

State of New Hampshire



PERSONNEL APPEALS BOARD
25 Capitol Street
Concord, New Hampshire 03301
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Appeal of Vicky Morton

Docket #2008-O-001

Community College System of NH

Personnel Appeals Board Decision on Appellant's Motion for Reconsideration/Rehearing and/or Clarification

January 23, 2008

By letter dated December 14, 2007, the SEA Grievance Representative Randy Choiniere submitted a Motion for Reconsideration/Rehearing and/or Clarification in the above-titled appeal.

In accordance with Per-A 208.03 " Such motion for reconsideration or rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable," [Per 208.03(b)]," and "A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the board's decision is unlawful, unjust or unreasonable." [Per 208.03(e)].

Grounds offered in support of the Motion are summarized below:

1. The term "division" refers to all of the colleges in the Community College System of New Hampshire.
2. The Board erred in ruling that the minimum qualifications on a supplemental job description can be different from those on the class specification.
3. Only the legislature has the authority to abolish a position, so the employer could not legitimately have been attempting to abolish the appellant's position in this instance.
4. Even if the personnel rules permitted different minimum qualifications on a supplemental job description than those listed on the class specification, the practice would violate Per 21-I:42, II.
5. The Board erred by not requiring the agency to consider Part-time Program Specialist II positions in the layoff scheme.

Having carefully considered the motion, the Board found the following.

1. There is no dispute that all the colleges in the system are within the same division, nor any reason for the Board to make such a finding in its decision.
2. According to the class specification for Program Specialist II, "Specific degree and experience requirements must be tailored to meet documented recruitment needs of the agency or department." Those specific requirements appear on the supplemental job description.
3. The appellant failed to offer evidence or argument that would prohibit an agency from selecting positions and/or classifications to be abolished, nor did the appellant raise the issue during the hearing on the merits of the appeal regarding the authority to establish or abolish positions, or why that would have any bearing on Ms. Morton's seniority.
4. The evidence reflects that all Program Specialist II positions require the same level of education and years of experience, and that they are all allocated at the same salary grade, consistent with the requirements of RSA 21-I:42. As one of several generic classes of positions, the supplemental job description in conjunction with the class specification provides the basis upon which applicants are certified.
 - a. Per 301.02(b) provides that, "The class specification shall not be considered a job description. The duties specific to an individual position shall be listed separately in the supplemental job description required by Per 301.03."
 - b. Per 401.01 (a) states, "The director or his or her designee shall review all applications for employment filed under Per 401 and certify in writing to the appointing authority whether the applicants meet the minimum educational, experience, and examination requirements which are stated in the class specification and/or supplemental job description required by Per 301.03."
5. The appellant failed to explain how the existence of part-time Program Specialist II positions elsewhere in the system would affect her seniority or change the order of lay-off and bumping.

Whereas the appellant's motion fails to demonstrate that the Board's decision is unlawful, unjust or unreasonable, the Board voted unanimously to DENY the Appellant's request for reconsideration or rehearing, and has herein provided any further clarification that the Board considers appropriate.

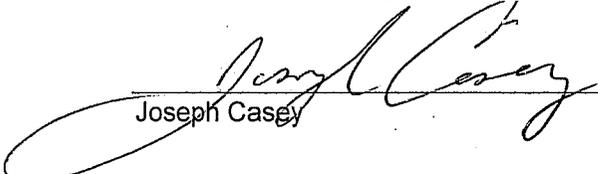
THE PERSONNEL APPEALS BOARD



Patrick Wood



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Docket #2008-O-001

NH Community Technical College System

November 15, 2007

The New Hampshire Personnel Appeals Board (Wood, Johnson and Casey) met in public session on Wednesday, August 29, 2007, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules to hear the appeal of Vicky Morton, a former employee of the Community College System of NH (hereinafter "System") Keene Campus. Ms. Morton, who was represented at the hearing by SEA Grievance Representative Randy Choiniere, was appealing her lay-off from employment effective July 2, 2007 from her position of Program Specialist II. Sara Sawyer, Human Resources Administrator, appeared on behalf of the System.

