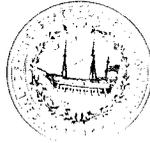


State of New Hampshire

87-P-103

PERSONNEL APPEALS BOARD
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APPEAL OF CHARLES COLPITTS
September 9, 1988

On July 19, 1988, the Promotion Appeals Tribunal consisting of Loretta Platt, Chairman; Joan Day, Human Resources Coordinator (Department of Employment Security); and John Roller, Human Resources Coordinator (Department of Environmental Services) heard the appeal of Charles Colpitts, a Personnel Analyst I with the Division of Personnel. Mr. Colpitts was appealing his non-selection to the position of Personnel Analyst II. Mr. Colpitts alleged that the Division of Personnel had violated Per 302.02(c) Posting of Vacancies at the Division of Personnel. Mr. Colpitts was represented by State Employees' Association Field Representative Ann Spear. Ms. Virginia Vogel, Director of Personnel, represented the Division of Personnel as the Appointing Authority.

At the outset of the hearing, the Tribunal considered the request from Ms. Spear for material she had requested in her letter of July 8, 1988, Motion for Discovery. That request was for certain documents pertaining to the appointment of Sara Willingham to the position of Personnel Analyst II. Upon review and discussion of the request, the Tribunal ruled that the request was not timely as the appellant and his representative, Ms. Spear, had had at least six months to submit this request. The Tribunal therefore voted to deny the Motion for Discovery.

Ms. Spear further contended that she had never received the material that the Tribunal had requested of the Director of Personnel in its January 18, 1988 order in this matter. The Board therefore took a short recess and requested Ms. Vogel to provide Ms. Spear access to this material. At the beginning of the hearing, Ms. Spear clarified the relief which the appellant was seeking. Because the position in question had been downgraded to Personnel Analyst I subsequent to Mr. Colpitts' filing of the appeal, the appellant limited his request for relief to a ruling by the Board that all vacancies be posted pursuant to Per 302.02(c).¹

¹ Because it is impossible to determine whether all future vacancies would be subject to Per 302.02 (c), the Board voted to review whether the position in question was subject to Per 302.02 (c).

In her presentation to the Tribunal, Ms. Vogel argued that her letter of January 26, 1988 to the Board clearly set forth her position. She explained that she was required to meet specific deadlines to set up the classification study and to have her staff in place for the contractors conducting the study. Ms. Vogel testified that she assigned additional supervisory responsibilities to Ms. Willingham and subsequently authorized a temporary adjustment in her classification and salary grade. At the time Ms. Vogel made the change, she reviewed her staff, consisting of a supervisor and two analysts and selected Sara Willingham to assume these additional responsibilities to coordinate and implement the Classification Study with the consultants. Ms. Vogel further explained she had problems with the appellant (i.e., attitude, letter of warning, complaints), and therefore contended that if the job had been posted, she still would not have selected Mr. Colpitts.

Ms. Vogel further testified that the Rules of the Division of Personnel allow the Director to shorten the posting of a vacancy and that if she had wanted to do so in this case, she would have been justified in waiving the posting period. She stated she had waived posting for other vacancies for other agencies upon request and justification. Ms. Vogel did not deny that position No. 18012 was a permanent position. She contended, however, that Ms. Willingham was temporarily promoted, rather than permanently, to Personnel Analyst II, to reflect her additional responsibilities brought about by the contractual requirements of the new Classification Study.

In his presentation to the Tribunal, the appellant argued that Position No. 18012 had been approved by the legislature approximately a year ago and Ms. Vogel had ample time to post the position and fulfill deadlines. Mr. Colpitts further argued that if the position had been posted, he and another employee, Richard Williams, would have applied. Ms. Spear introduced two documents that subsequently were marked Exhibit 1, Basic Position Information and Exhibit 2, Personnel Action Data, testifying that these two documents indicated that position No 18012 was a permanent position and that Ms. Willingham was placed in that position as a permanent appointment. Based on the evidence which she presented, she contended that a violation of Per 302.02(c) had occurred.

After reviewing the testimony and evidence received, the Tribunal voted to deny the appeal. In reaching that decision, the Tribunal made the following findings:

The Tribunal found that it need not address Richard Williams' possible interest in the position under appeal in its deliberations on the appeal filed by Mr. Colpitts. The Tribunal found that Mr. Williams had not filed an appeal of non-selection to the Personnel Analyst II position.

The Tribunal further found that the Director of Personnel was required to provide certain staff to outside consultants who were conducting a review of the state personnel system. The Director assigned Sara Willingham to work with the consultants. The assignment resulted in increased responsibilities for Ms. Willingham. The assignment was of a temporary nature as the consultants were to complete the review within a certain period of time. As a result of the increased responsibilities assumed by Ms. Willingham during her temporary assignment

working with the contractors, the Director of Personnel temporarily promoted her to a Personnel Analyst II. In reaching this conclusion, the Board reviewed Exhibits 1 and 2, Basic Position Information and Personnel Action Data. The Tribunal found that the Basic Position Information form is a record that gives data on a permanent position and establishes the existence of a permanent position but does not address an incumbent. The Position Action Data form is used for processing information about an incumbent. In a temporary promotion the position number should be entered to indicate the position from which funds will be paid; therefore, the form does not necessarily indicate either the temporary or permanent status of the promotion. The end date indicates an indefinite status date for the position itself. The permanent, full time codes indicate the incumbent is a permanent, full-time employee. The Tribunal found that Ms. Willingham remained a permanent full time employee, temporarily promoted based on the additional responsibilities that had been added to her duties as a result of the new Classification Study.

Based on the foregoing, the Tribunal found that the Division of Personnel did not violate Per 302.02(c) in filling the position in question, and therefore voted to deny the appeal.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

cc: Ann Spear
SEA Field Representative

Virginia A. Vogel
Director of Personnel