

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

## **APPEAL OF PHILIP NADEAU** **Supreme Court Case No. 92-075**

**May 23, 1994**

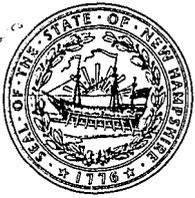
The New Hampshire Personnel Appeals Board (McNicholas and Johnson) met Wednesday, May 4, 1994, to consider a Motion to Confirm Settlement in the above-captioned appeal. Both the Motion and attached Agreement were signed by Clyde E. Terry **on behalf** of the Division of Mental Health and Developmental Services, and Jean Chellis, the appellant's SEA Field Representative.

The Board voted to confirm the settlement. In so doing, the Board expressed no opinion regarding the value of the lump sum payment. Since the parties are in agreement as to the amount of the payment and the withdrawal of the appellant's pending appeal, any further order by this Board is unnecessary.

FOR THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman  
Patrick J. McNicholas, Chairman

cc: Virginia A. Lamberton, Director of Personnel  
Clyde Terry, Legal Coordinator, Division of Mental Health  
Jean Chellis, SEA Field Representative



STATE OF NEW HAMPSHIRE  
 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
 DIVISION OF MENTAL HEALTH AND  
 DEVELOPMENTAL SERVICES

APR 12 1994  
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Harry H. Bird, M.D.  
 Commissioner  
 Department of Health and Human Services  
 Donald L. Shumway  
 Director  
 Division of Mental Health and  
 Developmental Services  
 105 Pleasant Street  
 State Office Park South  
 Concord, NH 03301  
 603/271-5000

Ms. Mary Ann Steele  
 Executive Director  
 Personnel Appeals Board  
 State House Annex  
 25 Capital Street  
 Concord, New Hampshire 03301

April 8, 1994

Re: Appeal of Philip Nadeau  
 Supreme Court Case No. 92-075

Dear Ms. Steele,

Enclosed is a Motion to Confirm Settlement, between the Division of Mental Health and Developmental Services and Mr. Philip Madeau concerning the above captioned appeal. If you could please place this on the boards agenda for immediate action as soon as possible it would be greatly appreciated as the time frame stated within the agreement is going to expire.

If you have any questions please do not hesitate to contact me.

Very truly yours

*Clyde E Terry, Emie*

Clyde E, Terry  
 On behalf of the  
 Division of Mental  
 Health and Developmental  
 Services

CC: Jean Chellis

Enclosures

State of New Hampshire  
Personnel Appeals Board

Appeal of Philip Madeau  
Supreme Court Case Mo.92-075

MOTION TO CONFIRM SETTLEMENT

NOW COMES, the Division of Mental Health and Developmental Services and Philip Nadeau, through their representatives and asks this honorable board to grant this motion to confirm the settlement agreement made between the parties and order payment thereto. The parties further state that;

1. On or about March 17, 1994, the Division of Mental Health and Developmental Services and Mr. Philip Nadeau acting in good faith entered into a settlement agreement in the above captioned personnel appeal. (attachment A)

2. On or about the same date the state employees association acting on behalf of Mr. Madeau and in good faith complied with the terms of the agreement by sending a letter to this board, withdrawing said appeal. (exhibit B)

WHEREFORE, the parties ask this honorable board to grant this motion to confirm the attached settlement agreement made between the parties and order payment thereto and grant any other relief that is just and reasonable.

Respectfully submitted,

Dated: 4/8/94

  
Clyde E. Terry  
On behalf of the Division  
of Mental Health and Developmental  
Services

Dated: 4/8/94

  
Jean Chellie  
Field Representative  
State Employees Association  
on Behalf of Philip Madeau

AGREEMENT

NOW COME the undersigned who enter into the following agreement fully intending to be bound by all of its provisions:

Philip Nadeau will withdraw his present appeal pending before the New Hampshire Personnel Appeals Board (Supreme Court Case #92-075, assented to motion for remand granted June 10, 1993).

The Division of Mental Health, N. H. Department of Health and Human Services shall pay to Philip Nadeau, within thirty (30) days of the execution of this agreement a lump sum payment of Five Thousand Dollars (\$5,000.00).

This agreement shall in no way be construed as an admission of liability or of any fact or allegation by any party.