The appeal was heard on offers of proof. The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audiotape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

State's Exhibits

1. CHAPTER Per 1100, LAYOFF, of the Administrative Rules of the NH Division of Personnel
2. Copy of the July 2, 2007 letter of notification of layoff issued to Ms. Vicky Morton

3. Copy of the Supplemental Job Description for the position of Keene Center Coordinator, classification Program Specialist II, as assigned to Ms. Vicky Morton
4. Copy of the June 5, 2007 State of New Hampshire Seniority Date Listing for full-time employees at the CCSNH classified as Program Specialist II
5. Copy of the Supplemental Job Description for the position of Program Coordinator Littleton Center (#42365), classification Program Specialist II, as held by Ms. Melanie Collins
6. Copy of the Supplemental Job Description for the position of Project Director – DOL Grant (#9T807), classification Program Specialist II, as held by Mr. Christopher Lawrence
7. Copy of the June 15, 1995 decision of the State of New Hampshire Personnel Appeals Board pertaining to the appeals of Mr. Claude Allard (Docket #94-L-1) and Mr. David St. Cyr (Docket #95-O-1)
8. Copy of the Supplemental Job Descriptions for part-time employees classified as Program Specialist II within the Community College System of New Hampshire, formerly the NH Department of Community Technical Colleges

Appellant's Exhibits

1. July 9, 2007 Notice of Appeal with attachments (July 2, 2007 letter of layoff from Interim President Harvey Hill, and June 15, 1995 decision relative to Docket #94-L-1 and Docket #95-O-1)
2. August 3, 2007 "Additional Pleadings"
3. Email from Interim President Harvey Hill to Ms. Morton re: Daily Deposit Process
4. June 28, 2005 letter from Dr. Susan Henderson to Ms. Morton concerning the resolution of an appeal
5. Administrator III class specification and Supplemental Job Description for the Associate Vice President of Academic Affairs

6. Class specification for Program Specialist II and Supplemental Job Description for Keene Center Coordinator
7. June 24,2006 Keene Center Organizational Chart
8. September 27,2004 email from Dr. Susan Henderson regarding transfer of credits
9. List of employees classified as Program Assistant II in the Community College system¹

Position of the parties:

Mr. Choiniere argued that the Community College System of New Hampshire violated the Rules of the Division of Personnel and the provisions of RSA 21-I:42 when it determined seniority for purposes of lay-off based on the affected employees' Supplemental Job Descriptions rather than considering all incumbents in the general classification of Program Specialist II. Mr. Choiniere also argued that the agency's decision to abolish the appellant's position and lay her off from her full-time Program Specialist II position was the result of anti-union animus in violation of RSA 273-A, and was the method the agency chose to remove Ms. Morton without having to employ the disciplinary procedures in the personnel rules. Finally, he argued that the personnel rules prohibit agencies from laying off full-time employees while there are part-time employees serving in the same class of positions in the same agency.²

Ms. Sawyer argued that the decision to abolish the position of Program Specialist II, Keene Center Coordinator, was based solely on anticipated staffing needs and the System's decision to reorganize academic operations in the southwestern part of the state in order to create better academic linkage between the satellite center in Keene and the main campus in Claremont, and work toward expanding programming into Lebanon.

Although Appellant indicated the incumbents were classified as Program Assistant II, the evidence reflects that the positions were actually classified as Program Specialist II

The Rules do not require agencies to abolish or vacate part-time positions during a reduction in force, and Ms. Morton did not suggest that she should have been placed into one of those part-time positions.

Ms. Sawyer argued that the title "Program Specialist II" is a generic job classification, and although two or more positions might have the same generic title, their individual position titles, accountabilities, and minimum qualifications can vary significantly. As a result, she said, determining seniority on the basis of classifications within a division requires the agency to look at the specific job accountabilities and qualifications for each position before determining which position in that sub-set or class is actually the least senior. In this case, she said, Ms. Morton was found to be the least senior person in the class within the division, and was therefore subject to layoff once the System had decided to abolish the position she occupied.

After carefully considering the evidence and arguments offered by the parties, the Board made the following findings of fact and rulings of law:

Findings of Fact

1. The System has the discretion to make periodic adjustments to its staff, including its academic and academic support positions. From time to time, those adjustments can include abolishing positions, reclassifying positions, transferring positions, or creating new positions to meet the needs of the students already enrolled in the program, or to expand offerings to attract new students.
2. At the request of Interim College President Harvey Hill, as part of a restructuring plan for the System's academic programming in his area, the System agreed to create a new position to provide academic, programmatic and operational leadership at the college in Claremont. As part of that restructuring, the System agreed to abolish the appellant's position of Program Specialist II, Keene Center Coordinator.
3. Once the decision had been made to abolish that position, the System began its analysis of Program Specialist II positions throughout the System to determine which positions were sufficiently similar in purpose, scope, accountabilities and minimum qualifications to be considered in the same class of position as the Keene Center Coordinator position occupied by Ms. Morton.

