

**THE STATE OF NEW HAMPSHIRE**  
**SUPREME COURT**

In Case No. 98-078, Appeal of Claude Allard, the court upon November 16, 1999, made the following order:

Having considered the briefs and oral arguments of the parties, the court concludes that a formal written opinion is not necessary for the disposition of this appeal. The burden of proof is upon the petitioner to show that the order of the personnel appeals board (board) is clearly unreasonable or unlawful, and all findings of the board upon all questions of fact properly before it are deemed prima facie lawful and reasonable. RSA 541:13 (1997). The board determined that professional activities, institutional activities, and experience as division chairperson or department head are not applicable in calculating the fifty-five professional credits necessary to meet the minimum certification requirements in this case. The petitioner has failed to demonstrate on appeal that this determination is unjust or unreasonable. Cf. N.H. Admin. Rules, Per 405.01(a), 1101.02(h). In light of this determination, we agree with the State that under the circumstances of this case, the board was not required to hold a further evidentiary hearing. Accordingly, the decision below is affirmed.

Affirmed.

Distribution:

NH Personnel Appeals Board  
Michael C. Reynolds, Esquire /  
Nancy J. Smith, Esquire  
Ms. Sara Sawyer, Human Resources Administrator  
Donna K. Nadeau, Supreme Court  
File

Howard J. Zibel,  
Clerk

# State of New Hampshire



## **PERSONNEL APPEALS BOARD**

State House Annex  
Concord, New Hampshire 03301

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### **APPEALS OF:**

**Claude Allard**  
**(Docket #94 -L-1)**

**and**

**David St. Cyr**  
**(Docket #95 -O-1)**

**Department of Postsecondary Technical Education**

**June 15, 1995**

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, May 3, 1995, under the authority of RSA 21-I:58, to hear oral argument on the State's motions to dismiss the above-captioned appeals, and the appellants' requests for disposition of these appeals without evidentiary hearing. Michael C. Reynolds, SEA General Counsel, appeared on behalf of the appellants. Assistant Attorney General William C. McCallum appeared on behalf of the Department of Postsecondary Technical Education. During the course of the hearing, the parties agreed that any documents being offered by either party could be admitted into the record as exhibits without objection.

The appellants, former employees of the New Hampshire Department of Postsecondary Technical Education who were laid off from their positions, were appealing the Department's refusal to allow them to bump into positions for which they might qualify in any of the other colleges or institutions in the system, other than the colleges from which they were laid-off. The State contended that each of the colleges and the technical institute are separate "divisions" of the Postsecondary Technical Educational System, and that under the provisions of Per 1002 of the Rules of the Division of Personnel, effective April 27, 1992, laid-off employees eligible to bump are limited to bumping within their own division.

Mr. McCallum stated that it has been the constant practice and understanding of the department that each college functions separately. Each of the professors is responsible for establishing a curriculum, so that similarly titled courses in two different colleges might have very different instructional programs. He argued that the department's "clients" are tuition-

paying students, and that if employees<sup>1</sup> were permitted to bump between colleges, students could be subjected to a change in instructional staff during the course of a semester. Mr. McCallum also argued that it would be fundamentally unfair for a college which was meeting its revenue projections to be forced to accept staff as a result of a lay-off from another college which was not meeting its revenue projections.

RSA 188-F:2, establishing the Department of Postsecondary Technical Education, states:

"There shall be a department of postsecondary technical education which shall be governed by a board of governors. The department shall be a state agency and shall consist of the office of the commissioner, the New Hampshire technical institute, the 6 technical colleges, and the police standards and training council."

Mr. McCallum argued that although RSA 188-F does not specifically define the colleges, the technical institute or Police Standards and Training as separate divisions of the Department of Postsecondary Technical Education, their functions within that department, as well as their internal organization, are consistent with the definition and description of "division" appearing in RSA 21-G:5 VII:

"Division' means the principal unit within a department, which is directly responsible to the department level and is concerned with related major functional programs and activities."

Mr. McCallum argued that each of the institutions within the Department of Postsecondary Technical Education serves a different client population, tailoring their programs to meet the business needs of the geographic region in which the college is located. As an example, he compared the programming at the college in Berlin, which is principally intended to meet the needs of the tourism and forestry industries, to the type of technical training and education offered at the college in Nashua, which is more specific to business and manufacturing. Mr. McCallum noted that although they are not statutorily defined as divisions, each of the colleges is listed separately by name in RSA 188-F, each has an individual line in the budget, and each has its own revenue sources in addition to State funding. Mr. McCallum argued that each institution manages its own revenue sources, independently seeks appropriate accreditation, and develops programs to meet the specific needs of the region. He explained that if revenue projections for any one of the colleges is not met, it is up to that college to reduce costs by adjusting the programming, and in some instances, laying-off employees from those programs.

