

State of New Hampshire



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

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88-0-920

APPEAL OF STEPHEN TRITTER

March 13, 1989

On December 13, 1988, the Personnel Appeals Board, Commissioners Cushman and Platt sitting, reviewed the memoranda filed in response to its order dated September 22, 1988. The Board ruled that the scope of the appeal shall be limited to issues relating to his non-selection to a vacant position, and shall not include his original lay-off.

The Board further ordered that the Motion for Reconsideration, dated January 29, 1988, be granted to the extent that it requests an evidentiary hearing. The Board shall reserve the issue of its jurisdiction for decision following the evidentiary hearing.

Parties shall receive notice of the hearing as soon as the Board's schedule permits.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

Executive Secretary

LSP/mas

cc: Chairman Patrick J. McNicholas
Personnel Appeals Board

Claire L. Gregory, Attorney
Civil Bureau, Attorney General's Office

Jean Chellis, Field Representative
State Employees' Association

Virginia A. Vogel
Director of Personnel

State of New Hampshire

PERSONNEL APPEALS BOARD
Edward J. Haseltine, Chairman
Gerald Allard
Loretta Platt



EXECUTIVE SECRETARY
Mary Ann Steele

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APPEAL OF STEPHEN TRITTER

September 22, 1988

By order dated January 13, 1988, the Personnel Appeals Board dismissed this appeal. Mr. Tritter has moved for reconsideration of that order.

A review of the record reveals that on September 4, 1987, Mr. Tritter filed this appeal, alleging that the employer violated Per 302.04 (Reemployment With a Department or Agency). Mr. Tritter alleges that the employer sent Mr. Tritter a notice of layoff dated July 1, 1987. Thereafter, Mr. Tritter applied for the vacant position that the college advertised. On September 3, 1987, Mr. Tritter received a letter informing him of his non-selection to the position. The appeal alleges that the employer violated Per 302.04(a) by not giving Mr. Tritter preference over an original appointment.

It is apparent that Mr. Tritter appeals solely from his non-selection to a vacant position, and not from his original layoff. The appeal document itself alleges only a violation of Per 302.04, and an appeal from Mr. Tritter's layoff that was not filed until September 4, 1987 would appear to be untimely. See RSA 21-I:58, I.

Mr. Tritter's appeal dated September 4, 1987 would appear to be timely regarding the non-selection decision. However, it further appears that Mr. Tritter may not have been a permanent employee at the time that the action complained of occurred. Thus, the issue of the Board's jurisdiction must be addressed, as RSA 21-I:58, I provides for appeals by any "permanent employee."

The Board shall grant both parties 15 days from the date of this order in which to file a memorandum of law on the issue of the Board's jurisdiction to hear this appeal. Either party may also address the issue of the scope of the appeal. Neither party is required to file a memorandum.

After receipt of all memoranda, or following the expiration of the 15-day period, the Board shall issue a further order in this matter.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

cc: Attorney Claire L. Gregory, Attorney General's Office
Jean Chellis, SEA Field Representative

State of New Hampshire

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APPEAL OF STEPHEN TRITTER

January 13, 1988

By Board order dated November 17, 1987, the Department of Postsecondary Vocational-Technical Education was requested to provide information to the Appeals Board relative to the appeal of Stephen Tritter, an employee of the Vocational-Technical College at Nashua. That response was filed by Attorney Claire L. Gregory, Esquire, of the Attorney General's Office on behalf of the College.

Per 308.05 of the "Rules of the Department of Personnel" states, "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..."

Upon review of the information submitted by both parties to the appeal, the Board found that Mr. Tritter had been considered for the vacancy in the newly reorganized electronic/mechanical technology area, and that he was not chosen to fill the vacancy by virtue of his lack of qualifications in all the for which the incumbent would be responsible. Part of the agency's decision regarding Mr. Tritter's qualifications for the vacancy rested upon a review of the appellant's college transcripts which included failure of a course in applied mechanics and a physics class, and subsequent grades of C and D respectively when the appellant retook those classes.

The Board found that Mr. Tritter was not laid-off by virtue of budget constraints alone, but rather as a result of an agency reorganization. As such, the agency was responsible for determining capacity for the vacancy. Per 302.04 of the "Rules of the Department of Personnel" states, "Employees laid off from an agency for not more than 3 years, as distinguished from employees separated for cause or those voluntarily leaving their employment, shall be given preference over original appointments within said agency. Such former employees may be given preference over candidates for promotion when so requested by the appointing authority." In this instance, the appointing authority did not find Mr. Tritter sufficiently qualified for the vacancy and was, therefore, under no obligation to give him preference in appointment.

APPEAL OF STEPHEN TRITTER
January 13, 1988

Based upon the foregoing, the Board voted unanimously to dismiss the matter, finding that the appellant had been the opportunity to reply to the posting for the vacancy, had not been deemed sufficiently qualified to assume the responsibilities of the vacancy in the electronic/mechanical technology area, that the agency had exercised its prerogative in reorganizing and determining subsequent lay-offs, and did not violate the "Rules" in choosing to fill the vacancy in question with the original appointment of a more qualified candidate.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

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cc: Claire Gregory, Esquire
Office of the Attorney General

Jean Chellis, Field Representative
State Employees' Association