

State of New Hampshire



PERSONNEL APPEALS BOARD

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Appeal of Gregory Ives, Docket #2009-P-007

New Hampshire Employment Security and New Hampshire Division of Personnel

January 5, 2011

The New Hampshire Personnel Appeals Board (Wood, Bonafide, Johnson and Casey) met in public session on Wednesday, November 3, 2010, 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 Gregory Ives, an employee of New Hampshire Employment Security. Mr. Ives, who appeared *pro se*, was assisted at the hearing by Nick McGinty, SEA Grievance Representative. JoAn Buntin, Supervisor of Recruitment and Certification for the Division of Personnel and Personnel Director Karen Hutchins appeared on behalf of the state. The appeal was heard on offers of proof by the parties. Mr. Ives was appealing the Division of Personnel's decision denying him certification as meeting the minimum qualifications for the position of Human Resources Administrator/ Administrator II, based on the information he supplied as part of his application for an in-house posting.

Preliminary Motions and Pleadings

On June 23, 2009, Randy Choiniere, SEA Grievance Representative II, filed the initial appeal on Mr. Ives' behalf. On July 7, 2009, Personnel Director Karen Hutchins filed a Request for Disposition Without Evidentiary Hearing, arguing that the issues raised by Mr. Choiniere in support of the appeal had already been answered by the New Hampshire Supreme Court in its decision in the Appeal of Vicky Morton, 158 N.H. (2008). By letter dated July 17, 2009, Mr. Choiniere filed his response, arguing that there were material facts in dispute, and that the state had failed to provide all relevant information or specifically respond to several of the submissions made by the appellant. He argued that to issue a decision without giving Mr. Ives an opportunity for formal discovery would prejudice the appellant. Before receiving a response from the Board, Mr. Choiniere notified the Board by letter dated August 20, 2009, that he was leaving his employment with the State Employees Association, and that SEA Field Representative Jeffrey Brown would assume responsibility for representing the appellant.

On March 12, 2010, the Board contacted the State Employees Association by email requesting updated information about representatives of record for scheduling purposes, as Mr. Brown was reported to be away indefinitely on extended leave. A similar request was sent via email on September 17, 2010, with requests for information about representation so that hearings could be scheduled in November and December 2010. The Board sent notices of hearing to the parties. On October 25, 2010, the Board received notice that JoAn Bunten of the NH Division of Personnel would appear on behalf of the State. Nicholas McGinty, SEA Grievance representative, advised the Board by phone that Mr. Ives would represent himself in the hearing on the merits of his appeal scheduled for November 3, 2010, but that Mr. McGinty would be there to assist. The Board received written notice from Mr. Ives on October 27, 2010, regarding the exhibits that he intended to present in his direct case on the merits of the appeal.

The Board did not issue a formal decision on the State's Request for Disposition Without Evidentiary Hearing, but did notify the parties in its September 24, 2010, scheduling order that the Board would hear the merits of the appeal on offers of proof by the representatives of the parties on November 3, 2010.

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

- A. Job posting for the position of Administrator II, #11090
- B. Classification Specification for the generic title of Administrator II
- C. Gregory Ives' completed Application for Employment for the position of Administrator II, #11090
- D. Letter dated May 26, 2009, to Gregory Ives from JoAn Bunten
- E. Letter dated June 2, 2009, from Gregory Ives to JoAn Bunten requesting reconsideration
- F. Letter dated June 12, 2009, from Personnel Director Karen Hutchins to Gregory Ives
- G. Classification Specification for the generic title, Chairman, Unemployment Compensation Appeals Tribunal I
- H. Supplemental Job Description for Gregory Ives as Chairman, Unemployment Compensation Appeals Tribunal I
- I. Classification Specification for the generic title of Manager, Local Office
- J. Supplemental Job Description for Gregory Ives as Manager, Local Office
- K. November 7, 2008, NH Supreme Court decision in the matter of Vicky Morton

Appellant's Exhibits

1. May 14, 2009 in-house posting for position #11090
2. Application for position #11090
3. May 18, 2009 application memorandum
4. May 26, 2009 letter of non-certification
5. June 12, 2009 letter of non-certification
6. Administrator II classification
7. Chairman, Unemployment Compensation Appeals Tribunal I classification
8. Manager classification
9. Covers and representative pages for 1999-2001 and 2000-2003 Collective Bargaining Agreements
10. O*Net Online summary reports
11. Bureau of Labor Statistics Occupational Outlook Handbook excerpts
12. Printouts from the www.shrm.org website

Also included, but unmarked as an exhibit, was a document submitted by the Appellant titled "Offer of Proof that Gregory B. Ives Certifies as Human Resources Administrator II." As part of its deliberations, the Board also reviewed the "Basic Purpose" section of classification specifications found on the Division of Personnel website for positions assigned to human resource management as shown below. Finally, the Board reviewed the specific occupational groupings for positions described by the Appellant in his application for employment to determine if they would be considered "human resources" positions using the federal system of labor classifications.