Mr. McCallum argued that administration for each of the institutions is also consistent with the statutory definition and description of divisions. RSA 21-G:6 II (a) states, "The principal unit of the department shall be the division; and each division shall be headed by a director."

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<sup>1</sup> Not all employees of the Department of Postsecondary Technical Education are academic personnel.

RSA 21-G:8 provides for the appointment of an unclassified employee to serve as the director of a division.

"Division directors shall serve terms of 4 years. Such terms shall end on March 31 of an even-numbered year. Initial terms for some directors may be for approximately 2 years so that the terms of one-half of the directors will end one year after a commissioner's term commences and one half 3 years after that date." (RSA 21-G:8 IV)

"Each commissioner shall nominate for appointment by the governor, with the consent of the council, each division director within his department, for all departments established after July 1, 1983, except as otherwise provided by law. Each division director shall be an unclassified employee." (RSA 21-G:8 II)

**Mr. McCallum** argued that appointment of the presidents for the colleges and technical institute is also consistent with the statutes describing organization of executive branch departments. He said that the college and technical institute presidents, as well as the Director of Police Standards and Training are unclassified employees appointed by the Governor and Council. for a term. RSA 188-F:8 states the following:

**"Presidents of the Institute and Colleges.** The commissioner shall nominate, subject to approval by the board of governors, a president of the technical institute and presidents of the 6 technical colleges who shall be confirmed by the governor and council. Presidents shall be qualified by education and experience and shall serve at the pleasure of the board of governors."

Mr. Reynolds argued on behalf of the appellants that the colleges within the Department of Postsecondary Technical Education are not separate, statutorily defined divisions, in spite of any similarities which the colleges might have with legislatively created divisions of a department or agency. Mr. Reynolds argued that there are also **substantial** differences between statutorily created "divisions" and the colleges established within the Postsecondary Technical Education System. He argued that the most notable difference was that division directors are unclassified employees, appointed for a four year term, whereas the presidents of the colleges and the technical institute are unclassified employees who serve "at the pleasure of the board of governors." [RSA 188-F:8] Mr. Reynolds also argued that geographic location, different educational missions and separate funding were insufficient reasons to find that the colleges are actually "divisions" for the purposes of lay-off and bumping. He asked the Board to compare the Department of Postsecondary Education with the Division of Mental Health, which has offices and institutions in diverse geographic regions, serving very different client populations, and operating as separate and distinct budgetary units. He contended that in spite

of the obvious differences between the work performed by various units of that division, all of those units are part of the same statutorily created division.

Mr. Reynolds argued that while any lay-off is potentially disruptive, the possibility of disrupting services provided to students by changing faculty during a term was irrelevant to the question of whether or not the colleges should be considered separate divisions of the Department of Postsecondary Technical Education for the purposes of bumping by laid-off employees. Furthermore, Mr. Reynolds argued that any possible disruption would be minimized by the requirement that an employee wishing to bump another employee within the department would have to be certified as meeting all the minimum qualifications for the position into which the more senior employee wished to bump.

He argued that differences in programming between colleges was a certification issue, not a bumping issue, and that if an employee was not qualified to teach in a particular discipline or curriculum, he or she would be prohibited from bumping on that basis. Mr. Reynolds also argued that while lay-off and bumping may create a hardship for the employer, there is an even greater hardship for the laid-off employee.

Mr. Reynolds argued that the case must be decided on the plain language of the statutes and the plain language of the Rules. The Board agrees.

Much of the State's argument relies upon the independence of each college in funding its programs, and in determining when a program should be modified or eliminated. The Board reviewed the exhibits offered by the State entitled "Department of Postsecondary Technical Education - A. Statutes Establishing Board of Governors and Department of Postsecondary Technical Education RSA 188-F, particularly with regard to funding schemes and transfer of funds within and between PAU's.

RSA 188-F:14 states:

"The department shall submit an operating budget based on program appropriation units or other budgetary units required by the general court. Each institution of the department and the commissioner's office shall be considered a separate budgetary unit. The department shall submit its budget in the same format and at the same time as other state agencies. However, the board of governors is authorized to transfer funds between line items within any budgetary unit. By October 31 of each fiscal year, the department shall submit a report to the joint fiscal committee detailing all transfers made during the last fiscal year and the reasons for them. Transfers of funds between budnetary units shall be made in accordance with procedures and restrictions applying to all other

agencies."

In further reviewing the issue of funding for the various programs offered throughout the system, the Board found that **RSA 188-F:14-b I, II, and V** permit the Commissioner of the Department of Postsecondary Technical Education to transfer funds, equipment and personnel as follows:

"I. Receive for disbursement, with the prior approval of the fiscal committee and the governor and council, any actual excess over the estimate of income received from students enrolled in the vocational training division which shall be used only for the administration and operation of programs offered by that division."

