

State of New Hampshire

WPPID493



PERSONNEL APPEALS BOARD

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

RESPONSE TO MOTION FOR REHEARING

Appeal of Barbara Nolan, et al.
Laconia Developmental Services

March 15, 1990

The New Hampshire Personnel Appeals Board (McNicholas, Bennett and Rule) met Wednesday, February 28, 1990, to review the Motion for Rehearing filed by SEA Director of Operations, Thomas Hardiman, in the above-captioned appeal. In his motion, Mr. Hardiman asks that the Board grant a rehearing in the retroactive pay appeal of certain Licensed Practical Nurses from Laconia Developmental Services (formerly Laconia State School and Training Center).

Appellants argue that they should have received a salary increase from S.G. 11 to S.G. 12, based upon the December 8, 1986 recommendation of the former Director of Personnel, and that such increase should have been effective September 24, 1985. They further argue that by appealing that recommendation to the Personnel Appeals Board, and then withdrawing said appeal, their positions should have been upgraded in keeping with the former director's recommendation. Appellants argue that in keeping with past practice, the effective date of increase should have been the date of the original request for review of the position(s).

The record in this matter indicates that the Division of Personnel was not notified of an appeal being filed or withdrawn in this matter. The Division was not notified by Ms. Nolan, as required by the Director in her letter of December 8, 1986, of either acceptance or rejection of the initial recommendation for upgrading. The Director's December 8, 1986 letter very clearly requires that Ms. Nolan "let [the Division of Personnel] know in writing" whether or not she would accept the recommendation. The Director's letter also clearly indicates that following such acceptance or rejection, concurrence by the Superintendent at LDS and other state agencies employing LPNs would be sought before any action would be taken. Ms. Nolan did not respond.

By letter dated June 5, 1987, the current Director of personnel authorized salary increases for all classes of nursing personnel, stating that the

RESPONSE TO MOTION FOR REHEARING

Appeal of Barbara Nolan, et al.
Laconia Developmental Services

page 2

increase was intended to address difficulties in recruiting and retaining nursing personnel, and that the effective date of such increases would be June 5, 1987. It appears that the appellants took no action, and initiated no formal correspondence with the Division of Personnel, until learning that the effective date of any salary increase would be June 5, 1987, rather than September 24, 1985.

The Board concurs with the Director's Objection to Motion for Rehearing dated February 20, 1990, that the only issue properly before the Board is the Director's decision of October 5, 1987, in which she notified Ms. Nolan that no additional retroactive compensation would be granted.

Neither Ms. Nolan, nor the State Employees' Association, filed a timely appeal of that decision, either with the Director of Personnel or the Personnel Appeals Board. Accordingly, the Board found the appeal to be untimely and dismissed the matter.

Upon review of the documents filed by the parties in this matter, and in consideration of both the Motion for Rehearing and Objection to Motion for Rehearing, the Board affirmed its decision of February 1, 1990, denying Appellants' request for further hearing in this matter.

FOR THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman

cc: Thomas F. Hardiman, Director of Operations
Lisa Currier, Human Resource Coordinator, Laconia Developmental Services
Virginia A. Vogel, Director of Personnel
David S. Peck, Assistant Attorney General

State of New Hampshire



PERSONNEL APPEALS BOARD

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

APPEAL OF BARBARA NOLAN, et al.
LPNs - Laconia Developmental Services

dated: February 1, 1990

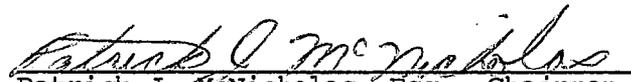
On March 22, 1989, the Personnel Appeals Board met to hear oral argument in the appeal of Barbara Nolan, a licensed practical nurse from Laconia Developmental Services, who had appealed denial of retroactive compensation following the upgrading of all nursing positions in state institutions. Ann Spear, former SEA Field Representative, appeared on behalf of the appellant. Mary Ann Steele, Supervisor, represented the Division of Personnel.

