

# State of New Hampshire



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

### APPEAL OF DIANE JOHNSEN AND SIDNEY OSGOOD

March 29, 1989

On February 15, 1989, the promotion Appeals Tribunal consisting of Chairman Peter C. Scott and members Sharon Sanborn, Human Resource Coordinator (New Hampshire Hospital) and George Liouzis, Human Resource Coordinator (New Hampshire Liquor Commission) heard the appeals of Diane Johnsen and Sidney Osgood, employees of the New Hampshire Technical Institute. Ms Johnsen and Mr Osgood were appealing their non-selection to the position of Instructor/Professor - Computer Services. The appellants were represented by SEA Field Representative Stephen J. McCormack. The Technical Institute was represented by Dr. David E. Larrabee, Sr., President of the Institute and Sarah Hopley, Human Resource Coordinator for the Institute.

Mr McCormack contended that both appellants were better qualified than the successful candidate and that pre-selection had occurred in the appointment to said position. Mr McCormack further contended that the interview committee should be identified and that the committee was not set up pursuant to the Division of Personnel Rules.

Ms Hopley presented interview questionnaires on each of the three candidates for the vacancy completed by the interview committee. Dr. Larrabee gave testimony on his selection of an interview/search committee and their recommendations to him prior to his final selection decision on Friday, September 2, 1988.

After reviewing the testimony and evidence received the Tribunal voted to deny Diane Johnsen's and Sidney Osgood's appeals. In reaching that decision, the Tribunal made the following findings.

Per 302.03(b) provides "Selection for such promotion shall be based upon capacity for the vacant position, ability as evidenced by past performance and length of service with the Department."

The interview of candidates is an integral part of the selection process which helps determine capacity for the vacancy. The Tribunal, upon review of the questions asked of each candidate, felt they were appropriate. SEA Field Representative McCormack, in his October 11, 1988 letter to the Tribunal, requested that the members of the interview committee be identified. Sarah Hopley, Human Resource Coordinator, identified the members of the committee in her February 7, 1989 letter to the Tribunal by their titles only. She did not release the names of the selection committee for the purpose of confidentiality.

At the hearing, names of the selection committee were disclosed. The Tribunal felt that this information should be presented. Since both appellants were interviewed by this committee, the Tribunal did not believe a confidentiality issue could be raised. It was mentioned that the successful candidate's immediate supervisor was on this search committee. The Tribunal did not view participation by this member as inappropriate and saw no evidence of bias during the scoring of the interviews. The immediate supervisor of all the candidates has great weight in giving the appointing authority input on an employee's job performance. (Per 302.03 (i) "It is the prerogative of the appointing to give such weight to an employee's job performance as he deems appropriate when considering the employee for appointment to a vacancy.")

The Tribunal found that interviews conducted by each agency shall be constructed per the Appointing Authority's prerogatives, and chosen selection process. Since all candidates met the minimum qualifications for this position, the Agency needed to make a determination, through its interview and screening process which candidate was best suited to the vacancy and most capable of fulfilling its requirements. The Tribunal found this process was conducted pursuant to the Rules of the Division of Personnel.

The search committee or selection committee finished their interviews on Thursday, September 1, 1988, and on Friday, September 2, 1988, Dr. Larrabee informed Ms. Johnsen and Mr. Osgood that Mr. Kenneth Randall had been selected, based on the recommendations of the selection committee.

Per 301.12 "Oral Examination" is not applicable to the interview process at the Agency level and is only applicable to the Division of Personnel conducting oral examinations. An appointing authority may make use of a committee such as the one employed by Dr. Larrabee, and may give it such weight under the circumstances as the appointing authority believes appropriate. In the end, however, the decision rests with the appointing authority. Nevertheless, the Tribunal will not condone a sham process, if the purpose of the process is to hide an improper selection.

Appeal of Diane Johnsen and Sidney Osgood

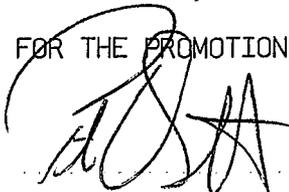
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The Promotional Appeals Tribunal found no evidence of pre-selection, since the process was completed on September 1, 1988. Moreover, Dr. Larrabee testified that the selected candidate was not the candidate he thought the committee would strongly recommend. In conclusion, the Tribunal found no evidence of any violation of personnel rules in the selection made for the position under appeal.

For the foregoing reasons, the Tribunal voted to deny the appeal.

FOR THE PROMOTION APPEALS TRIBUNAL



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PETER C. SCOTT, Esq.  
NH. Personnel Appeals Board

cc: Stephen J. McCormack  
SEA Field Representative

Sarah Hopley, Human Resource Coordinator  
New Hampshire Technical Institute

Virginia A. Vogel  
Director of Personnel

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### APPEAL OF JOHNSEN AND OSGOOD

March 29, 1989

The Promotion Appeals Tribunal met to consider this case on February 15, 1989. The Tribunal consisted of Peter Scott, Sharon Sanborn and George Liouzis. Stephen McCormack, Field Representative of the State Employees' Association, appeared on behalf of the Appellants, and Richard Sweet appeared on behalf of the Appointing Authority.

The Tribunal was not impressed with the action of the Appointing Authority prior to the scheduled hearing. First, the Appointing Authority did not respond to the November 4 request of Ms. Johnsen that she be given the reasons for her non-selection. See Per 302.03(e). Second, the Appointing Authority did not produce two witnesses whose presence had been requested by the Appellants. While the attendance of these witnesses may ultimately not be required, the Appellants and the Tribunal deserve some response to the request in advance of the hearing. Finally, the Appointing Authority sought to introduce a prepared statement of Commissioner Brown, without producing a copy of the statement for the Appellants 72 hours prior to the hearing. See Per-A 202.08(b)(1)(c).

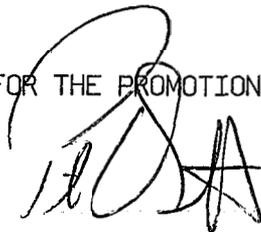
The Tribunal made the following orders at the close of the hearing:

1. The hearing will be continued for one month or until the next meeting of the Tribunal. Both parties shall receive notice of the scheduling of the hearing.
2. The Appointing Authority shall postpone filling the vacancy until at least the end of March.
3. The Appointing Authority was given ten working days to provide Appellants with reasons for non-selection.

In addition, the Appellants<sup>1</sup> request to produce two witnesses was treated as a Motion to Compel their attendance. The Appointing Authority was given one week to file a written objection to this Motion. The Appointing Authority has filed no objection, and the Tribunal accordingly orders the Appointing Authority to produce those witnesses.

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FOR THE PROMOTION APPEALS TRIBUNAL



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Peter C. Scott, Chairman  
Promotion Appeals Tribunal

cc: Richard Sweet  
Department of Postsecondary Vocational Technical Education

Mary Pillsbury Brown, Commissioner  
Department of Postsecondary Vocational Technical Education

Stephen J. McCormack  
SEA Field Representative