"II. Receive for disbursement, with prior approval of the fiscal committee and the governor and council, any actual excess over the estimate of income received from students enrolled in the technical-education division which shall be used only for the administration and operation of programs offered by that division."

"V. With prior approval of the board of governors and the fiscal committee, transfer or eliminate instructional programs as student, business, and geographic areas needs change, as well as transfer such associated personnel, equipment, and instructional program appropriations between and among the several functional units within the department in order to enable the department to respond rapidly to changing needs for technical education and training."

**RSA 188-F:14c** also provides for creation of a nonlapsing account:

"Notwithstanding any other provision of law to the contrary, revenue received in excess of the legislative estimates in the technical education and vocational training divisions of the New Hampshire technical institute and the technical colleges, as well as net unexpended general fund appropriation balances at the close of the fiscal year, shall be placed in a continuing nonlapsing account. Funds in this account may be used only with the prior approval of the fiscal committee and with the approval of the governor and council in order to establish or enhance, or both, program offerings that will meet the needs of both the students and business and industry with the greatest degree of effectiveness and responsiveness. If the legislative estimates are not met for a fiscal year, then effective the immediate year following, the commissioner, upon prior approval of the fiscal committee and the governor and council, shall notify the bureau of accounts as to which line item appropriations, in which functional units and the specific amounts to be reduced in order to compensate completely for the prior fiscal

year's revenue deficit or shall utilize such funds as may be available in the continuing nonlapsing account to satisfy all or a portion of such deficit."

The statute makes frequent reference to the "technical education", and "vocational training" divisions of the New Hampshire Technical Institute and the technical colleges. While RSA 188-F:14 permits the transfer of funds between budgetary units, or colleges, RSA 188-F:14c strictly limits the use of excess revenues from the "technical education division" to "technical education" program operation and administration, and the use of excess revenues from the "vocational training division" to "vocational training" program operation and administration.<sup>2</sup> However, in making the functional distinction between the technical education and vocational education divisions, the Board had no evidence that the legislature ever formally created such divisions, or provided for appointment of a director for either of those "divisions".

Upon review of the relevant statutory language, the Board found that the Department of Postsecondary Technical Education is a single unit, without separate divisions as described by RSA 21-G. As such, any employee who is laid off as a result of abolition of a position, change in organization, decline in agency work load, insufficient funding, change in state law or change in federal requirements, may exercise his option to bump another employee in any of the offices or institutions of the department, provided that the laid-off employee has been continuously employed on a full-time basis, without a break in service, for at least ten years, and is qualified by virtue of education and experience to displace a less senior employee in the class to which he or she elects to bump. An academic employee who is to be laid off from a position in one college because of program changes or lack of funding may not bump another academic employee in another college if he or she does not qualify to assume the full course load of the individual to be bumped.

While the State argued that instructors develop their own curricula, and bumping between the colleges could subject students to a change in curriculum during the middle of a term, the Board found that the same would apply to bumping within a college. It would appear that the appropriate remedy in that instance would be to require instructors to adhere to a more standardized curriculum, not to deny long-term employees the opportunity to exercise privileges afforded to other long-term employees within State government.

The Board appreciates the agency's commitment to its students, as well as its belief that because the students make direct payment in the form of tuition for the services they receive, they are

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<sup>2</sup> Neither the Commissioner nor the Board of Governors is authorized to transfer any funds from the Police Standards and Training Council Training Fund, or any other funds granted to the Police Standards and Training Council, to any other budgetary unit.

**Appeals of Claude Allard #94-L-1  
and David St. Cyr #95-O-1**

entitled to expect continuity in the services they receive. However, that same principle applies to all other agencies and the clients they serve. Whether clients pay for the services they receive in the form of a direct payment, such as a tuition payment, or in a less obvious or direct fashion, as with fees, fines or penalties, they all expect services to be provided without disruption.

The Department of Postsecondary Technical Education shall re-examine the qualifications of Mr. Allard and Mr. St. Cyr, as well as their seniority, to determine if they would have qualified to bump another employee in any of the colleges at the time of their separation from service. Their reinstatement, if warranted, shall be accomplished in accordance with the provisions of RSA 21-I:58 with regard to payment of lost wages and benefits. If either of the appellants would not have qualified to displace another employee, they shall be considered for recall to a position in the same classification from which they were laid-off in any of the colleges or institutions for a period of three years from the date of lay-off. The parties shall advise the Board, in writing, within 30 days of the date of this order, of any action taken in implementing this order. They shall also advise the Board if further hearing is required to dispose of these matters. Otherwise, both cases will be considered closed.

The Board ruled as follows on the Technical Colleges' First Motion for Findings of Fact and Rulings of Law:

Findings of Fact:

1 - 12, 14 - 18, 20, and 21 are granted.

