

State of New Hampshire



WPPID706

PERSONNEL APPEALS BOARD

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

APPEAL OF PATRICIA HUTCHINS

Docket #91-D-2

Department of Postsecondary Technical Education
(New Hampshire Technical Institute)

February 28, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 13, 1991, to consider the appeal of Patricia Hutchins, an employee of the Department of Postsecondary Technical Education. The appellant, through her SEA Field Representative Margo Hurley, requested that the Board order Ms. Hutchins "...be accorded the rank of professor, Nursing Department, and that the salary grade associated with that title, to which she had been promoted in April. Since availability of funding is part of the selection process, to promote people and then attempt to take it away is not only cruel but a demotion." The Board, upon review of the appellant's submissions in support of her appeal, does not agree and accordingly declines to order the relief requested.

Appellant argued that "availability of funding is part of the selection process." Appellant's Attachment #2, Dr. David E. Larrabee's letter of April 20, 1989, to the appellant, states:

"Unfortunately promotions are limited by the availability of funds.

"...This year, ten individuals met the criteria, however, there will not be adequate funds to support this number of promotions. Five have been chosen based on rationale and rank order submitted by the Dean of Academic Affairs. These individuals will receive the promotion subject to the availability of funds'.

"You will be officially notified by this office when the funds are available." (Emphasis added)

APPEAL OF PATRICIA HUTCHINS
Docket #91-D-2
page 2

On August 29, 1990, (Appellant's Attachment #3) Dr. Larrabee notified the appellant that:

"A moratorium has been placed on promotions until at least July 1, 1991.

"Your accomplishments leading to the promotion stands and will be rewarded when funds are available." (Emphasis added)

It is apparent from the appellant's own submissions that her promotion from Associate Professor to Professor, after initial qualification and ranking for same, was predicated solely upon the availability of funds. It is equally clear that the appellant had been advised as early as April, 1990, that if and when funds were available, she would be promoted. Those funds were never available, and therefore, the promotion did not occur.

The appellant could not have been "demoted" having never been promoted due to the moratorium on funding for promotional purposes. While the Board is sympathetic to the appellant's disappointment at being held at her current level of pay and her current position title, it is neither willing nor able to require the agency to implement a promotion which would be in clear violation of its own "funds available" policy for promotion.

The Board found that Ms. Hutchins did not suffer a reduction in her salary, nor was she demoted. Accordingly, Ms. Hutchins' appeal is dismissed.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Margo Hurley, SEA Field Representative
Sarah Hopley, Human Resource Coordinator, N.H. Technical Institute
H. Jeffrey Rafn, Commissioner, Postsecondary Technical Education