



87-P-102

DEPARTMENT OF PERSONNEL
State House Annex—Room #1
Concord, New Hampshire 03301
Telephone: (603)271-3261

PROMOTION APPEAL TRIBUNAL DECISION

In the Matter Of:

MARINA J. JOHNSON

November 4, 1986

The Promotion Appeals Tribunal met on October 14, 1986 to hear the appeal of Marina J. Johnson relative to her non-selection to the position of Accounting Technician in the Division of Human Services. Ms. Johnson was represented by SEA Field Representative Stephen J. McCormack. The Division of Human Resources was represented by Robert LaRoche, Business Administrator.

In his testimony, Mr. McCormack stated that Ms. Johnson is a permanent employee and that a probationary employee was selected for the position. He stated that the Personnel Rules indicate preference must be given to permanent employees. Thus, he requested that the position in question be vacated and given to Ms. Johnson.

Mr. LaRoche's testimony revealed that there were five candidates for the position and Ms. Johnson and the individual selected were the two finalists. He further stated that although "technically" Ms. Johnson was an excellent candidate, the position is supervisory in nature and that the successful applicant demonstrated a greater ability to deal with the personalities involved and therefore could better handle and deal more effectively with the supervisory responsibilities required of the position.

The question arose as to whether or not Ms. Johnson had requested the reasons, in writing, as to why she had not been selected. Testimony revealed that she did so request and Mr. Tolme talked with her regarding the reasons for her non-selection but used a rather feeble excuse for not providing the answers in writing. In fact, his reason could almost have been considered intimidating. Ms. Johnson stated that at that point she was confused about the whole situation and contacted Mr. McCormack regarding her rights.

PROMOTION APPEAL TRIBUNAL DECISION

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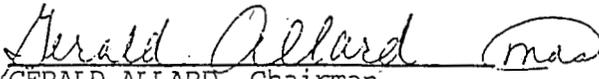
Marina J. Johnson

November 4, 1986

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After due consideration, the Tribunal finds that the Division of Human Services did correctly follow the appropriate procedures outlined in the Personnel Rules in the selection process. Their decision was that it was not "possible and reasonable" to promote a qualified permanent employee because they did not, in their best judgment regarding the scope of responsibilities inherent in the position in question, have a qualified permanent employee to promote. The Tribunal therefore denies Ms. Johnson's appeal.

The Tribunal also finds that the Division of Human Services did not properly abide by the Personnel Rules or the Collective Bargaining Agreement in that they failed to provide Ms. Johnson, as requested, with the reasons for non-selection in writing as required by Per 302.03(e). The Tribunal therefore directs that Ms. Johnson's request be properly fulfilled by providing the reasons for her non-selection in writing. The Tribunal also strongly recommends that Ms. Johnson be counselled so that she may correct any shortcomings or weaknesses and better qualify herself for future vacancies.


GERALD ALLARD, Chairman
Promotion Appeal Tribunal

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cc: Stephen J. McCormack
State Employees' Association

Jan Beauchesne
Division of Human Services

COPE OF ADMINISTRATIVE RULES

PART Per 302 CERTIFICATION AND APPOINTMENT

Per 302.01 Request for Employees.

(a) Whenever an appointing authority wishes to fill a vacancy of a new position in the state classified service, a requisition for a employee shall be submitted to the director on a form prescribed by him. Each such request shall identify the position by reference to the established class title and to the name of the employes last occupying the same, or in the case of a newly established position, the date of its establishment. Insofar as practicable, each vacancy shall be anticipated sufficiently in advance to permit the director to determine who may be available for appointment or, if necessary, to establish a register of eligibles.

(b) If the appointing authority can reasonably and properly fill the vacancy by the promotion, transfer, or demotion of an employee presently employed within the department or agency, or by the reemployment of a former employee, in accordance with the policies stated in Per 302.03, 302.04, 302.05, and 302.05 below, his recommendation shall be stated in the requisition. The director shall act upon such recommendation in accordance with the policies in the above-mentioned sections.

Source. #2315, eff 4-15-83

Per 302.02 Methods of Filling Vacancies.