13 is granted to the extent that the Commissioner and Board of Governors can authorize the transfer of personnel and personnel costs between the colleges and the institute.

19 is neither granted nor denied. The record reflects that appointment by Governor and Council is for a specified term, however, the statute reflects that the presidents serve at the pleasure of the Board of Governors.

22 is granted, after replacing the words "would be detrimental" with the words "could be detrimental".

Rulings of Law:

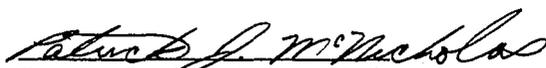
1 - 11, 13 and 14 are granted.

Appeals of Claude Allard #94-L-1  
and David St. Cyr #95-O-1

12 is denied. While the factual findings support the conclusion that each of the institutions within the system enjoys a substantial degree of autonomy, the facts do not support the conclusion that each of the institutions is a legislatively defined division.,

15 is denied as set forth in the decision above.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson, Commissioner

  
Lisa A. Rule, Commissioner

cc: Virginia A. Lamberton, Director of Personnel  
Michael Reynolds, SEA General Counsel  
William McCallum, Assistant Attorney General  
Stephen J. McCormack, SEA Field Representative

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

MAY 1995 TERM

PERSONNEL APPEALS BOARD

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Appeals of	*	
	*	PAB Nos. 94-1-1, 95-0-1
CLAUDE ALLARD &	*	
DAVID ST. CYR	*	
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TECHNICAL COLLEGES' (FORMER EMPLOYERS')  
FIRST MOTION FOR FINDINGS OF FACT AND RULINGS OF LAW

NOW COMES the State of New Hampshire, Department of Postsecondary Technical Education, New Hampshire Technical Colleges at Laconia and at Stratham, by and through counsel, the Office of the Attorney General, and requests the following findings of fact and rulings of law:

**I. REQUESTED FINDINGS OF FACT**

1. The Department of Postsecondary Technical Education is presently divided into six (6) technical colleges [hereinafter, "colleges"], the Technical Institute in Concord [hereinafter, "institute"], the Police Standards and Training Council [hereinafter, "PSTC"], and the Office of the Commissioner.

2. The Technical Institute in Concord, the Police Standards and Training Council, and the Office of the Commissioner are all located on Institute Drive in Concord, but in separate buildings.

3. The colleges are dispersed geographically throughout the State — Stratham, Nashua, Laconia, Manchester, Berlin, and

Claremont.

4. The geographic and practical distance between some of the colleges is substantial, e.g., Nashua and Berlin.

5. Each college and the institute individually tailors its available programs to the perceived needs of the surrounding community, e.g., Berlin has a focus on forestry industry and tourism. Each college as well as the institute generate some of their own revenue.

6. The demographics and needs of the student populations vary considerably among each college and the institute.

7. Some colleges have programs which are completely unique, e.g., Laconia's facility for State prisoners.

8. Each college and the institute have an array of individualized mechanisms determined at each institution for raising revenue, e.g., some institutions provide seminar facilities or technology deployment centers. Not all institutions derive their revenue from the same group of sources.

10. Each college and the institute are individually responsible for meeting expenses with the revenue they generate.

11. Each college or institution is its own principal accounting unit, or PAU.

12. An institution which fails to meet its revenue projections will be required to engage in individualized cost-cutting, including layoffs.

13. Personnel and personnel costs are not spread among the colleges, among the colleges and the institute, or among the colleges, institute, and PSTC.

14. The institute in Concord is much larger in terms of

staff, student body, and facility than any college.

15. The institute in Concord has a demonstrably different character than any of the colleges, e.g., major dormitory space, more and different degree programs, international and out-of-State students.

16. PSIC is completely separate from the functions of any college, the institute, or the Office of the Commissioner, ~~notwithstanding its announced teaching function.~~

17. Thus, each college or institution has its own "culture."

18. The president of each technical college and ~~of~~ **the** institute are unclassified employees.

19. ~~The~~ ~~president~~ of each technical college and of the institute are appointed for specific terms.

20. Even if an individual is qualified as a professor, assistant professor, or instructor, he or she may not be qualified to teach a particular course.

21. Because of the school calendars, indiscriminate bumping could replace one school's professor with another professor unknown to the students and unfamiliar with the curriculum in mid-semester.

22. Bumping between colleges and institutions would be detrimental to the functioning of the schools and detrimental to the students.

## II. REQUESTED RULINGS OF LAW

1. The rules of the Division of Personnel applicable to this appeal were adopted on or about April 27, 1992.

2. The prior ~~practice~~ practice and understanding of the bumping rule ~~were~~ controlled by former rule N.H. CODE ADMIN. Per 308.05, which

provided for bumping within an entire department.

3. N.H. ADMIN. R. Per 1101.02(h) limited bumping by providing in pertinent part that "[u]pon notification of layoff, an employee with 10 or more years of continuous full-time service may bump another employee within the same division of an agency. . . ."

