

State of New Hampshire



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

Appeal of Donald Barr
Docket #97-P-10
NH Community Technical College System
Response to Appellant's Reconsideration Request

Thursday, October 23, 1997

The Board has considered the request for reconsideration of its September 4, 1997, decision filed by the NH SEA, SEIU Local 1984, on behalf of Mr. Donald Barr.

Requests for reconsideration must, as a general rule, 1. allege that the Board has made an error of law or 2. Present additional facts that were not available at the original hearing. With this standard in mind, the Board will respond to the request for reconsideration.

Request #1 does not allege any error of law nor does it present any additional facts.

Request #2 alleges the September 4, 1997, decision does not consider certain provisions of the Administrative rules, Division of Personnel but does not specify which rules are not considered. The board reviewed, among others, Rules 601.01, 101.67, 501.02, and 601.05. The promotion of Mr. Barr was clearly temporary and not provisional. There are no new facts alleged in this request. The Board finds no error of law.

Request #3 suggests Mr. Barr was on a "special assignment" which does not comport with the facts presented by either side in this case, nor does the request include additional facts to support this suggestion. The Board has reviewed Chapter 800 and does not find an error of law.

Request #4 does not allege any new facts. The Request ignores the modifying language of Per 602.02 (a) ("Whenever possible) and Per 602.02 (b) and (c) ("in the opinion of the appointing authority"). The board finds no error of law.

Request #5 alleges no new facts and alleges no error of law.

Request #6 alleges the agency assigned all the duties of the position of Plant Maintenance Engineer. However, the case as presented by the agency clearly indicated their position that not all duties were assigned to Mi. Barr. Mr. Barr had ample opportunity to present contradicting evidence at the hearing but failed to do so. This request does not allege new facts but asks the Board to ignore the facts presented and not contradicted. The Board finds no error of law.

The Board has considered the request for reconsideration filed on behalf of Mr. Barr and such request is DENIED. Since the request for reconsideration is denied, there is no need for an evidentiary hearing in this case.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chairman



Patrick H. Wood, Commissioner



James J. Barry, Commissioner

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Docket #97-P-10
NH Community Technical College System

September 4, 1997

The New Hampshire Personnel Appeals Board (Rule, Wood and Barry) met on Wednesday, August 20, 1997, to hear the appeal of Donald Barr, an employee of the NH Community Technical College in Claremont. Mr. Barr was appealing his non-selection for promotion to the position of Plant Maintenance Engineer. Sara Sawyer, Human Resources Administrator, appeared on behalf of the Community Technical College System. Thomas Hardiman, SEA Director of Field Operations, appeared on behalf of the appellant. The appeal was heard on offers of proof without objection by either party.

The following facts are not in dispute:

1. On October 9, 1996, the New Hampshire Regional Community Technical College System posted a vacancy of Plant Maintenance Engineer I, and accepted applications from in-house candidates for that vacancy through October 15, 1996.
2. Mr. Barr, a full-time employee at the Claremont campus, applied for the vacancy.
3. The position became vacant in July, 1996, and Mr. Barr was selected to fill that position on a temporary promotion.
4. When the position was posted in October, 1996, Mr. Barr was one of three in-house applicants who met the minimum qualifications for consideration, and who were interviewed for the vacancy.
5. The criteria used by the interviewers in making their recommendations to the appointing authority included the following: 1) meeting the minimum qualifications for education and experience stated on the class specification; 2) demonstrating knowledge and expertise in building maintenance and plant operations; 3) possessing

current work experience in a position with responsibility for building or plant maintenance including plumbing, carpentry, electrical, painting, heating, ventilation and steamfitting; plant operation management including fiscal administration, preventative maintenance planning, development and implementation, operating systems evaluation and modification and material and resource allocation; policy and procedure development and training in safe maintenance practices.

6. The interviewers were also seeking a candidate who possessed knowledge of occupational hazards, safe work practices, codes, regulations and statutes, and current mechanical and technical practices required in the operation and maintenance of a physical plant. They sought a candidate with experience in the supervision of mechanical and technical staff, and a candidate possessing strong communication skills and an ability to establish and maintain effective working relationships with faculty, staff, contractors, other government entities, and the public.
7. After the interviews, the panel ranked Mr. Barr third of the three in-house applicants.
8. The interview panel recommended the selection of the in-house candidate who ranked first in the interviews.
9. The appointing authority rejected that recommendation and undertook an outside recruitment through which the position was ultimately filled.

