

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

Appeal of Kathryn McCarroll
Docket #93 - P-5
Division of Children, Youth and Families
(Formerly Children and Youth Services)

September 21, 1994

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, August 31, 1994, to hear the appeal of Kathryn McCarroll, an employee of the Division for Children, Youth and Families (formerly Children and Youth Services) regarding her non-selection for promotion to the position of Juvenile Services Officer Supervisor. Ms. McCarroll was represented at the hearing by SEA Field Representative Stephen J. McCormack. Sandra Platt, Administrator, appeared on behalf of the Department of Health and Human Services.

The Board heard the appeal on offers of proof made by the representatives of the parties. The record consists of the audio tape recording of the hearing, and documents entered into evidence which had been exchanged by the parties and filed with the Board prior to the hearing. Upon review of that information, the Board found that the following facts are not in dispute:

1. Ms. McCarroll was one of three in-house applicants who certified as meeting the minimum qualifications for promotion to a posted vacancy of Juvenile Services Supervisor, Division for Children and Youth Services, position #18509.
2. When Ms. McCarroll applied for promotion to the position of Juvenile Service Officer Supervisor, she met the minimum qualifications for promotion. At that time, she held a bachelor's degree and was in her third year of law school.
3. Ms. McCarroll was notified by letter dated October 6, 1992, signed by Rose Pound, Acting (Eastern Office) Area Administrator, that she had not been selected for promotion to Juvenile Service Officer Supervisor. The notice of non-selection stated, in pertinent part, "Although you offered us an independent, honest and thorough presentation of your philosophy regarding the role of a Division for Children and Youth Services supervisor, it doesn't meet my expectations. Unfortunately, it is inconsistent with the present philosophy of the Division."

4. After receiving notice of non-selection, Ms. McCarroll initiated the Procedures for Informal Settlement of Disputes (Part Per 202, Rules of the Division of Personnel) by requesting a meeting with Rose Pound, the Acting Area Administrator. A Step I meeting was held by Rose Pound on November 5, 1992, and Step II meeting was held by Sandra Platt (Designee for Commissioner Bird) on December 29, 1992. The decision to not select Ms. McCarroll for promotion was upheld at both Steps.
5. On January 18, 1993, Personnel Director Virginia Lamberton issued a Step III Informal Settlement decision pursuant to Per 202.03 of the Rules of the Division of Personnel, advising the parties that she would neither amend the action in dispute nor schedule a meeting for further review.
7. On February 2, 1993, the Board received Ms. McCarroll's appeal of her non-selection for promotion to the position of Juvenile Services Officer Supervisor.
8. The candidate selected for promotion was an employee of the Department of Health and Human Services who did not meet the minimum qualifications for promotion, lacking a bachelor's degree, when the position vacancy was originally posted "in-house". When the posting went to "open recruitment", the employee had completed the course work and was deemed to meet the minimum requirements for promotion.

Ms. McCarroll argued that her non-selection for promotion constituted a violation of Per 602.02 of the Rules of the Division of personnel, which states that whenever possible, selection by the appointing authority to fill a vacancy shall be made from within the agency, and that the selection shall be based upon the employee's possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position. She further argued that the agency abused its authority in denying her promotion on the basis of "philosophical differences".

Ms. Platt said that in selecting a candidate for promotion to the position of JSO Supervisor, the Division for Children and Youth Services was seeking certain "key elements". The successful candidate would be expected to make frequent high-level contact with Court officials, law enforcement agencies, State agencies and the general public in assuring the harmonious exchange of information necessary for the Court's use in case determination and management. The position requires tact and professionalism, as well as a commitment to the Division's philosophy of teamwork.

Ms. Platt said that Ms. McCarroll's credentials and work record were excellent, and that if she had "talked teaming" during her interview, she would have been selected for promotion. She said that the interview panel would testify, however, that Ms. McCarroll was more interested in "business as usual" and that she failed to demonstrate a commitment to "blending of roles" and "teaming" which were considered key elements in the selection decision. She said Ms. McCarroll left the interview team with the impression that she was intent on continuing to "act as an individual" rather than working as part of a team. Ms. Platt said that her offers of proof would cover the interview team's recollection of Ms. McCarroll's response to questions asked during the interview process.

Mr. McCormack objected to any offers of proof which the State might make concerning the questions asked or answers given during the appellant's promotional interview. Mr. McCormack stated that among the documents he received from the State which were being offered into evidence, there was a list of 5 sets of questions which purportedly had been asked of Ms. McCarroll at her promotional interview. He said that the sheet did not contain what Ms. McCarroll's answers to those questions, and that without seeing those answers, it was impossible for him to prepare the case. He said that the agency had the advantage of reviewing the documents containing Ms. McCarroll's responses and could make whatever representations it wanted without Ms. McCarroll having any way to dispute them.

Ms. Platt responded that the State had not reviewed answers to the questions, and was relying solely upon what the interview team members remembered about Ms. McCarroll's interview. She said that she had met with the interview team prior to the hearing and would make offers of proof based upon the testimony the interview team would have offered if called to testify at the hearing.