4. The current rules of the Division of Personnel do not contain a definition of what constitutes a "division": N.H. ADMIN. R. Per 101.22 simply provides that reference to the division within a rule typically means the Division of Personnel.

5. RSA chapter 21-G is a legislative pronouncement on the organization of the executive branch that stresses efficiency in organization, RSA 21-G:3, III, manageable administrative structure, RSA 21-G:4, I, and agency organization on a "functional" basis, RSA 21-G:4, III, all for greater responsiveness to "public needs;" RSA 21-G:4, IV.

6. The definitions in RSA chapter 21-G are intended for the understanding of terms used in that chapter. RSA 21-G:5.

7. Nonetheless, RSA 21-G:5, which provides a definition of "division" can be a useful interpretative tool in understanding the use of that term in N.H. ADMIN. R. Per 1101.02(h). It defines "division" as "the principal unit within a department, which is directly responsible to the department level and is **concerned** with major functional programs and activities."

8. RSA 188-F:10 and RSA 188-F:11 do not name the technical colleges and the institute as "divisions" but do separately name each of them.

9. RSA 188-F:2 includes the Office of the Commissioner, PSTC, the six technical colleges, and the institute into a single

department, the Department of Postsecondary Technical Education.

10. RSA 188-F:14 defines each technical college, the institute, PSTC, and the Office of the Commissioner as a separate accounting unit.

11. The amendments proposed in HB 152-FN, if passed, will further define the individual identities of each technical college in terms of their programs, *i.e.*, their major functions responsive to the public needs in their areas.

12. In light of the findings of fact, see above, and these rulings of law, each technical college, the institute, PSTC, and Office of the Commissioner itself are the equivalent of "divisions."

13. Prior to 1992, it was the constant practice and understanding of the department that bumping rights could be exercised throughout the system as the rule referred to "department"-wide bumping.

14. Subsequent to 1992, it has been the constant practice and understanding of the department that bumping rights are to be exercised within each college or institution as these are "divisions" of the department.

15. Accordingly, bumping rights under N.H. ADMIN. R. Per 1101.02(h) are intended to be applied within each college.

The State respectfully requests reservation of the right to submit further proposed findings and rulings after the close of the evidence or at a date soon thereafter in the discretion of the Board.

WHEREFORE, the New Hampshire Technical College at Stratham and the New Hampshire Technical College at Laconia respectfully

request that this Honorable Board:

A. Accept the foregoing proposed findings and rulings and grant such of them as may be properly granted.

B. Grant such other and further relief as may be just and equitable.

Respectfully submitted,

NEW HAMPSHIRE TECHNICAL  
COLLEGES AT STRATHAM AND  
AT LACONIA,

By and through counsel,

Jeffrey R. Howard, Esq.

Attorney General

  
\_\_\_\_\_  
William C. McCallum, Esq.  
Assistant Attorney General  
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Concord, NH 03301  
(603) 271-3658

May 3, 1995

I hereby certify that a copy of the foregoing was hand delivered to counsel for appellees.

  
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William C. McCallum, Esq.

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
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## ***APPEAL OF CLAUDE ALLARD***

***Docket #96-0-1***

***NH Regional Community Technical College System  
(Formerly Department of Postsecondary Technical Education)***

***October 30, 1997***

The New Hampshire Personnel Appeals Board (Rule, Johnson and Barry) met on Wednesday, September 10, 1997, under the authority of RSA 21-I:58, to hear the appeal of Claude Allard, an employee of the NH Regional Community Technical College System. Mr. Allard was appealing his non-certification for the purpose of bumping into a position of Professor of Electro-Control Technology following his lay-off from a position of Professor - Industrial Electricity. The appellant was represented at the hearing by Jean Chellis, SEA Field Representative. Sara Sawyer, Human Resources Administrator, appeared on behalf of the State. /

Over the appellant's objection, the appeal was heard on offers of proof by the representatives of the parties. The parties had been advised by notice dated August 12, 1997, that the matter would be heard on offers of proof; that the parties would be permitted to offer documentary evidence, oral argument and offers of proof; and that if the Board then determined that it had insufficient evidence to fairly decide the appeal, the Board could compel the production of additional evidence up to and including the testimony of witnesses. The Board determined that it had sufficient evidence to decide the case without hearing live witness testimony.