3/17/94  
Date

Richard Crocker  
Richard Crocker, Director  
Bureau of Developmental Services  
N. H. Division of Mental Health

2/94  
Date

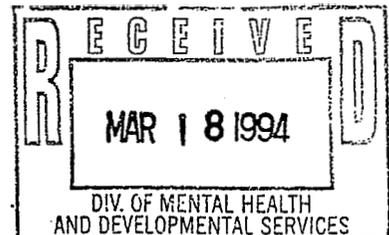
[Signature]  
Witness to Mr. Crocker's  
signature

3/17/94  
Date

Philip Nadeau  
Philip Nadeau

3/17/94  
Date

Jean E. Collins  
Witness to Mr. Nadeau's  
signature





State Employees  
Association of  
New Hampshire, Inc.

Local 1984, Service Employees International Union  
AFL-CIO, CLC

March 17, 1994

Ms. Mary Ann Steele  
Executive Secretary-,  
N. H. Personnel Appeals Board  
State House Annex  
Concord, NH 03301

Re: Philip Nadeau - Laconia Developmental Services  
(Supreme Court Case No. 92-075, assented to motion for remand  
granted June 10, 1993)

Dear Ms. Steele:

Please be advised that the above cited matter was settled  
between the parties this date. Therefore Mr. Nadeau is withdrawing  
his appeal thus eliminating the need for the scheduled March 23,  
1994 hearing before the Board.

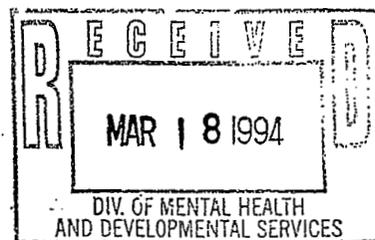
Thank you for your attention to this matter.

Very truly yours,

Jean Chellis  
Field Representative

JC:jc

cc: ✓ Clyde Terry  
Virginia A. Lambertson  
Philip Nadeau



# State of New Hampshire

WPPID860



**PERSONNEL APPEALS BOARD**  
State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

## APPEAL OF PHILIP NADEAU - Docket #90-O-13 Response to Appellant's Request for Reconsideration

January 13, 1992

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, December 4, 1991, to consider the appellant's request for reconsideration in the above-captioned appeal.

The appellant argued that the Board erred in ruling that Superintendent Crocker applied the Rules in a legal and proper manner, contending that Per 308.02 applies "to an employee already properly targeted for layoff". The appellant claimed that applying Per 308.02 to "any employee" contradicts the intent of Per 308.05.

"Per 308.05 Layoff. An appointing authority may lay off an employee within his department whenever necessary by reason of abolition of a position, because of change in organization, lack of work, insufficient funds, or like reasons. Such layoff shall not be considered to reflect discredit on the employee.

"(a) Procedure of layoff. Whenever there is to be a layoff, the appointing authority shall first determine the class or classes to be affected in his department. Each employee whose position is in an affected class shall be considered with other employees in the same class in accordance with their seniority whether he is in a duty or a leave status...."

The appellant did not offer evidence to support a finding that the class "Program Coordinator" was determined to be an "affected class" for the purposes of lay-off in March 1989 when Mr. Nadeau's original reassignment occurred. The record reflects that Mr. Nadeau was assigned to serve as the Staff Psychologist in Peterson Cottage because he was the only one of four Program Coordinators with the educational background to assume that assignment.

Mr. Nadeau appealed that reassignment, resulting in a review by the Director of Personnel who, on November 27, 1989, wrote to SEA Director of Operations Chris Henchey stating, in pertinent part:

"It would appear to me that the Superintendent failed to follow the Rules because he did not demote Mr. Nadeau to a Psychologist II in lieu of lay-off. Accordingly, Mr. Nadeau would appear to be inappropriately

APPEAL OF PHILIP NADEAU

Response to Appellant's Request for Reconsideration

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classified at this time because his job specification, and level of compensation are not consistent with his actual duties."

Ms. Chellis' letter dated, July 13, 1990, addressed to the Board, addressed that issue as follows:

"As Ms. Currier states ... S.E.A. did appeal Mr. Nadeau's March, 1989 reassignment and did in fact drop the issue after receiving Ms. Vogel's November 11, 1989 letter. However, our failure to pursue the matter in no way indicated agreement with Ms. Vogel's position."

