

State of New Hampshire



PERSONNEL APPEALS BOARD

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

Request for Reconsideration

Appeal of James Lutz - Department of Environmental Services

Docket #91-O-18

April 29, 1998

By letter dated February 27, 1991, the State Employees' Association requested reconsideration of the Board's February 14, 1991, decision denying Mr. Lutz's request for a hearing on the merits of his appeal. The State's Objection to Reconsideration was received on March 12, 1991.'

In his original request for a hearing on Mr. Lutz's behalf, Mr. Hardiman wrote:

"On November 16, 1990, Mr. Lutz was notified that he was being laid off due to climate conditions. He was also notified that he would be recommended for rehire when the weather conditions permitted.

"Because the layoff occurred prior to December 1, 1990, Mr. Lutz applied for the provisions of House Bill 1506, namely, three months of health insurance.

"He was told he did not qualify for the benefits because he was a seasonal employee. This is contrary to the fact that he had been employed in a full time

¹ Mr. Lutz's appeal file mistakenly had been treated as inactive, in spite of properly filed motions for reconsideration and objections thereto by the parties. The Board appreciates the State Employees' Association's diligence in ensuring that the file was reactivated for the Board's review and consideration.

capacity for approximately three years. In fact, in the fall of 1990, the agency sought year round funding for Mr. Lutz's position and it was approved.

"In a response to an inquiry by the SEA, Director Delbert F. Downing responded that Mr. Lutz was not laid off due to budget restrictions but rather to lack of work. We maintain that whatever the reason, Mr. Lutz was laid off as a full time employee, not a seasonal employee."

On February 14, 1991, the Board issued a decision finding that it lacked subject matter jurisdiction to hear the appeal. In dismissing the appeal, the Board found that the appellant was requesting relief in the form of a ruling that Mr. Lutz's employment status at the time of lay-off entitled him to insurance benefits under the provisions of HB-1506.

In his Request for Reconsideration, Mr. Hardiman argued that as a full-time employee of the State of New Hampshire, Mr. Lutz was subject to the Rules of the Division of Personnel, including the provisions allowing him to be laid-off. He argued that although Mr. Lutz did not challenge the State's right to effect a lay-off, the reasons for such lay-off must conform to the Rules of the Division of Personnel. He argued that contrary to the Board's findings, Mr. Lutz was, "not requesting the Board to extend the benefits of HB 1506," benefits which "would automatically be extended if Mr. Lutz was laid off under the Rules of the Division of Personnel as they pertain to full time employees." He argued that the Board had jurisdiction to hear appeals based on an application of the Personnel Rules, and therefore should grant Mr. Lutz a hearing in order to declare that he was laid-off effective November 29, 1990.

The State's March 11, 1991, Objection to Reconsideration, argued that the current personnel rules permit agencies to, "...lay-off employees due to lack of work ([Former] Per 308.05)." The State argued that the appellant was responsible for grounds maintenance at the Connecticut-Coos Project, performing work which could not be performed in the winter months when the ground was frozen. The State argued that in the past, there was indoor work available to carry the appellant through the winter months; however, no such work was available and the appellant was therefore laid off for lack of work. The State asserted that while it intended to rehire the appellant in the spring when

outside work could continue, and that the agency would make every effort to continue Mr. Lutz's employment as long as there was work available, it could make no guarantee of continuous employment as his duties made it extremely difficult to find work in the winter months.

On November 13, 1991, Mr. Hardiman submitted to the Board a copy of a letter dated October 15, 1991, from Donald M. Rapoza to Mr. Lutz. In that letter Mr. Rapoza wrote, "This is in reference to the May 21, 1991 letter we sent you regarding the conditions of your employment at the Connecticut-Coos Project. As a reminder your last date of employment as a seasonal temporary employee ends at the end of the normal work day on October 31, 1991." Mr. Hardiman argued that the agency's letter, "...once again puts Mr. Lutz in a layoff status without the benefits extended to him by the New Hampshire Legislature. We maintain that Mr. Lutz was a full time employee when he was first laid off and because of that status he is entitled to benefits extended by the Legislature. The agency's move to place Mr. Lutz in another category of employment is purely economics without regard to the well being of a permanent employee."

First, there appears to be no dispute that the effective date of Mr. Lutz's original lay-off was November 29, 1990. (See February 16, 1990 letter from Vernon Knowlton to Jim Lutz.) There also appears to be no dispute that at the time of lay-off, he was working full-time in a seasonal position. Under the provisions of RSA 98-A:6, the legislature granted "permanent" status to full-time seasonal employees who work the equivalent of six months or more in any twelve month period. In light of the undisputed fact that Mr. Lutz worked on a full-time basis in a seasonal position for a period well in excess of six month minimum, Mr. Lutz had already earned the rights and benefits of other permanent employees. The agency's understanding of that fact is reflected in Mr. Knowlton's assurances that the appellant would be "paid the balance of annual leave, bonus leave and any compensation time," and that his, "...accumulated sick leave² will be maintained and credited to [him] upon return of employment within three years." Therefore, a finding by the Board that Mr. Lutz was "a full time employee" laid off from employment effective November 29, 1990, would be superfluous.