The Division of Personnel outlined the chronology of events which culminated in the June 5, 1987 upgrading of LPNs, and presented the Division of Personnel's Requests for Findings of Fact and Rulings of Law. Specifically, the Division of Personnel requested that the Board find Ms. Nolan's appeal to be untimely, and dismiss it on that basis.

After reviewing the correspondence filed by the parties in this matter, and considering oral argument by the parties, the Board found that the appeal was untimely. The Board found that the decision from which this appeal arises was the October 5, 1987 decision of Personnel Director Vogel in which she denied Ms. Nolan's request for pay adjustments retroactive to December, 1986. Neither the appellant nor the appellant's representative filed an appeal of that decision until December 2, 1987, fifty-eight (58) days after the Director's decision.

The Board voted to dismiss the matter as untimely. In so doing, the Board grants all the Findings of Fact and Rulings of Law submitted by the Division of Personnel, dated March 22, 1989 (copy attached).

FOR THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Esq., Chairman

cc: Thomas F. Hardiman, SEA Director of Operations
Virginia A. Vogel, Director of Personnel
David. S. Peck, Assistant Attorney General

State of New Hampshire
Personnel Appeals Board

Requests for Findings of Fact and Rulings of Law

March 22, 1989

1. On December 8, 1986, former Personnel Director Judy Bastian wrote to Barbara Nolan, LPN, Laconia State School, responding to a request to review and upgrade her position.

2. Ms. Bastian's recommendation was for upgrading positions of Licensed Practical Nurse from salary grade 11 to salary grade 12.

3. By letter dated December 23, 1986, the State Employees Association filed with the Personnel Appeals Board an appeal of that decision.

4. By letter dated March 12, 1987, the State Employees Association withdrew said appeal stating, "The State Employees' Association on behalf of Barbara Nolan, wishes to withdraw its appeal in the matter of an upgrade decision for LPNs at Laconia State School & Training Center. The appeal was dated December 23, 1986."

5. Withdrawal of the LPN appeal does not refer to any acceptance of the recommendations made by former Director Bastian.

6. On June 5, 1987, the Division of Personnel issued a decision upgrading certain nursing positions, including positions of Licensed Practical Nurse.

7. The decision of June 5, 1987 sets forth June 5, 1987 as the effective date for calculating the increase.

8. No appeal from the decision of June 5, 1987 was filed by the appellant with either the Director of Personnel or the Personnel Appeals Board within fifteen (15) days of the date of that decision.

9. By letter dated September 24, 1987, Barbara Nolan wrote to the Director of Personnel stating, "As Past President of Chapter 65, I am accepting one Labor Grade increase for L.P.N.'s up to July 3, 1987."

10. On October 5, 1987, the Director of Personnel responded to Ms. Nolan denying the retroactive adjustment by stating, "I will not adjust the LPN's retroactively to December, 1986."

11. No appeal from the decision of October 5, 1987 was filed until December 2, 1987.

12. RSA 21-I:57, effective March 27, 1986, provides for appeal to the Personnel Appeals Board of decisions arising out of classification decisions of the Director of Personnel, provided that the employee or department head, or both, affected by the allocation of a position in a classification shall be given a reasonable opportunity to be heard by the director of personnel.

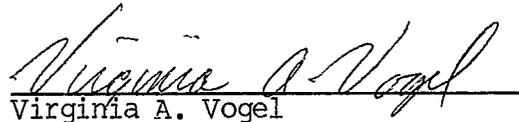
13. The standard for filing of a reconsideration request under RSA 541-A is twenty days.

14. No request for reconsideration of the Director's October 5, 1987 decision was filed within twenty days of that decision.

15. Because no appeal or motion for reconsideration was filed by the appellant or the appellant's representative until December 2, 1987, fifty-eight (58) days after the date of the Director's October 5, 1987 decision, the appeal of Barbara Nolan to Director Vogel must be dismissed as untimely.

16. Because no appeal or motion for reconsideration was timely filed by the appellant or the appellant's representative of the Director's October 5, 1987 decision, the appeal of Barbara Nolan to the Personnel Appeals Board dated August 22, 1988 must be dismissed as untimely.

Respectfully submitted,



Virginia A. Vogel

Virginia A. Vogel
Director of Personnel