The record in this matter consists of the audio tape recording of the hearing on the merits, orders and notices issued by the Board, pleadings submitted by the parties, and exhibits admitted into evidence as follows:

State's Exhibits

1. Chapter Per 1100, Layoff, Administrative Rules of the Division of Personnel
2. PART Per 405, Certification, Administrative Rules of the Division of Personnel
3. June 15, 1995 Decision of the NH Personnel Appeals Board
4. June 12, 1995 letter to Mr. Allard
5. Copy of System program data and bumping options as reviewed with Mr. Allard on July 25, 1995
6. Copy of supplemental job description for TIIC Professor - Electricity/Electro Controls (#13388) at the Manchester Technical college and copy of the state approved generic classification of TI/C Professor
7. Copy of teaching schedule for three semesters for position #13388 - TIIC Professor - Electricity/Electro-Controls
8. Copy of application and documentation submitted by Mr. Allard for TIIC Professor of Electricity/Electro-Controls
9. Copy of teaching schedules for Mr. Allard from Spring 1991 through Spring 1995/with copy of course descriptions at the Laconia Technical college
10. Copy of criteria for establishing professional credits for faculty certification
11. Copy of August 25, 1995 letter to Mr. Allard documenting bumping options and status
12. Copy of August 30, 1995 memorandum to Mr. Henry Dumas, incumbent of position #13388, TI/C Professor Electricity/Electro-Controls, documenting layoff due to suspension of the Electro-Control Technology Program at the Manchester Technical College
13. Copy of March 25, 1996 recall letter to Mr. Allard
14. Certification statement for Mr. Allard for TIIC Professor - Electricity/Electro Controls

## Appellant's Exhibits

1. August 25, 1995 letter to Mr. Allard concerning bumping options at lay-off
2. September 8, 1995 letter to Virginia Lamberton requesting reconsideration of the decision to deny Mr. Allard certification to bump into the position of TIIC Professor of Electro-Control Technology at NHTC/Manchester
3. September 25, 1995 letter from Virginia Lamberton declining to amend the Postsecondary Technical Education Department's certification decision, or schedule a meeting for further review of the issues
4. Supplemental Job Description for position 13388, Professor
5. 3-page Criteria for Establishment of Professional Credits
6. Mr. Allard's analysis of his professional credits
7. March 27, 1996 letter to Mr. Allard notifying him of recall to TIIC Professor - Industrial Electricity
8. April 9, 1996 letter to Mr. Allard from Dr. Alex Easton confirming Mr. Allard's acceptance of recall to TIIC Professor - Industrial Electricity .
9. July 29, 1995 letter to Sara Sawyer from Mr. Allard with accompanying 12 pages of application materials
10. pages 15 and 46 from the NH Technical College at Manchester 1991 - 1993 Catalog
11. Supplemental job description for TIIC Professor, position #13689 |

Ms. Sawyer stated that upon receipt of the Board's June 15, 1995, Order permitting Mr. Allard to bump into positions throughout the Department, she met with the appellant to review his qualifications and bumping options. She stated that Mr. Allard elected to bump into the position of Professor of Electricity/Electro-Control Technology at the Technical College at Manchester. Ms. Sawyer said that since authority for certifying faculty applications is delegated to the various Academic Deans, she asked Marie Sias, Dean of Academic Affairs at Nashua, Roger Berlinguette, Dean of Academic Affairs at Manchester, and Ken Coletta, Chairperson of the Industrial Technologies programs at Manchester, to review Mr. Allard's qualifications. She said that she also reviewed the appellant's qualifications with JoAn Bunten, a Certification Specialist from the

Division of Personnel. She stated that none of those persons found Mr. Allard to meet the minimum qualifications to bump into position #13388.

Ms. Sawyer said that because Mr. Allard did not possess a Master's degree, one of the position's requirements, she completed an analysis of his education and experience to determine if he met the alternate certification requirement of 55 "professional credits." Her analysis yielded a total of 47.5 professional credits: 20 for possession of a bachelor's degree<sup>1</sup>, 1.5 for 11 additional semester hours at Plymouth State College, 14 for NHTC teaching experience, 10 for related professional activities and 2 for licensure.

Ms. Sawyer said that even if the appellant had possessed the necessary 55 professional credits, he did not have the appropriate experience to teach all of the subjects in the Electricity/Electro-Control Technology curriculum. She noted that the job description used to evaluate a candidate's qualifications requires an applicant to possess the following:

"Thorough knowledge of teaching methods, instructional materials and subject matter related to courses of instruction. Complete knowledge of the principles, methods, techniques, materials, tools and equipment of the specific industry being taught."

In order to assume the duties of the Professor of Electro-Control Technology, Mr. Allard would need to teach and develop a curriculum in robotics, pneumatics, hydraulics, and fundamental microprocessor theory. She argued that although some of those subjects may have appeared as topics in the classes taught by the appellant, neither his education nor experience demonstrated that he possessed the in-depth knowledge of theory, applicability and technology to teach and develop such a curriculum.

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<sup>1</sup> Mr. Allard holds both an Associate's degree and a Bachelor's degree. However, an individual can not receive credit for each degree earned, only for the highest degree earned.