² The statute makes no provision for payment of 1/3 of a permanent seasonal employee's accumulated sick leave when laid-off at the end of a season.

Clearly, the real issue remains whether or not Mr. Lutz was entitled to benefits under the provisions of HB-1506, a question that turns on the basis for the lay-off, not the employee's status as a "permanent seasonal" employee as defined by RSA 98-A:6. Inasmuch as the appellant argued in both his original pleadings and his Motion for Reconsideration that the basis for lay-off was irrelevant³, there appears to be no need for a hearing to determine that fact. The Board continues to find that it lacks subject matter to determine the appellant's entitlement to benefits under the provisions of HB-1506.

FOR THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Chairman

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol Street, Concord, NH 03301
Thomas Hardiman, SEA Director of Operations, PO Box 3303, Concord, NH 03302-3303
Elizabeth Cooper, HR Administrator, Dept. of Environmental Services, Hazen Drive,
Concord, NH 03305

³ The appellant argued that, "An agency should not be allowed to change [an employee's position] status arbitrarily to avoid the payment of benefits." There is neither evidence nor argument to support the assertion that the agency changed the employee's position status, nor is there persuasive evidence or argument that such a change, if it occurred, affected any of the appellant's entitlements, or was effected by the agency as a means of avoiding payment of any of the benefits available to the appellant under the Rules of the Division of Personnel.

State of New Hampshire



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PERSONNEL APPEALS BOARD

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Concord, New Hampshire 03301
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APPEAL OF JAMES LUTZ Docket #91-0-18 Department of Environmental Services (Eligibility for Benefits Under HB-1506-FN-A)

February 14, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Johnson) met Wednesday, February 13, 1991, to review a December 21, 1990 appeal from SEA Director of Operations Thomas Hardiman filed on behalf of James Lutz relative to his eligibility for paid medical insurance benefits under the provisions of HB 1506.

Mr. Hardiman alleges that Mr. Lutz's lay-off resulted prior to December 1, 1990, that he occupied a position which was funded for year-round work, and that pursuant to Chapter 261, Laws of 1990, *Mr.* Lutz should have been eligible for fully paid medical benefits for 3 months following his lay-off. On January 17, 1991, John Roller, Human Resources Coordinator for the Department of Environmental Services, filed a Motion to Dismiss, arguing that the appellant was laid-off because of lack of work, and not as a product of Chapter 1:16 or any other State law.

PART Per-A 201 Jurisdiction defines those matters which may be appealed to the Board.

Per-A 201.01 Proceedings included. Except as provided in Per-A 201.02, the jurisdiction of the Board shall extend to the following persons and matters.

- (a) Any permanent employee who is dismissed, demoted, or suspended, or otherwise affected by any action of the appointing authority or the division of personnel.
- (b) Any employee or department head, or both, dissatisfied with the decision of the director of personnel regarding the allocation of a position in a classification.

- (c) Any employee or appointing authority dissatisfied with a decision arising out of the application of rules adopted by the director of personnel.

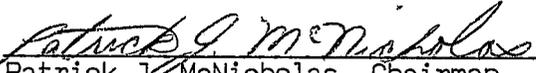
Mr. Lutz is not a "permanent employee...affected by any action of the appointing authority or the division of personnel". In the Appeal of Carol Higgins-Brodersen and William McCann, ___N___, August 27, 1990, the New Hampshire Supreme Court ruled that

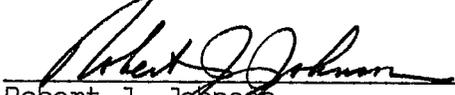
"RSA 21-I:46 grants the Board general authority to hear and decide 'appeals arising out of the rules adopted by the director of personnel . . .'" RSA 21-I:46 . . . Upon review, we conclude that the petitioners' claims are founded upon RSA 98-A:6 (Supp. 1989) and do not arise out of an application of the personnel rules. We therefore hold that the Board's conclusion, that it lacked jurisdiction to hear their appeals under RSA 21-I:46, was both legal and reasonable. See Appeal of Tamm, 124 H.H. at 110-11, 469 A2d at 1293."

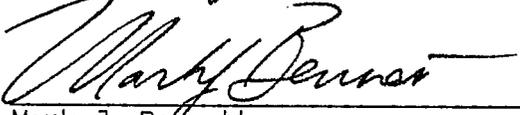
In the instant appeal, Mr. Lutz's claims arise out of the application of Chapter 261:1, Laws of 1990, and not out of the application of a personnel rule. Accordingly, the Board finds that it lacks subject matter jurisdiction in the matter.

The Board voted unanimously to dismiss Mr. Lutz's appeal as provided above.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc: Thomas F. Hardiman, SEA Director of Field Operations
Virginia A. Vogel, Director of Personnel
Civil Bureau, Office of the Attorney General
John D. Roller, Human Resource Coordinator, Dept. of Environmental Services