Mr. Hardiman argued that when the department temporarily promoted Mr. Barr to fill the position of Plant Maintenance Engineer, it certified to the Division of Personnel that the appellant met all the minimum qualifications for promotion, and that the appellant would be assigned "all of the duties and responsibilities of the higher level class" for which the temporary promotion was requested.

Mr. Hardiman argued that during the seven months that Mr. Barr filled the Plant Maintenance Engineer position, he received no unfavorable evaluations¹ of his work and was never given reason to believe that he was not properly fulfilling all the duties and responsibilities of the position. He also argued that all of the appellant's prior performance evaluations reported that he was meeting expectations.

¹ Throughout the period of his temporary promotion, Mr. Barr received no formal evaluation.

Mr. Hardiman argued that the appellant never received written clarification of his assignments in his status as the temporary Plant Maintenance Engineer, and he would have had no way of knowing that tasks such as budgeting, resource allocation, and short and long term planning had either been assumed by someone else or had been put on hold until the position could be filled permanently. He also argued that Mr. Barr never received an evaluation² during his temporary assignment supervising plant maintenance activities, and therefore would have been unaware of any perceived deficiencies in his work.

Mr. Hardiman argued that under the provisions of Per 602.02 (a) of the Rules of the Division of Personnel, the agency had an obligation to promote the appellant based on his full-time status and his demonstrated abilities to carry out the duties and responsibilities of the position. He argued that when the agency rejected Mr. Barr's candidacy and that of the other full-time employees who applied for promotion, their decision to disqualify him was based on the fact that he did not possess a license in a trade, a requirement not found on the class specification for Plant Maintenance Engineer. Mr. Hardiman argued that the Board had heard a similar case in the Appeal of William Chandler and asked the Board to issue a similar order, requiring the Department to promote the appellant to the vacancy.

Ms. Sawyer argued that the Plant Maintenance Engineer vacancy had occurred very suddenly at the beginning of the academic year, and that the agency needed someone to handle the day to day functions of supervising maintenance personnel and ensuring that necessary work was performed. However, she argued that other functions associated with the position were handled by other college staff. Specifically, she said that Mr. Fisher handled budgeting and resource allocation, while preventative maintenance, short-term planning and long-term planning were all put on hold. She argued that the agency never

² Although Per 801.06(b) (3) requires appointing authorities to evaluate the performance of employees "on special assignment," there is no specific requirement for evaluation of employees during periods of temporary promotion.

assigned Mr. Barr the full responsibilities outlined on the supplemental job description, and when the agency considered Mr. Barr's application in conjunction with his record of performance, they found him to lack the level of technical and managerial skills that the other candidates possessed, resulting in his ranking third of the three in-house applicants. Specifically, the interview committee had concerns that the appellant lacked the breadth of technical knowledge required, particularly in the areas of electrical and mechanical functions. They also found that he lacked the experience and ability to develop and implement a plan to deal with crisis/emergency situations.

Per 602.02 (b) provides that, "The most qualified candidate for the position, in the opinion of the appointing authority, shall be selected from designated groups of employees considered in the following order: (1) full time employees; (2) former full-time agency employees who have been laid off within the past three years; (3) probationary employees; and (4) part-time employees." In the opinion of the appointing authority, Mr. Barr was the least qualified of the three in-house applicants for promotion.

Per 602.02 (c) provides that, "Candidates may be denied selection if, in the opinion of the appointing authority, they are deemed to lack personal or professional qualifications for promotion." In the opinion of the appointing authority, Mr. Barr lacked the technical and managerial skills necessary for promotion to the position of Plant Maintenance Engineer.

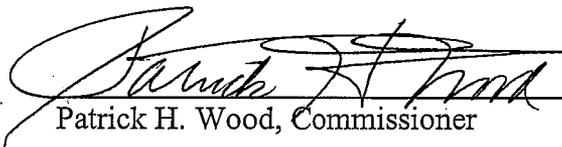
The appellant seems to believe that somehow he has been prejudiced by the agency not assigning to him all the duties of the position during his temporary promotion, and by not evaluating his work performance in that position. The Board does not agree. Mr. Barr had the opportunity to perform some if not all of the position's duties and responsibilities. By contrast, his co-workers who also had applied for promotion had no such opportunity. Furthermore, since the interview panel based their rankings on their impression of the candidates during the interview and not on a review of performance evaluations in the position itself, Mr. Barr received the same consideration as those candidates. Following that interview, Mr. Barr was ranked third of the three candidates who had applied.

For the reasons set forth above, in consideration of the evidence, argument and offers of proof, the Board voted unanimously to deny Mr. Barr's appeal.

THE NEW HAMPSHIRE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chairman



Patrick H. Wood, Commissioner



James J. Barry, Commissioner

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