

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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

### *Appeal of Vicky Morton*

*Docket #2008-P-002*

### *Community College System of NH*

### *Personnel Appeals Board Response to 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 the Rules of the Personnel Appeals Board, "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-A 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-A 208.03(e)]

The appellant's arguments in support of the Motion for Reconsideration/Rehearing and/or Clarification are briefly summarized below:

1. The Board's ruling was erroneous in finding that the minimum qualifications on a supplemental job description could be more specific than those found on a generic class specification for a position.
2. RSA 21-I:42, II, provides that "the same qualifications may be reasonably required for, and the same schedule of pay may be equitably applied to all positions within the same classification."
3. The Board failed to explain why Ms. Morton's education and experience did not meet the minimum qualifications as stated on the supplemental job description when they would have satisfied the requirements on the generic class specification.

In support of the Motion, the appellant restated some of the arguments presented at the hearing on the merits of the appeal<sup>1</sup>, each of which the Board considered carefully in reaching its decision DENYING Ms. Morton's appeal.

Having carefully considered the Motion, the Board found that the Appellant failed to state a basis upon which to conclude that the Board's decision was unlawful or unreasonable. While it is clear that the Appellant disagrees with the conclusions reached by the Board, that disagreement does not constitute good cause for reconsideration or rehearing on the merits of the appeal. Restating the arguments raised during the hearing on the merits of appeal and incorporating prior pleadings and submissions does not demonstrate that the Board's decision was unlawful or unreasonable.

The evidence reflects that all Administrator III 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."

If the general statement of qualifications and duties were sufficient to describe a position within a statewide generic classification such as Administrator III, there would be no need for supplemental job descriptions, which by their very definition must identify "the scope of work, duties, and accountabilities of an agency-level position falling within a specific class." [Per 102.59] The class specification is not sufficient to identify the specific duties and responsibilities upon which an employee's performance will be evaluated, as RSA 21-I:42 requires. The supplemental job description fulfills that requirement.

The Board believes no further clarification is required with respect to Ms. Morton's qualifications, and why they did not meet the minimum qualifications as stated on the Supplemental Job Description for the position of Associate vice-president of Academic Affairs.

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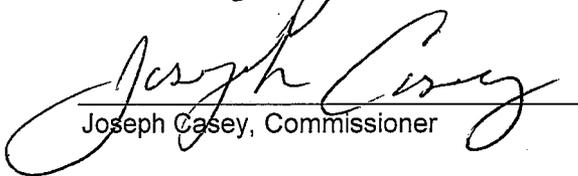
<sup>1</sup> In the original pleadings and during the hearing on the merits of the appeal, the appellant alleged that the refusal to certify her application and appoint her to the position of Associate Vice-President of Academic affairs was a result of anti-union animus.

For all the reasons set forth above, the Board voted unanimously to DENY the Appellant's Motion for Reconsideration/Rehearing and/or Clarification of the Board's decision DENYING Ms. Morton's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick Wood, Chairman

  
Robert Johnson, Commissioner

  
Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
Sara Sawyer, Director of Human Resources, Community College System, 26 College Drive, Concord, NH 03301  
Randy Choiniere, Grievance Representative, State Employees Association of NH, PO Box 3303, Concord, NH 03302-3303

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**Docket #2008-P-002**

**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, to hear the appeal of Vicky Morton, a former employee of the NH Community Technical College System. Ms. Morton, who was represented at the hearing by Randy Choiniere, SEA Grievance Representative, was appealing her non-certification for selection to the position of Administrator III, Associate Vice President of Academic Affairs. Sara Sawyer, Director of Human Resources for the System appeared on behalf of the State.

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

State's Exhibits

1. In-house posting dated July 5, 2007 for the position of Associate Vice-President of Academic Affairs
2. Approved Supplemental Job Description and organization chart for the position of Associate Vice-President of Academic Affairs
3. PART Per 405 – Certification

4. Ms. Morton's application for employment for the position of Associate Vice President of Academic Affairs, letter of interest addressed to President Cheryl Groeneveld, Ms. Morton's resume, and Ms. Morton's college transcripts
5. July 16, 2007 Letter from Kathleen Medaglia to Ms. Morton
6. July 19, 2007 email from Ms. Morton to Ms. Medaglia regarding non-certification
7. July 24, 2007 letter from Ms. Medaglia to Ms. Morton concerning the request for reconsideration of the certification review
8. November 16, 1999 NH Supreme Court Decision in the Appeal of Claude Allard, and the October 30, 1997 Decision of the NH Personnel Appeals Board in the Appeal of Claude Allard
9. Affidavit of Kathleen Medaglia