Ms. Chellis argued that the statement of minimum qualifications appearing on the job descriptions for positions #13388 and #13689 were identical, and that if the appellant met the qualifications to be recalled to his former position teaching Industrial Electricity, he must also have met the qualifications to bump into a position teaching Electro-Control Technology. Ms. Chellis argued that although the appellant had not taught the topics included in the Electricity/Electro-Control Technology curriculum as separate subject matters, he had taught them as topics in his Industrial Electricity curriculum, and that he should not be disqualified on that basis.

Ms. Chellis argued that professional credits for institute service and service as a department head should have applied to Mr. Allard's certification for bumping into position #13388. She said that if the Department had utilized those credits, the appellant would have met the requirement for 55 professional credits for certification. Ms. Chellis argued that the Department's refusal to certify the appellant as having been eligible to bump into the position of TI/C Professor - Electricity/Electro-Control Technology was the State's way of avoiding its obligations to compensate Mr. Allard for lost wages following his original lay-off until the date of his recall to position #13689, Professor of Industrial Electricity.

Upon review of the evidence, a number of facts are not in dispute:

1. Mr. Allard was laid-off from his position as a Technical Institute/College Professor - Industrial Electricity at the Laconia Technical College on August 20, 1993.
2. As an employee with ten or more years of continuous full-time service, Mr. Allard was eligible to bump a less senior employee in his own division, provided that he met the qualifications for that position.
3. The Department of Postsecondary Technical Education determined that each of the colleges in the Technical College system were independent "divisions" and that the only positions into which the appellant could bump were those at the college from which he had been laid-off.
4. Mr. Allard appealed that decision to the Personnel Appeals Board.
5. The Board, by order dated June 15, 1995, found that the various colleges in the system should not be considered "divisions," and that the appellant was therefore entitled to bump into a

position in another college, provided that he met the minimum qualifications for the position into which he intended to bump.

6. Mr. Allard elected to bump into position #13388 (Professor of Electricity/Electro-Control Technology) at the Manchester Technical College.
7. On August 25, 1995, Sara Sawyer, Human Resources Administrator for the Department of Postsecondary Technical Education, advised Mr. Allard that he did not meet the minimum qualifications for position #13388.
8. In order to certify as meeting the minimum qualifications for Position #13388, an applicant must possess a master's degree in an area related to the teaching assignment plus six years experience in teaching, business or industry in the field in which the teaching vacancy exists, two years of which must have been supervisory teaching duties. In the alternative, an applicant could possess fifty-five professional credits for the field of instruction.
9. The Criteria for Establishment of Professional Credits that can be utilized for either entry or promotion into a position include formal Postsecondary education (for highest degree earned), additional semester hours (to include seminars, workshops with the equivalent of one semester hour granted for each 15 hours of instruction with a maximum of 9 semester hours to be acquired in that manner for entry and for each promotional level thereafter), teaching experience at other institutions, teaching experience in the Postsecondary Technical College system, related professional experience and licensure.

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After considering the evidence, argument and offers of proof, the Board made additional findings as follows:

10. Professional Activities, Institutional Services (including committee memberships and campus activities), Division Chairperson status and Department Head status can only be used as professional credits for the purposes of promotion within the faculty promotion process'

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<sup>2</sup> As the Board understands it, the "faculty promotion process" does not involve selection to a vacancy. Rather, it is the process whereby Institute and Technical College faculty can achieve advanced faculty rank and improve their salary by obtaining additional "professional credits."

11. Professional activities, institutional service and experience as a division head or department head would have qualified Mr. Allard for advancement in rank or salary increases in his own position prior to lay-off. However, whether or not the appellant had been laid off, those credits were only applicable to the "faculty promotion process" and would not have been applicable to his certification for any other vacancy.
12. Mr. Allard did not possess the requisite 55 professional credits to meet the minimum certification requirements for position #13388. Had he met the minimum credit requirement, his application did not demonstrate that he possessed the subject matter expertise necessary to bump into a position of Professor in the Electro-Control Technology curriculum.
13. Mr. Allard would not have met the minimum qualifications for selection to a vacant position of Professor of Electro-Control Technology; therefore, he did not meet the minimum qualifications to bump into that position following lay-off.

