational Chart, North Country Facility, Administration Division
6. 2009 Organizational Chart, North country Facility, Administration Division
7. Supplemental Job Description, Brian Coulombe
8. Supplemental Job Description, Kristine Martin
9. Employment History
10. Application for Employment, April 9, 1999 (Corporal) and August 16, 1998 (Corrections Officer)

Appellant's Exhibits

- A. Correctional Line Supervisor I 10/7/08 Supplemental Job Description
- B. Correctional Line Canteen Manager 10/3/08 Supplemental Job Description
- C. Supervisor I Hobby Craft 2/13/06 Supplemental Job Description
- D. September 23, 2008 Performance Evaluation
- E. October 8, 2009 letter to all DOC employees from William Wrenn, Commissioner
- F. February 24, 2010 letter to Lisa Currier, HR Administrator from Jeffrey Brown, SEA Field Representative
- G. Waiting List Report by Shop created by Mr. Coulombe
- H. Current Member Information (locker assignment)
- I. Northern Correctional Facility (NCF) Hobby Craft Property Inventory created by Mr. Coulombe
- J. NCF Hobby Craft Contract created by Mr. Coulombe
- K. Safety tests created by Mr. Coulombe
- L. July 2009 NCF Hobby Craft Program Monthly Statistics created by Mr. Coulombe
- M. July 16, 2009 Hobby Craft count sheet
- N. January 1, 2008 through July 1, 2008 Hobby Craft Weekly Resale Control
- O. Inmate Tracking Report

The following persons gave sworn testimony:

Lisa Currier, Human Resources Administrator, NH Department of Corrections
Sara Willingham, Deputy Director, NH Division of Personnel
Brian Coulombe, Appellant

Position of the parties:

The State asserts that Mr. Coulombe's position was unfunded, and that he did not meet the minimum qualifications for reassignment to a position held by a Supervisor I who had less seniority than the Appellant. The Appellant alleges that he did meet the minimum qualifications and that the Department violated the Rules of the Division of Personnel by laying him off. The Appellant argued that the Department of Corrections had an affirmative obligation to further investigate his qualifications, including any information that may not have been included in his personnel file, applications for employment, requests for reclassification, or work history, to better evaluate whether or not he met the qualifications for the position of Canteen Manager. The Appellant also argues that he would have been protected from layoff, and would have been eligible to bump a less senior employee, if the legislature had not suspended the provisions of Per 1001.02 (j). The Appellant noted that a suit had been filed in Merrimack County

Superior Court seeking to have the pertinent parts of section 64 of House Bill 2 declared unconstitutional, and argued that if the lawsuit is successful, those protections would be restored retroactively.

Narrative summary of the evidence and argument presented:

In July, 2009, reductions in the budget for the Department of Corrections required the Department to effect a reduction in force. When that reduction in force had been accomplished, positions that remained vacant were abolished. In October of 2009, as a result of continued insufficient funding and the resulting changes in the department's organizational structure, the Department of Corrections was required to layoff additional employees. Although there were position vacancies at the time within the agency, a number of those positions were "unfunded." While the positions themselves remained on the agency roster, they could not remain filled, nor were they available for purposes of transfer, reassignment or demotion in lieu of layoff for those persons who were subject to a reduction in force, as there were no longer funds appropriated to support those positions.

Mr. Coulombe's position of Supervisor I in the Hobby Craft area of the Northern Correctional Facility was one of the positions that was "unfunded" in the Commissioner's Division. Because the Appellant was not the least senior Supervisor I in that division of the agency, Lisa Currier, the agency's Human Resources Administrator, reviewed the Appellant's personnel record and qualifications to determine if he could fulfill the responsibilities of either of the temporary Supervisor I positions in that division of the agency. Because Supervisor I is considered a "generic" classification, various positions within that classification may have very different duties and different specific qualifications in terms of education and experience. In this case, the two temporary part-time Supervisor I positions were for Hearings Officers, and each had specific qualifications that the Appellant did not possess, so Ms. Currier determined that the Appellant did not meet the minimum qualifications for either of the temporary Supervisor I positions in the Commissioner's division, and the Appellant was notified by letter dated October 14, 2009, that he was to be laid off effective October 29, 2009. (Exhibit 1).

Upon receiving his notice of layoff, the Appellant contacted Ms. Currier and asked why Kristine Martin, a less senior Supervisor I, was assigned to the Administration division and not the Commissioner's division. The Appellant contended that if Ms. Martin had been in the Commissioner's division with the Appellant, Ms. Martin would have had less seniority than the Appellant and would have been laid off instead. After reviewing the records, Ms. Currier determined that Ms. Martin's position was incorrectly assigned to the Administration division and that Ms. Martin had less seniority than the Appellant. Ms. Currier also concluded that Ms. Martin would have been laid off and the Appellant would have been reassigned to that position if he met the minimum qualification for the position of Canteen Manager.