(a) All vacancies in the state classified service shall be filled by transfer, promotion, demotion, reemployment, or original appointment, but not necessarily in this order.

(b) Original appointment may be of the following types: temporary, seasonal, emergency, exceptional, provisional, or permanent.

(c) All vacancies shall be posted on departmental bulletin boards so that employees may have the opportunity to apply for promotion. Normally, the posting period shall be for a minimum of 5 working days and shall not be shortened unless approved by the director at the request of the appointing authority.

Source. #2315, eff 4-15-53

Per 302.03 Promotion from Within a Department or Agency.

★ (a) A vacancy shall, whenever possible, ~~be filled~~ **id reasonable by** promotion of a qualified permanent employee from within the department or agency.

(b) Selection for such promotion shall be based upon capacity for the vacant position; ability as evidenced by past performance, and length of service with the department.

> seniority count

CODE OF ADMINISTRATIVE RULES

(1) It is the prerogative of the appointing authority to give such might to an employee's job performance as he deems appropriate when considering the employee for appointment to a vacancy.

(2) If the appointing authority finds certain professional and personal qualifications lacking in even ostensibly qualified candidates for promotion, employees may be denied promotion.

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(3) While probationary and part-time employees not having six months service within a one-year period can respond to a departmental posting, preference in selection must be given to permanent employees.

(c) The director, if requested or deems desirable and whenever he is reasonably able to do so, will assist the appointing authority in the determination of relative capacity for the vacant position by conducting a promotional examination. The announcement of an intra-department promotional examination shall constitute a posting of vacancies.

(d) Prior to promotion, a selected employee must be approved as qualified by the director for the position to be filled.

(1) However, whenever an employee is to be promoted to a position in a class of more than one higher level in the same class series, or to a position in another class series, he must qualify by passing an examination.

(e) An employee who is not selected after applying for a posted position shall be informed in writing of their non-selection and, if requested, the reason therefore.

(f) Any aggrieved employee failing of promotion may, within 5 working days from the date of his non-selection, appeal to an appeal tribunal consisting of one member of the personnel commission and 2 agency personnel officers not from the agency connected with the appellant.

Date

All promotional appeals go directly to personnel commission
(g) The personnel commission member shall serve as chairman and the 2 agency personnel officers shall be appointed by the director of personnel. The decision of this tribunal shall be final.

employee receive

not appealable except to courts and courts will only review for following proc

Source. #2315, eff 4-15-83

Per 302.04 Reemployment With a Department or Agency.

(a) Employees laid off from an agency for not more than 3 years, as distinguished from 'employees separated for cause or those voluntarily leaving their employment, shall be given preference over original appointments; within said agency. Such former employees may be given preference over candidates for promotion when so requested by the appointing authority.

State of New Hampshire

PERSONNEL APPEALS BOARD

Edward J. Haseltine, Chairman

Gerald Allard

Loretta Platt



EXECUTIVE SECRETARY

Mary Ann Steele

PERSONNEL APPEALS BOARD

State House Annex

Concord, New Hampshire 03301

Telephone (603) 271-3261

November 25, 1986

Stephen J. McCormack
Field Representative
State Employees' Association of N.H.
163 Manchester Street
Concord, New Hampshire 03301

87-P-102

re: Marina J. Johnson

Dear Mr. McCormack:

By letter dated November 12, 1986, you requested a hearing on behalf of the above-named individual to appeal a decision of the Promotion Appeal Tribunal dated November 4, 1986. That decision denied Ms. Johnson's appeal of non-selection to the position of Accounting Technician in the Division of Human Services.

At its meeting on November 25, 1986, the New Hampshire Personnel Appeals Board reviewed the record in this matter. The Board then voted to affirm the decision of the Promotion Appeal Tribunal. Your request is hereby denied.

Very truly yours,

FOR THE PERSONNEL APPEALS BOARD

Mary Ann Steele

MARY ANN STEELE

Executive Secretary

N. H. Personnel Appeals Board

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cc: Jan D. Beauchesne, Personnel Officer
Division of Human Services