Mr. McCormack repeated his objection, arguing that under the offer of proof format, he would be unable to challenge the witnesses' recollections through cross-examination. The Chair overruled the objection, noting that Ms. McCarroll was present at the interview and was free, through her representative to relate her own account of what transpired at the promotional interview. The Chairman further noted that if the offers were contradictory, the Board would have to weigh the facts and proffered evidence in reaching its decision.

Ms. Platt said that if Ms. Pound were called to testify, she would tell the Board that the Division's philosophy and focus had shifted from dealing with families in their individual aspects to addressing families as a whole. She also would testify that throughout the interview, she had focused on the need to function as a team. She said Ms. Pound would testify that the successful JSO Supervisor candidate needed to demonstrate a knowledge of, and espouse a belief in, "teaming and blending of roles" in working with other supervisors and staff. Ms. Pound believed Ms. McCarroll did not share that philosophy, that she had described Juvenile Services Officers and Child Protective Service Workers as having distinctly different functions, and that she had stated during the interview, "CPSW's are social workers; JSO's are officers of the court".

Ms. Platt said that Ms. Pound would testify that the appellant had not demonstrated a willingness to work through the chain of command, but would take her concerns "to the top". Ms. Pound would also testify that when the appellant was given an opportunity to demonstrate her understanding of "teaming" in dealing with a difficult employee, she had said she would utilize discipline in dealing with a difficult subordinate. Ms. Platt said that both Ms. Pound and Ms. Seeger would testify that the agency wanted JSOs to spend more time in the district offices while Ms. McCarroll believed that they belonged in the courthouses. She said they would further testify that Ms. McCarroll did not express a commitment to mediating with the judges or attempting to educate them concerning DCYS's policy shift, and that when she was asked about her relationship with the courts, Ms. McCarroll said, "I work for the judge and will do what he asks." Ms. Platt said that the interview team members would testify that they had found Ms. McCarroll's approach to be too independent. Ms. Platt said that when Ms. McCarroll

was asked why she wanted the job, she had responded that it would mean less work for more money.

Mr. McCormack said that Ms. McCarroll would testify that the interview panel had not stressed "teaming", and that she had not been asked part 2 of question 2 on the interview question sheet. He said Ms. McCarroll would testify that the questions asked of her were somewhat different from those appearing on the State's exhibit. However, he made no contradictory offers of proof with regard to what questions the appellant believed she had been asked or what she recalled answering.

Mr. McCormack said that if there were "philosophical differences" between Ms. McCarroll and the agency, they could have been worked out during her probationary period. Mr. McCormack also said that Ms. McCarroll's non-selection constituted a violation of the Rules of the Division of Personnel in that the candidate ultimately selected for promotion from a later "outside recruitment" was actually a Department of Health and Human Services employee who did not meet the minimum qualifications for promotion at the time of the original in-house posting. He said that Ms. McCarroll would testify that she was well qualified for promotion, and that on the basis of her qualifications, she should have been selected for promotion.

At each step of the informal settlement and appeal process, Ms. McCarroll has argued that the agency may not deny her promotion solely on the basis of "philosophical differences", and that a "philosophical difference" is neither a personal nor a professional qualification. The Board does not agree. The position for which Ms. McCarroll had applied is a highly responsible, highly visible position, particularly in terms of interaction with law enforcement agencies and the courts. The department was acting within its discretion when it determined that in order to be considered the best qualified employee for promotion, candidates needed to demonstrate their belief in and commitment to "teaming" as the only acceptable management style. Although the Board might not have established that same selection criteria for promotion, it may not supplant its judgment for that of the appointing authority.

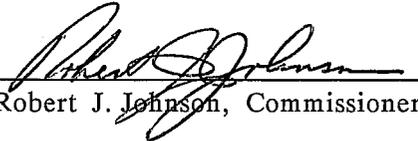
Under the provisions of Per 602.02(c), the appointing authority did have articulable reasons sufficient to form the basis, of its opinion that Ms. McCarroll was not the most qualified candidate under the criteria determined by the agency. Similarly, while the notice of non-selection did not specify the nature of the "philosophical difference" which formed the basis of the decision to not promote Ms. McCarroll, the reason was sufficiently stated to satisfy the administrative requirement that the appointing authority notify the employee in writing why the employee was not selected for promotion.

Accordingly, the Board voted unanimously to deny Ms. McCarroll's appeal. Ms. McCarroll failed to demonstrate that the agency abused its discretion in placing so much emphasis on the "team" concept, or that under the standard for selection articulated by the agency, she was the most qualified candidate for promotion. In the absence of contradictory offers of proof which the Board might weigh in assessing Ms. McCarroll's relative capacity for the vacancy, the Board voted unanimously to deny the appeal.

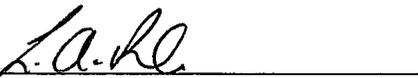
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Vice-Chairman



Robert J. Johnson, Commissioner



Lisa A. Rule, Commissioner

- cc: Virginia A. Lamberton, Director of Personnel
- Sandra Platt, Administrator, Health and Human Services
- Stephen J. McCormack, SEA Field Representative