Having carefully reviewed the documents submitted by both parties, and after considering the arguments and offers of proof provided at the hearing, the Board found as follows:

Facts:

1. The "Basic Purpose" for human resources classifications in State service are as follows:
 - a. Human Resources Assistant I: "To perform clerical and accounting duties in maintaining personnel and payroll records related to state employees."
 - b. Human Resources Assistant II: "To prepare and maintain personnel records in a state personnel unit and to process paperwork used in hiring or terminating employees."
 - c. Human Resources Assistant III: "To prepare, review and maintain personnel forms and records, including interviewing applicants for employment according to prescribed agency policy."

- d. Human Resources Technician: "To provide technical assistance in processing human resources information and to make preliminary recommendations for the development and modification of statewide personnel procedures."
 - e. Senior Human Resources Technician: "To support the human resources (HR) and/or employee relations (ER) functions of a large division or department by coordinating and assuming administrative responsibility for one or more agency HR/ER functions, collecting, verifying and distributing information to field HR personnel; communicating any changes in HR/ER policies and procedures with agency HR Administrators; and recommending amendments to existing department and statewide personnel policies and procedure to improve the efficacy of agency operations."
 - f. Human Resources Coordinator I: "To coordinate and monitor agency personnel management activities, including implementing agency personnel programs and resolving staffing and other personnel management problems."
 - g. Human Resources Coordinator II: "To plan and coordinate agency human resources management policies, implement agency personnel programs, and serve as liaison between the agency and the Division of Personnel regarding personnel matters."
 - h. Human Resources Administrator: "To administer a variety of human resources programs including payroll activities, training, workers' compensation, benefits administration, safety and EEO issues for a state agency, including the planning and development of the agency personnel program."
 - i. Human Resources Specialist I: "To analyze and interpret human resources information to make preliminary recommendations for the development and modification of statewide personnel functions."
 - j. Human Resources Specialist II: "To coordinate the development, modification and implementation of human resources functions within assigned area of specialization."
2. In order to meet the minimum qualifications for the position of Administrator II, Human Resources, the Appellant needed both a bachelor's degree and "Seven years' experience in human resource management with at least four years in a management level position involving administrative or supervisory duties involving personnel administration, labor relations, recruitment, staff development, program planning and evaluation, business management or related management experience." (Appellant's Exhibit A-1)
3. The Summary Report for Human Resources Managers from O*Net OnLine (Appellant's Exhibit A-10, page 27) describes Human Resources Managers as performing the following duties: "Plan, direct, and coordinate human resource management activities of an organization to maximize the strategic use of human resources and maintain functions such as employee compensation, recruitment, personnel policies, and regulatory compliance."