Regardless of what the appellant did or did not intend to convey by accepting the reassignment, the record reflects that the decision to assign Nadeau to the position of Staff Psychologist was a valid program decision, and that he was performing the duties of a Psychologist II (salary grade 23) from March, 1989 through July 6, 1990, although he retained his grade 25 salary until he was formally demoted in lieu of lay-off. When Mr. Nadeau was assigned the duties of Psychologist II, he was not the least senior Program Coordinator. At the time of his reassignment, Mr. Nadeau was the only Program Coordinator incumbent qualified to serve as the Psychologist II.

After considering the record before it, the Board voted to affirm its finding that the agency demonstrated "good cause" for its decision to demote the appellant in lieu of layoff, and that the appellant failed to meet his burden of proving that Laconia Developmental Services violated the Rules of the Division of Personnel in so doing. Accordingly, the request for reconsideration is denied.

THE PERSONNEL APPEALS BOARD

  
Mark J. Bennett

  
Robert J. Johnson

  
Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Clyde Terry, Division of Mental Health  
Jean Chellis, SEA Field Representative

# State of New Hampshire

WPPID837



## PERSONNEL APPEALS BOARD

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

APPEAL OF PHILIP NADEAU  
Docket #90-O-13  
Department of Health and Human Services

November 12, 1991

The New Hampshire Personnel Appeals Board (Bennett, Johnson and Rule) met Wednesday, October 9, 1991, to hear the appeal of Philip Nadeau relative to his demotion in lieu of lay-off, effective July 6, 1990. The appellant was represented at the hearing by SEA Field Representative Jean Chellis. Clyde Terry appeared on behalf of the Division of Mental Health and Developmental Services.

Mr. Nadeau was employed by Laconia Developmental services as one of three Program Coordinators. In March of 1989, Mr. Nadeau was reassigned the duties of a Psychologist II, salary grade 23, but was allowed by the agency to retain the title of Program Coordinator, salary grade 25. On July 6, 1990, when Mr. Nadeau was demoted in lieu of lay-off to a position of Psychologist II, the classification from which he was promoted into the position of Program Coordinator. Of the three Program Coordinator incumbents, Mr. Nadeau was the only one holding a Master's Degree in Psychology. The remaining two Program Coordinator incumbents hold Master's Degrees in Social Work.

The State argued that in order to carry out both a federal court order and the legislative mandate for "downsizing" of Laconia Developmental Services, without compromising the ability to develop a community based service network for the mentally and developmentally disabled, it was necessary to demote Mr. Nadeau rather than one of the other Program Coordinators.

The appellant argued that Mr. Nadeau's demotion was in violation of the Personnel Rules in that having selected the classification "Program Coordinator" for reduction in force, the Department of Health and Human Services was obligated to lay-off the least senior Program Coordinator, Todd Ringelstein, rather than demoting Mr. Nadeau. The appellant offered no evidence concerning his qualifications for positions of Program Coordinator assigned to the Division of Mental Health.

Immediately after the close of the hearing, the Division of Mental Health and Developmental Services asked to be allowed to submit its requests for findings of fact and rulings of law, even though the case was considered to be submitted. The appellant had no objection. The Board, allowed the submission of those requests for the Board's review.

APPEAL OF PHILIP NADEAU  
Docket #90-0-13  
Department of Health and Human Services  
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In consideration of the record before it, the Board voted to grant the State's requested findings of fact. The State's proposed Rulings of Law are disposed of as follows:

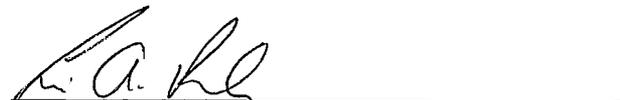
1 - 4 are granted.  
5 is neither granted nor denied. The language of the proposed ruling is too broad to grant or deny without additional evidence.  
6 - 9 are granted.

The Board voted to deny Mr. Nadeau's appeal, finding that the agency had demonstrated "good cause" for its decision to demote the appellant in lieu of lay-off, and that the agency had acted in accordance with Per 308.02 and Per 308.05 of the Rules of the Division of Personnel. In voting to deny Mr. Nadeau's appeal, the Board further found that the appellant failed to meet his burden of proving that the personnel action from which his appeal arises represented the improper exercise of managerial discretion by the appointing authority.

THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Mark J. Bennett

  
\_\_\_\_\_  
Robert J. Johnson

  
\_\_\_\_\_  
Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel  
Jean Chellis, SEA Field Representative  
Clyde Terry, Division of Mental Health