

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Susan Lovegreen

Docket #2004-T-006

Health and Human Services/Office of Information Technology

Personnel Appeals Board Decision

In Re: April 25, 2003 Written Warning

May 21, 2004

On March 17, 2004, parties to the above-titled appeal appeared before the New Hampshire Personnel Appeals Board at a Mandatory Pre-hearing Conference to facilitate the scheduling of a hearing in Ms. Lovegreen's appeal of her January 16, 2004 termination from employment as a Technical Support Specialist I in the Office of Information Technology. At that meeting, the parties agreed that Ms. Lovegreen had a pending appeal relative to a written warning issued to her on November 14, 2003. The parties disagreed, however, whether or not the appellant had a valid, pending request for informal settlement of a warning issued to her on April 25, 2003. The Board asked the parties to submit memoranda outlining their respective positions on the question of whether a timely appeal of the April 25, 2003, letter of warning was filed with the Personnel Appeals Board. Both parties submitted memoranda as requested.

Having reviewed the memoranda and supporting documents the Board determined that:

1. On February 11, 2003, Kimberly Taylor-Miller, the appellant's immediate supervisor, issued to the appellant a "Notation of Counseling Session." In that memorandum, Ms. Taylor-Miller described a February 4, 2003 meeting between Ms. Lovegreen, John Avlas, Jeanne LaBelle and Ms. Taylor-Miller to discuss the effect of "negative comments" that the appellant allegedly made within earshot of coworkers in the Desktop Technical Services work area. on or about January 17, 2003.

2. On February 24, 2003, John Andersch filed on Ms. Lovegreen's behalf a Step I Grievance concerning an alleged violation of Article XVI, Section 16.5 of the Collective Bargaining Agreement. In the grievance, Mr. Andersch refers to a January 14, 2003 weekly meeting between the appellant, Ms. LaBelle, Ms. Taylor-Miller and Mr. Avlas in which the appellant reportedly was informed she was under investigation for an event that occurred on January 7, 2003. It also refers to a meeting on February 4, 2003 in which Mr. Avlas complained of "Management's behavior" at that meeting. As a remedy for the alleged violation of the contract (CBA), Mr. Andersch requested that "Ms. Lovegreen and her position be moved to another department."
3. By letter dated March 25, 2003, Jeanne M. LaBelle responded to the Step I grievance, denying the request to transfer Ms. Lovegreen.
4. By letter dated April 25, 2003, Kimberly Taylor-Miller issued a written warning to the appellant for failure to meet the work standard as a result of her allegedly inappropriate comments and conversations in the workplace. The letter concluded by stating that, if Ms. Lovegreen took exception to the warning, she had 15 calendar days in which to request that the matter be resolved through the procedures for informal settlement of disputes pursuant to Per 202.01 of the Rules of the Division of Personnel by submitting to Ms. Taylor-Miller a detailed written statement outlining the reasons why the appellant believed the warning should not have been issued. The letter indicated that such statement must be received by Ms. Taylor-Miller on or before May 9, 2003.
5. In order to be timely, a request for informal settlement of a written warning must be filed within 15 calendar days of the action giving rise to the dispute [Per 202.02 (a)(3)] or, in this case, no later than May 10, 2003. May 10, 2003 was a Saturday. Therefore, a timely request for informal settlement should have been filed by the close of the next business day, or not later than May 12, 2003.
6. By letter dated May 16, 2003, SEA Field Representative Michelle McCord filed with Ms. Taylor-Miller a Step I informal settlement request.
7. The May 16, 2003 request was not timely and should have been dismissed as such.
8. Although the request for informal settlement was not timely, Ms Taylor-Miller scheduled a meeting for June 10, 2003 that was attended by Ms. McCord, Ms. Lovegreen, Ms. LaBelle and Mr. Foster (SEA Steward). In a letter to Ms. McCord dated June 13, 2003, Ms. Taylor-Miller issued a decision affirming the issuance of the written warning. She referred the appellant to Step II of the informal settlement process, instructing the

appellant to direct such correspondence to Richard Bailey, Director of the Office of Information Systems.

9. By letter dated July 1, 2003, SEA Steward Stephen Foster requested a meeting with Richard Bailey as an "Appeal to Step II of Informal Dispute." His letter began, "Transmitted herewith is our timely appeal to Step II of the Informal Dispute Process as provided at Part 202.2 (b) of the Personnel Administration Rules."
10. In order to be timely, a Step II request for informal settlement must be submitted within 15 calendar days of the action in dispute [Per 202.02 (b)(1)] and must include a detailed written description of the basis for the dispute.
11. As Ms. Taylor-Miller's letter was dated June 13, 2003, a timely request for informal settlement should have been received by Mr. Bailey no later than June 28, 2003. Since June 28, 2003 was a Saturday, a timely request could have been submitted by the close of business on June 30, 2003.
12. Mr. Foster's July 1, 2003 Step II Informal Settlement request was not timely and should have been dismissed as such.
13. By letter dated August 27, 2003, Mr. Foster submitted to Robert Anderson, Chief Information Officer at the Office of Information Technology an "Informal Dispute Step III Appeal." In that letter, he indicated that because of "the inability to schedule a meeting at Step II of the process with Mr. Richard Bailey," the appellant had been instructed on August 26, 2003 to schedule a meeting with Mr. Anderson instead.
14. Mr. Anderson scheduled what appears to be a Step III meeting on September 19, 2003, and issued a decision by letter also dated September 19, 2003, denying the request to relocate or transfer the appellant out of her existing supervisory team.
15. By letter dated October 8, 2003, Lorri Hayes,,SEA Contract and Field Operations Administrator, filed an appeal on Ms. Lovegreen's behalf with Personnel Director Joseph D'Alessandro. Ms. Hayes indicated that the appellant did not receive a copy of Mr. Anderson's September 19, 2003 letter until September 24, 2003.
16. According to Per 202.03 (a) of the Rules of the Division of Personnel, "If an employee's dispute is not resolved under Per 202.03, the employee shall have the option to request a review by the director [of personnel] within 15 calendar days of the decision of the appointing authority or the expiration of step III."
17. In order to be timely, a Step IV request as authorized by Per 202.03 of the NH Code of Administrative Rules must have been received by the Director of Personnel within 15