4. Although there are three full-time Program Specialist II positions in the system, Ms. Sawyer identified only one other full-time position at the Littleton Academic Center with similar duties, responsibilities and minimum qualifications. The incumbent in that position had more seniority than Ms. Morton, and Ms. Morton was then identified as the least senior person in her class within her Division.
5. Ms. Morton had two more years of seniority than the Program Specialist II incumbent in the full-time position of Program Specialist II at Stratham.
6. Although the in-house title of the position in Stratham is "Project Director – DOL Grant," the supplemental job description for that position includes a general description of the scope of work, accountabilities and minimum qualifications that were sufficiently similar to those of the Program Specialist II, Keene Center Coordinator, that the position should have been considered in the same class for purposes of lay-off and bumping.
7. Ms. Morton's application for employment shows her meeting the minimum qualifications for the position of Program Specialist II in Stratham.

Rulings of Law

- A. According to Per 102.13 "'Class' or 'class title' means a group of positions which have the same class specification and whose duties, responsibilities, and minimum qualifications are sufficiently similar so that the same schedule of compensation and the same tests of fitness can be applied to each position in the group;" whereas Per 102.59 states, "'Supplemental Job Description' means a document identifying the scope of work, duties, and accountabilities of an agency-level position falling within a specific class."
- B. Per 1101.02 (d) of the Personnel Rules states, "No permanent employee shall be laid off from any position while there are temporary fill-in, part time or probationary employees serving in the same class of position within the same division of the agency." Ms. Morton was laid-off while there were seven part-time employees working as Program Specialist IIs throughout the System.

Decision and Order

Ms. Sawyer offered into evidence the Board's June 15, 1995 decision in the appeals of Allard and St. Cyr, arguing that the System applied the very same principles in determining which positions should be considered a "class" for the purposes of layoff. In that decision, however, the Board wrote:

“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.” [See PAB Decision, Claude Allard and David St. Cyr, page 7.]

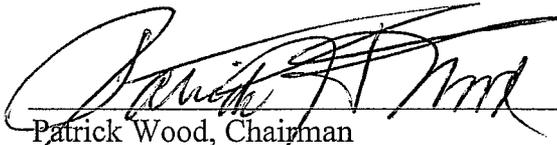
The same steps should have been taken in this case. If Ms. Morton possessed qualifications that would have certified her for appointment to another Program Specialist II position in which the incumbent had less seniority, that employee should have been laid off instead of the appellant.

While the Board understands the rationale utilized by the System, the Board believes that the lay-off decision also should have taken into consideration the qualifications of each full-time employee classified as Program Specialist II, and whether or not the employee in the abolished position would have met the minimum qualifications as described in the supplemental job description for other Program Specialist II positions where the incumbent had less seniority.

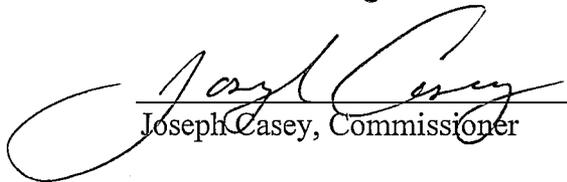
With respect to the Appellant's assertion that the lay-off decision was based on anti-union animus, the Board found that the single email from Interim President Hill regarding his authority to make operational decisions at the college did not support that claim. No other evidence of alleged anti-union animus was offered.

Having carefully considered the evidence and argument offered by the parties, the Board found that Ms. Morton was not the least senior Program Specialist II within her Division. Inasmuch as Program Specialist II is a generic classification and the agency must rely on Supplemental Job Descriptions for individual position qualifications, the agency shall review Ms. Morton's education and experience. If Ms. Morton meets the minimum qualifications for the position of Program Specialist II – Project Director, DOL Grant, she shall be assigned to that position. If the agency determines that Ms. Morton does not meet the minimum qualifications by virtue of education and experience as described in the appropriate Supplemental Job Description, the agency shall so advise the Board and the appellant within fifteen days of the date of this order, explaining the rationale for its decision. The appellant will then have fifteen days in which to file an objection. The Board will then consider the information provided by both parties to determine whether or not the appellant should have been assigned to the Program Specialist II – Project Director, DOL Grant.

THE PERSONNEL APPEALS BOARD


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Robert Johnson, Commissioner


Joseph Casey, Commissioner

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