

# State of New Hampshire

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**PERSONNEL APPEALS BOARD**  
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**APEAL OF JOHN J. RATOFF ET AL**  
Department of Employment Security  
Docket #91-0-39

September 26, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, September 11, 1991, to consider the above captioned appeal filed by Commissioner John Ratoff and several employees of the Department of Employment Security, through their attorneys Michael Black and Lon Siel.

The instant appeal involves the establishment of minimum qualifications for the position of Assistant Director of Operations, Department of Employment Security, and the decision of the Director of Personnel to disallow the substitution of relevant experience for formal education for entry into that class. The appellant(s) claim rights to appeal under the provisions of N.H. RSA 21-I:57 and 58, and request that the Board:

- "a) Reverse the action of Virginia A. Vogel and restore the equivalency factors for education and experience to the position of Assistant Director of Operations;
- "b) Find the director of personnel has no authority to change job specifications such as minimum qualifications without approval of the appointing authority;
- "c) Find that the director of personnel's action deleting equivalency factors violates the Federal and State Constitutions and the statutory provisions cited herein related to discrimination and statutory authority; and
- "d) Such other relief as is equitable and just."

In support of their appeal, the petitioners allege that the Director of Personnel violated certain statutory and constitutional provisions briefly described below by refusing to substitute relevant experience for education in certifying eligibles for the position of Assistant Director of Operations, Department of Employment Security:

1. That the action of Virginia A. Vogel is beyond her statutory authority, and substantially changes policy established by the Department of Personnel in 1979, violating the provisions of RSA 541-A.
2. That refusing to allow related experience to substitute for education in this instance has a disparate impact on race, color, religion, sex, or national origin.
3. That refusing to allow the substitution of related experience for formal education violates the statutory authority of the Commissioner of Employment Security and could result in a suspension of payments by the Secretary of Labor.

Revisions of class specifications which do not result in changing the allocation of all positions within the classification plan does not constitute adoption of a "new classification plan". Therefore, amendment of a class specification is not violative of RSA 21-I:42, II. Further, the "policy" to which the appellants refer in substituting experience for education (Appellants' Appendix H) refers only to the manner in which such substitutions are calculated. Previously, the allowed equivalencies called for substituting a year and a half of relevant experience for a year of formal education at the Bachelor's degree level. The policy amended the requirement, allowing substitutions to be made on a year for year basis, but only in those classes where equivalencies were allowed. The Department of Personnel retained the authority to determine when relevant experience might be substituted for formal education on a case by case basis. Disallowing substitution of experience for education in the instant appeal does not constitute "...a substantive change in agency policy."

The appellants have offered no evidence to support a finding that the decision disallowing the substitution of experience for education had, as its basis, any consideration of race, color, religion, sex or national origin. On the basis of the petition submitted, the only common factor among the petitioners which the Board may assume is that they are all employed by the same State agency. The Board finds no evidence or argument in the petition as filed to support an allegation of discriminatory practice.

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The appellants have failed to offer any substantive basis to support a finding that refusing to allow experience to be substituted for a Bachelor's degree in certifying eligibles for the class Assistant Director of Operations deprives the Commissioner of Employment Security of any authority vested in him by State or federal law.

In considering the instant appeal, one must first review the Board's adjudicative authority as described by RSA 21-I:46 I:

"I. The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of rules adopted by the director of personnel. . ."

RSA 21-I:57 provides, in pertinent part:

"The employee or the department head, or both, affected by the allocation of a position in a classification plan shall have an opportunity to request a review of that allocation in accordance with rules adopted by the director under RSA 541-A, provided such request is made within 15 days of the allocation...."

Disallowing an equivalency for education and experience has no effect on the allocation of the subject position within the classification plan. Therefore, the instant appeal is not subject to review under the provisions of RSA 21-I:57.

RSA 21-I:58 I provides, in pertinent part:

"Any permanent employee who is affected by any application of the personnel rules, except 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. The appeal shall be heard in accordance with the procedures provided for adjudicative proceedings in RSA 541-A. If the personnel appeals board finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, race, color, ethnic background, marital status, or handicapping condition, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the employee's former position or a position of like seniority, status, and pay. . . ."

First and foremost, the appellants have failed to demonstrate that they were "affected by any application of the personnel rules" when the class specification was revised.

Appellants Jones, O'Dea, Diversi, Weafer, Rocklin-Weare and Peloquin were among eleven applicants certified by the Division of Personnel as meeting the minimum qualifications for the posted vacant position of Assistant Director of Operations. None of the appellants were selected for promotion to Assistant Director of Operations. While non-selection for promotion could be deemed an "action" within the meaning of RSA 21-I:58, none of the appellants filed a timely appeal of that decision.

The position vacancy was filled by Sandra Sweeney, an applicant the Board presumes to be one of the remaining five individuals certified by the Division of Personnel as meeting the minimum qualifications at the time of the posting. Amendment of the minimum qualifications subsequent to the position being filled did not affect the appellants' seniority, status or pay.

The appellant's claim that "...in the event a future Assistant Director of Operations vacancy occurred, they would need to submit a new applications [sic] and be re-certified." (See: Appeal of John Ratoff et al, page 2) The appellants in effect are asking the Board to enjoin the Director from taking action to protect their prospective interests.

The Board does not find the appellants to be entitled to appeal the prospective affect of amending the minimum qualifications for certification for the position in question. RSA 21-I:58 clearly limits appeal rights to "permanent employees" affected by an application of the personnel rules. No one can predict which, if any, of the appellants will be employed by the State of New Hampshire or Department of Employment Security if in the future a vacancy in the position of Assistant Director of Operations were to occur. No one can predict which, if any, of the appellants might apply for such a vacancy.

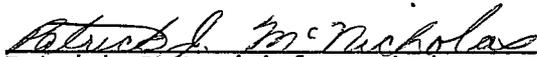
The Board finds it unreasonable to request that the Director be ordered to refrain from amending the minimum qualifications for any position in the State classified service without the approval of the appointing authority. RSA 21-I:42 II describes the Director's authority for "[p]reparing, maintaining and periodically revising a position classification plan for all positions in the classified service, based upon similarities of

duties performed and responsibilities assumed so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same classification..." The only prohibition appearing in RSA 21-I:42 applies to the development of "[a]ny new classification plan..." which is inconsistent with the recommendations of the Personnel System Task Force. Periodically revising class specifications in the current classification plan is well within the Director's statutory authority, and requires no additional approval from the Personnel System Task Force or any appointing authority.

The relief sought by the appellants exceeds the statutory authority of the Board to hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals arising out of application of the rules adopted by the director of personnel..." (See: RSA 21-I:46 I) Inasmuch as the appeal fails to cite any specific action affecting the named appellants from which an appeal under RSA 21-I:57 or 58 might arise, the Board finds the appeal to be premature.

Accordingly, the Board voted to dismiss the appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Mark J. Bennett

  
Robert J. Johnson

cc: Virginia A. Vogel, Director of Personnel  
John Ratoff, Commissioner, Department of Employment Security  
Atty. Michael Black, General Counsel, Department of Employment Security