Like the Appellant, Ms. Martin's position was in the generic classification of Supervisor I and, like the Appellant, her position had a unique set of qualifications tailored to the specific duties and responsibilities of a Canteen Manager. The qualifications for the position of Canteen Manager include a "bachelor's degree from a recognized college or university with major study in Business Management, Accounting, Computer Science or related field," as well as "two years' supervisor experience in warehousing and inventory control, including purchasing, having computer experience and being familiar with the operation of computers, typing and spreadsheet programs..." An employee lacking the required formal education would need six full years of relevant, approved work experience to meet the minimum qualifications.

After reviewing the Appellant's personnel file, supplemental job descriptions, employment applications and work history, Ms. Currier determined that the Appellant did not meet the minimum requirements to certify for the Canteen Manager position occupied by Ms. Martin. In doing so, Ms. Currier determined that the Appellant lacked the required formal education and reviewed his experience to determine if he had the required six years of approved work experience. Ms. Currier concluded that although the Hobby Craft and Canteen Manager positions had similar responsibilities for inventory and inventory control, the Appellant had insufficient retail experience to qualify for reassignment to Ms. Martin's position of Canteen Manager.

Having carefully considered the testimony, documentary evidence and argument offered by the parties, the Board made the following findings of fact and rulings of law:

Findings of Fact:

1. The Appellant was originally employed by the Department of Corrections as a Corrections Officer Trainee in December, 1998. Prior to his employment by the Department of Corrections, his work history included work as a Carpenter's Helper, Equipment Operator, Laborer/Foreman, Machine Operator, Crane Operator/Welder and Bridge Carpenter. None of the Appellant's work experience prior to December, 1998, would satisfy the education or experience requirements to certify as meeting the minimum qualifications for Supervisor I/Canteen Manager. (State's Exhibit 9)
2. In January, 2000, the Appellant was promoted from Corrections Officer to Corrections Corporal assigned to the men's prison in Berlin, New Hampshire. (State's Exhibit 9 and 10) Because of his prior construction experience, management at the facility assigned the Appellant to build and maintain the Hobby Craft area at the prison. It took approximately two years to complete construction of the Hobby Craft area and an additional year and a half to develop programs for the Inmates.

3. As late as October 22, 2003, the Appellant's performance evaluations addressed only the plans for a Hobby Craft area, not actual supervision in the Hobby Craft area. The first reference to additional duties in the Hobby Craft area appears in the 2004 performance evaluation. (Appellant's testimony)
4. Effective February 13, 2006, the Appellant was reclassified from Corrections Corporal to Supervisor I in the Hobby Craft area. (Appellant's testimony and testimony of Lisa Currier)
5. Because the Appellant did not have a bachelor's degree, in order to meet the minimum requirements for the position of Supervisor I/Canteen Manager, he would have needed six years of supervisory experience in warehousing and inventory control, including purchasing, having computer experience and being familiar with the operation of computers, typing and spreadsheet programs. In order to meet the minimum qualifications for Supervisor I/Canteen Manager, the Appellant would need to have assumed those duties on or before October 14, 2003, six years prior to the date he received notice of layoff. (State's Exhibit 8)
6. Although the Appellant began constructing the Hobby Craft area in or around January, 2000, the Appellant did not assume any actual programmatic responsibilities in Hobby Craft until 2004, at the earliest. The Appellant was not reclassified as a Supervisor I as a result of performing programmatic responsibilities in Hobby Craft until February, 2006. (Appellant's testimony)
7. The Appellant did not meet the minimum qualifications for reassignment to a position as Supervisor I/Canteen Manager.
8. Although Kristine Martin had less seniority than the Appellant, even if Ms. Martin's position of Supervisor I/Canteen Manager had been correctly assigned to the Commissioner's division at the time that layoffs occurred, the Appellant would not have met the minimum qualifications to be reassigned to that position.

Rulings of Law:

- A. Prior to the adoption of HB-2, effective July 1, 2009, wherein the legislature suspended administrative rules Per 1101.02 (j) through (l), an employee with ten or more years of continuous state service would have been eligible to "bump" a less senior employee within his or her own division of an agency as long as the employee exercising bumping rights had more seniority than the employee being bumped, the employee being bumped was at a lower salary grade, and the employee exercising bumping rights met the minimum qualifications for the position into which he or she was bumping. Because of the legislative suspension of bumping rights, the Appellant did not have the option to bump a less senior employee in the Commissioner's division at the Department of Corrections.
- B. Prior to the adoption of HB-2, effective July 1, 2009, agencies were prohibited from laying off permanent employees while there were temporary, part-time or probationary employees serving in the same class of position within the agency.