4. The Summary Report for Administrative Services Managers from O*Net OnLine (Appellant's Exhibit A-10, page 33) describes Administrative Services Managers as performing the following duties: "Plan, direct, or coordinate supportive services of an organization, such as recordkeeping, mail distribution, telephone operator/receptionist, and other office support services. May oversee facilities planning and maintenance and custodial operations."
5. In his application for employment, the Appellant's work experience includes two years, nine months as an Interviewer Trainee, Interviewer I and Interviewer II. In that capacity, the Appellant reported that he performed tasks including claim taking functions, classifying and registering individuals for job service, and managing job orders, including soliciting, receiving, writing, validating and inactivating those orders. Those tasks would be classified by the Department of Labor, Bureau of Labor Statistics, as one of the Office and Administrative Support classifications (43-0000). However, they fit into the description of Eligibility Interviewers, Government Programs (43-4060) which is separate and distinct from Human Resources Assistants (43-4160). While they have similar responsibilities for office and administrative support, they are not considered duties within the occupational grouping of "human resources."
6. Work experience listed on the Appellant's application for employment includes 4 years and 9 months as a Certifying Officer III, where his principal duties included writing and issuing determinations authorizing or denying unemployment compensation benefit claims. This position would fall into the major occupational grouping of Office and Administrative Support, but would not fit the more narrow category of human resources management, as its primary function related to determining eligibility for government programs.
7. Work experience listed on the Appellant's application for employment includes 2 years and 3 months as a Program Specialist II – Trainer. In that capacity, the Appellant reported that his primary responsibilities included designing and managing training programs for the Benefits Section staff, and supervising their day-to-day work assignments as they relate to benefit determinations. Although training and direct supervision are two of many functions associated with human resources management, the Appellant's work was more narrowly focused on issues related to unemployment compensation and employment eligibility for claimants rather than planning, directing and coordinating human resource management activities of his department to "maximize the strategic use of human resources and maintain functions such as employee compensation, recruitment, personnel policies, and regulatory compliance," as described in Exhibit A-10, page 27.
8. Work experience listed on the Appellant's application for employment includes 3 years and 7 months as a Local Office Manager for NH Employment Security, supervising and managing a staff of 8-16 employees in the Employment Service Program, as well as overseeing the Employer Services Program. Although he supervised staff and managed their day-to-day work assignments in the Employment Service and Employer Services Programs, his job was to supervise staff, not to "Plan, direct, and coordinate human resource management activities of [his department] to maximize the strategic use of human resources and maintain

functions such as employee compensation, recruitment, personnel policies, and regulatory compliance.”
(Appellant’s A-10, page 27)

9. Work experience listed on the Appellant’s application for employment includes just over 5 years to date as Chairman, UC Tribunal I, in which the Appellant is responsible for conducting quasi-judicial hearings concerning claimants’ eligibility for unemployment compensation. Policies and procedures he may develop relate to the unemployment compensation appeals process.
10. None of the work experience described in the Appellant’s application for employment was performed in a human resources office, or in support of a human resources function for an organization.
11. The Appellant has extensive experience in the area of unemployment compensation, but no actual experience planning, directing or coordinating human resource management activities for his department.
12. The Appellant served on the union’s negotiating committee for the 2001-2003 Collective Bargaining Agreement between the State and the State Employees’ Association, and served for an undetermined amount of time as a union steward.

Rulings of Law:

1. RSA 21-I:42, II, charges the Director of Personnel with, “Preparing, maintaining and periodically revising a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same classification...”
2. Minimum qualifications on classification specifications can be further defined by the Supplemental Job Description. As the NH Supreme Court found in the Appeal of Morton, “Various positions within state agencies may have the same classifications and general qualifications, as well as the same basic duties, but the specific nature of those positions can require specialized knowledge or experience.” NH Employment Security, with approval of the Division of Personnel, set forth the specialized experience an applicant would need to certify as meeting the minimum qualifications for the position of Administrator II, Human Resources.

Decision and Order

The generic class specification for Administrator II, salary grade 29, requires an applicant to have “Seven years’ experience in a field or occupation relevant to program area in which position is assigned, four years of which must have been in a management level position involving administrative or supervisory duties concerned with program administration, program planning and evaluation, business management or related management experience.”

Although the evidence reflects that the Appellant has substantial experience supervising and managing staff, he does

not have experience in human resource management as it relates to planning, directing and coordinating human resource management activities for an organization. The Appellant has applied legal standards to evaluate and ultimately adjudicate unemployment claims. That experience, however, is not sufficiently similar to managing compensation, recruitment, personnel policies or regulatory compliance for an agency in areas of human resources management and personnel administration. For all the reasons set forth above, the Board found that the Appellant's work experience is not "in a field or occupation relevant to human resources management."

Having found that the Appellant lacked the appropriate experience in human resources management, the Board did not reach the question of whether or not his work experience as a Local Office Manager could satisfy the requirement for "four years in a management level position involving administrative or supervisory duties involving personnel administration, labor relations, recruitment, staff development, program planning and evaluation, business management or related management experience." The fact that the Appellant lacked the requisite experience in the field of human resources administration would disqualify him for the position, regardless of his management experience. Therefore, for all the reasons set forth above, the Board voted unanimously to DENY Mr. Ives' appeal and affirm the decision of the Division of Personnel denying him certification for the position of Human Resources Administrator.

THE PERSONNEL APPEALS BOARD



Patrick Wood, Chair

Philip Bonafide, Vice-Chair



Robert Johnson, Commissioner

Joseph Casey, Commissioner

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