The Board made the following Rulings of Law:

- A. Upon notification of layoff, an employee with 10 or more years of continuous full-time service may bump another employee within the same division of an agency as long as the employee exercising bumping privileges has more seniority than the employee being bumped and is certified pursuant to Chapter Per 400. [Per 1101.02 (h)]
- B. If the reasons for a layoff no longer apply, employees shall be recalled to the same agency from which the employees were laid off according to the same seniority order which the appointing authority applied to lay off the employee, provided such recall occurs within 3 years from the original layoff date. [Per 1101.05 (a)]
- C. Recall shall apply only to laid-off employees who return to the same classification within the same agency. [Per 1101.05(b)]
- D. The director shall review all applications for employment filed under Part Per 401 and certify in writing to the appointing authority whether the applicant meets the minimum educational and experience requirements which are stated in the class specification and/or supplemental job description required by Per 301.03. [Per 405.01(a)]

- E. The review under paragraph (a) shall take into account the following criteria: (1) the relevancy of the applicant's stated education, including whether the applicant's academic credits on the college transcripts fulfill the educational requirement as stated in the specification and the supplemental job description; (2) The relevancy of the applicant's stated work experience; and (3) Any requirements for the equivalent substitution of education and experience... [Per 405.01 (b)]

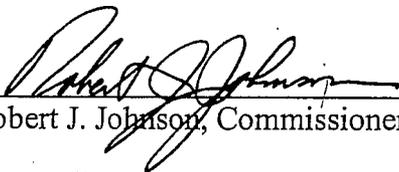
On the evidence, argument and offers of proof, the Board found that Mr. Allard did not qualify to bump into position #13388. The Board found that the NH Regional Community Technical College undertook a full and fair review of the appellant's qualifications consistent with the Board's Decision and Order dated June 15, 1995. Therefore, the Board voted unanimously to deny Mr. Allard's appeal.

The Personnel Appeals Board



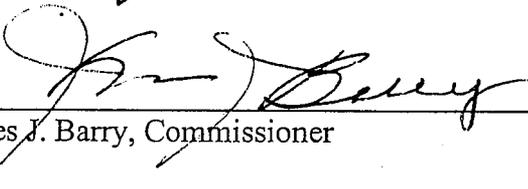
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Lisa A. Rule, Acting Chair



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Robert J. Johnson, Commissioner



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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Jean Chellis, SEA Field Representative, PO Box 3303, Concord, NH 03302-3303  
Sara Sawyer, Human Resources Administrator, NH Regional Community College System,  
6 Institute Dr., Concord, NH 03301

# State of New Hampshire



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

## ***APPEAL OF CLAUDE ALLARD***

***Docket #96-O-1***

***NH Regional Community Technical College System***

***Response to Appellant's Motion for Reconsideration***

***Monday, January 12, 1998***

By letter dated November 26, 1997, SEA Field Representative Jean Chellis, submitted a Motion for Reconsideration of the Board's October 30, 1997, decision denying Mr. Allard's appeal of non-certification for the purposes of bumping.

A properly filed motion for reconsideration must set forth fully every ground upon which it is alleged that the decision or order complained of was unlawful or unreasonable, or it must offer additional evidence that was not available at the time of the original hearing. With that standard in mind, the Board responds to the appellant's allegations as follows.

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Although the Board did not take the testimony of witnesses, the appellant was afforded an evidentiary hearing. The Board received documentary evidence, offers of proof and oral argument on all the issues that the appellant raised. As noted in the Board's scheduling notice and decision, had there been insufficient evidence upon which to fairly decide the appeal, the Board would have voted to compel the production of additional evidence, up to and including the testimony of witnesses. The appellant has failed to persuade the Board that live testimony would have produced evidence that was not otherwise available at the hearing on the merits, or that such testimony would have prompted the Board to reach a different decision.

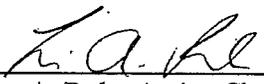
The State offered uncontroverted evidence that the professional activities and institutional service credits that may be used to qualify incumbents for "promotion" within their own

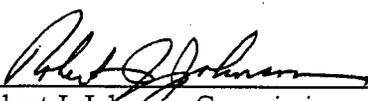
positions may not be used to satisfy the minimum qualifications for selection to a vacancy. Before an eligible employee can be permitted to exercise bumping privileges, that employee must first demonstrate that he or she meets the minimum qualifications for selection. [Per 1101.02 (h)] The appellant offered neither evidence nor argument to support the theory that employees who bump into a position need not meet the same basic entrance requirements as original applicants to the same position.

An employee electing to bump into a position must meet the minimum qualifications for both education and experience. Inasmuch as the appellant failed to persuade the Board that the appellant met the minimum education requirements for bumping, the Board found no good cause to schedule a further hearing to receive additional evidence on the adequacy of the appellant's experience.

For the reasons set forth above, the Board voted unanimously to deny the appellant's Motion for Reconsideration, and to affirm its decision that Mr. Allard did not meet the minimum qualifications to bump into the position of Professor of Electricity/Electro-Control Technology.

THE PERSONNEL APPEALS BOARD

  
\_\_\_\_\_  
Lisa A. Rule, Acting Chair

  
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Robert J. Johnson, Commissioner

  
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James J. Barry, Commissioner

cc: Virginia A. Lamberton, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Jean Chellis, SEA Field Representative, PO Box 3303, Concord NH 03302-3303  
Sara Sawyer, HR Administrator, NHRCTCS, 6 Institute Dr., Concord, NH 03301