- C. With certain enumerated exceptions, RSA 21-I:46, I, authorizes 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 application of rules adopted by the director of personnel." Because the legislature suspended the provisions of Per 1101.02 (j) through (l) of the Rules of the Division of Personnel, the Personnel Appeals Board lacks jurisdiction to address the Appellant's assertion that he was improperly denied the opportunity to bump another employee within his division of his agency.
- D. The Appellant was properly notified in accordance with the requirements of Per 1101.03 of the NH Code of Administrative Rules, that his position was no longer funded, and that as a result of insufficient funding and the resulting change in organization, he was being laid off from his position as a Supervisor I in the Hobby Craft area effective October 29, 2009.
- E. The Department of Corrections complied with the provisions of Per 1101.02 (a) through (c) and (e) through (h) by selecting positions in one or more classifications within a division for elimination, and establishing the order of layoff based on seniority within each classification, as well as the individual employee's abilities to meet the specific minimum qualifications for positions within generic classifications such as Supervisor I.
- F. Because there were no vacancies into which the Appellant could be demoted or reassigned, as described in the provisions of Per 1101.02 (f) through (h), the Appellant was properly notified of his layoff.

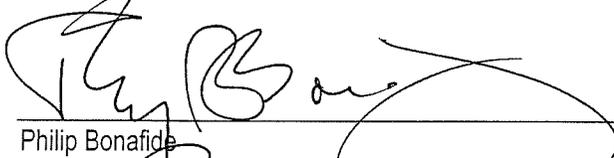
Decision and Order:

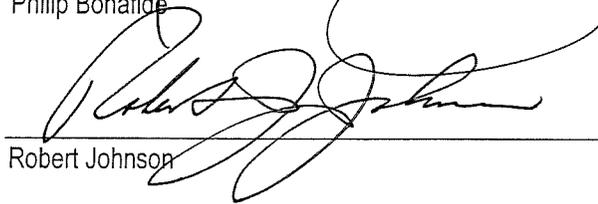
The Board found that the Department of Corrections acted within its authority when it determined which positions it needed to eliminate or "unfund" in order to reach legislatively required reductions in expenditures. The resulting reduction in force, including the Appellant's layoff from his position as a Supervisor I assigned to the Hobby Craft area at the Northern Correctional Facility, was effected in accordance with the Rules of the Division of Personnel. The Appellant did not qualify for either of the part-time hearings officer positions within the Commissioner's division, and the agency had no obligation to interview the Appellant or conduct a further investigation to determine whether or not he had other qualifications not listed in his personnel record, employment history or applications for employment with the Department of Corrections. Ms. Currier acted appropriately and in good faith when she learned that Ms. Martin's position was incorrectly listed in another division of the agency, and immediately undertook a review of the Appellant's qualifications to determine whether Ms. Martin should be laid off and the Appellant reassigned to her position. Assuming that Ms. Martin's position had been returned to the Commissioner's division before the effective date of the layoff, the Appellant did not meet the minimum qualifications to be assigned to that position.

For all the reasons set forth above, the Board voted unanimously to DENY Mr. Coulombe's appeal of his layoff from employment effective October 29, 2009.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


Patrick Wood


Philip Bonafide


Robert Johnson

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NH Personnel Appeals Board Decision on Appellant's Motion for Reconsideration/Rehearing

May 4, 2011

By letter dated April 28, 2011, SEA General Counsel Michael Reynolds submitted to the Board his Motion for Reconsideration/Rehearing of the New Hampshire Personnel Appeals Board's March 30, 2011, decision denying Brian Coulombe's appeal of his October 29, 2009, layoff from his position as a Supervisor I in the Hobby Craft program at the North Country Facility of the New Hampshire Department of Corrections.

In accordance with Per-A 208 .03 Rehearing, in the NH Code of Administrative Rules (Rules of the Personnel Appeals Board):

- (a) Pursuant to RSA 541 :3, within 30 days after the date of notice of any decision or order of the board, any party to the action or proceeding before the board, or any person directly affected thereby, may apply for rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order .
- (b) In order to be considered, such request shall be delivered to the executive secretary of the board within the 30 day period specified in (a) above.
- (c) Such 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.
- (d) The opposing party may file an objection within 5 days of the filing of the motion .
- (e) The board shall not grant a motion for rehearing for 5 days after the motion is filed in order to permit the opposing party to respond . Thereafter the board shall, within 10 days of the filing of the motion, grant or deny the motion, whether or not it has received a response from the opposing party .
- (f) A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the board's decision is unlawful or unreasonable.

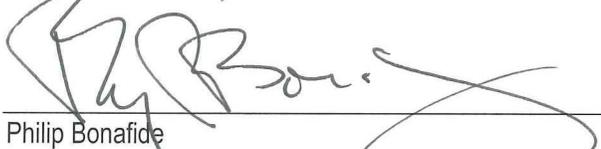
(g) Following the granting of a motion for rehearing, the board shall issue a notice as described in Per-A 206.11 (b).

Having carefully considered the Appellant's Motion, the Board found that the arguments raised by the Appellant in support of his request for reconsideration and rehearing are essentially the same arguments raised by the Appellant in his pleadings, testimony and oral argument before the Board during the hearing on the merits of his appeal. While it is clear that the Appellant disagrees with the Board's findings, as well as with the Board's analysis of the evidence presented, his disagreement with those findings and rulings is insufficient to demonstrate that Board's decision was unlawful, unreasonable or unjust.

Accordingly, the Board voted unanimously to DENY the Appellant's Motion for Reconsideration/Rehearing..

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD


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