calendar days of the date of Mr. Anderson's decision, or not later than October 4, 2003. Since October 4, 2003 was a Saturday, the appellant had until the close of business on Monday, October 6, 2003, in which to file such a request. The request dated October 8, 2003, was not timely and should have been dismissed as such.

18. Director D'Alessandro replied by letter dated November 17, 2003. His letter refers to two separate letters from Ms. Hayes and/or the SEIU, dated October 20, 2003 and October 8, 2003. The exhibits offered by the parties include only the letter dated October 8, 2003, in which Ms. Hayes requests a meeting with Mr. D'Alessandro to appeal the April 25, 2003 letter of warning. She also refers to a pending grievance concerning a "Disciplinary Investigation that took place on February 4, 2003."
19. In his November 17, 2003 response, Director D'Alessandro indicated that he had decided to hold in abeyance a decision on the written warning, but to "...rule in favor of Ms. Lovegreen on the Work Plan Expectations and transfer issues..."
20. By letter dated November 26, 2003, Chief Information Officer Robert Anderson requested that the Director of Personnel reconsider his November 17, 2003 decision to purge all files of the work plan issued to the appellant on July 22, 2003, and his instructions to transfer the appellant to another supervisor or work unit. Mr. Anderson also asked the Director to issue a decision on the pending letter of warning.
21. By letter dated December 22, 2003, Sally Gallerani, Director of Managed Support Services, submitted a letter and documents supporting Mr. Anderson's November 26, 2003 request. She also asked the Director to "reconsider [his] decision regarding the work plan, rescind [his] directive to transfer Ms. Lovegreen, and render a decision relative to the April 25, 2003 Letter of Warning."
22. By letter dated January 6, 2004, Director D'Alessandro informed Ms. Hayes that he had reviewed the requests filed by Mr. Anderson and Ms. Gallerani along with his letter of November 17, 2003 and the documents submitted by OIT. He wrote, "Accordingly, I have decided to rescind my decision of 17 November 2003 regarding Ms. Lovegreen's Letter of Warning (failure to meet work standard) and recommend that it remain in effect as submitted. However, I stand by my decision regarding the Work Plan Expectations appeal... it should be removed."
23. Correspondence between the parties, as well as correspondence between the parties and the Director of Personnel, makes it clear that the letter of warning was being dealt with as an issue separate and distinct from the enforceability of the July 22, 2003 work

plan or the Director's November 17, 2003 directive to transfer the employee to another department or work unit.

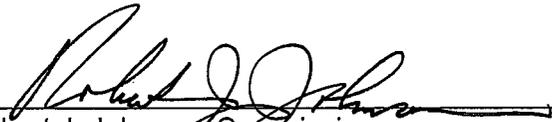
24. In a letter dated January 8, 2004, Ms. Hayes wrote, "On behalf of Susan Lovegreen, an employee of the Office of Information Technology, the State Employees' Association, SEIU Local 1984, wishes to appeal your letter dated January 6, 2004. The Union disagrees with Ms. Gallerani's assessment of Ms Lovegreen's performance and conduct and we disagree with the facts as you stated in your January 6, 2004 letter... We ask that you reconsider your letter dated January 6, 2004. Without your reconsideration, Ms. Lovegreen may be removed from State service."
25. Per 202.03 (f) states, "If the employee's dispute is not resolved under Per 202.03, the employee shall have the option to file an appeal with the board..."
26. There is no provision at any step during the process of informal settlement for reconsideration of a decision of the director or of the appointing authority.
27. The agency apparently declined to transfer the appellant or remove the work plan from the appellant's file because it did not believe the Director had the authority to make such an order.
28. Ms. Lovegreen and her union representative met with Ms. LaBelle and Ms. Taylor-Miller and were presented with evidence the agency believed supported her termination from employment.
29. The appellant was informed by letter dated January 6, 2004, that the Director of Personnel had issued a decision on the request for informal settlement of the April 25, 2003 written warning.
30. RSA 21-I:58, I states, in pertinent part, "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."
31. In accordance with RSA 21-I:58, I, the appellant had 15 calendar days in which to appeal the Director's January 6, 2004 decision regarding the letter of warning. In order to be timely, an appeal must have been received by the Board no later than Wednesday, January 21, 2004.

The Board found that the appellant failed to timely file an appeal of the Director's January 6, 2004 decision. Accordingly, the appellant's April 25, 2003 written warning is a standing warning that was not appealed. It remains a part of the appellant's personnel file and the agency may deem it effective for the purpose of further disciplinary action.

THE NH PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairman



Robert J. Johnson, Commissioner



Anthony B. Urban, Commissioner

cc: Director of Personnel
Michael Reynolds, SEA General Counsel
John Martin, Attorney, Department of Health and Human Services