Appellant's Exhibits

1. Original Appeal including July 24, 2007 email from Kathleen Medaglia disqualifying Ms. Morton's application for Administrator III, the appellant's resume, and additional email between Ms. Morton and Ms. Medaglia concerning the appellant's qualifications
2. Email from president Harvey Hill to Ms. Morton
3. June 28, 2005 letter from Dr. Susan Henderson to Ms. Morton
4. Class Specification for Administrator III, with Supplemental Job Description for Associate Vice President of Academic Affairs
5. Class Specification for Program Specialist II and Supplemental Job Description for Keene Center Coordinator
6. none submitted
7. June 24, 2006 copy of the Keene Center Organizational Chart
8. September 27, 2004 email from Dr. Susan Henderson to Ms. Morton
9. Interim President Harvey Hill's July 2, 2007 letter of layoff
10. 2006-2007 Claremont Campus Catalog

Position of the parties

Mr. Choiniere argued that the Community College System violated RSA 21-I:42, II and the personnel rules by establishing minimum qualifications on the supplemental job description for the position of Associate Vice-President of Academic Affairs that were more "onerous" than those appearing on the generic classification of Administrator III. He argued that by refusing to appoint Ms. Morton as a qualified candidate to the position of Associate Vice-President of Academic Affairs, the State also violated Section 263:74 of HB 2, which requires the appointment of laid-off employees to vacant positions for which they qualify within the classified service. Finally, Mr. Choiniere argued that the agency's refusal to certify Ms. Morton's application and appoint her to the position of Associate Vice-President of Academic Affairs constituted a violation of RSA 273, as the decision resulted from anti-union animus.

Ms. Sawyer argued that certification of eligibility for the position of Associate Vice-President of Academic Affairs, Administrator III, requires the applicant to possess a Master's Degree with major study in education, higher education administration, business administration/management, health administration, a liberal arts discipline, guidance counseling, or a related field. The applicant must also have seven years' experience in teaching or academic or higher education administration, four years of which must have been in a management level position involving administrative or supervisory duties concerned with academic program administration, curriculum and program planning and evaluation or related education management experience. Ms. Sawyer argued that while Ms. Morton possessed the appropriate educational credentials, her work experience was insufficient to meet the minimum qualifications. As such, she argued, Ms. Morton did not meet the minimum qualifications for consideration and was not considered a qualified candidate for promotion.

After carefully considering the evidence, argument, and offers of proof presented by the parties, the Board made the following findings of fact and rulings of law:

## Findings of Fact

1. On or about July 11,2006, Ms. Morton submitted her application for the position of Associate Vice-President of Academic Affairs (Administrator III) to the Community College System of NH.
2. Kathleen Medaglia, HR Coordinator for the System's office, reviewed Ms. Morton's application and determined that Ms. Morton lacked 3 years and 10 months of the required work experience. By letter dated July 16,2007, Ms. Medaglia informed Ms. Morton that her application had been disqualified for lack of appropriate work experience.
3. By email dated July 19,2007, Ms. Morton requested reconsideration of the certification decision, offering a further explanation of her work experience, and why she believed it should qualify her for promotion to the position.
4. On or about July 24,2007, at the request of the CCSNH, Jo-An Bunten, Recruitment and Certification Supervisor for the NH Division of Personnel reviewed Ms. Morton's application and supporting documents. Ms. Bunten also determined that Ms. Morton lacked 3 years and 10 months of the required experience. In particular, Ms. Bunten determined that Ms. Morton's experience as director of alumni and special events at Antioch College was most closely related to public relations, marketing and student services, but not appropriate for academic management or teaching.
5. Although there are some similarities between the work that Ms. Morton performed as a Program Specialist II at the Keene Academic Center in terms of day-to-day operations, and the work that would be performed as the Associate Vice-President of Academic Affairs, the work of an Associate Vice-President of Academic Affairs would be at a substantially higher level of accountability in the areas of academics and academic management than Ms. Morton performed as a Program Specialist II, and would include responsibility for creating academic programs, scheduling, managing and directing faculty, hiring adjunct faculty, and managing the process of program accreditation.

6. The generic class specification for Administrator III requires applicants to possess a Master's degree from a recognized college or university with a major study in a field relevant to the program area in which the position is assigned.
7. For appointment consideration to the position of Administrator III, Associate Vice-President of Academic Affairs, the "field [of study] relevant to the program area in which the position is assigned" is education, higher education administration, business administration/management, health administration, a liberal arts discipline, guidance counseling, or a related field.
8. The generic class specification for Administrator III requires an applicant to possess seven years' experience in a field or occupation relevant to the program area in which the 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 or related management experience.
9. For appointment consideration to the position of Administrator III, Associate Vice-President of Academic Affairs, the "field or occupation relevant to the program area in which the position is assigned" include teaching or academic or higher education administration, four years of which must have been in a management level position involving administrative or supervisory duties concerned with academic program administration, curriculum and program planning and evaluation or related education management experience.
10. While employed by Antioch New England Graduate School, Ms. Morton's duties were equally split between fund-raising and alumni relations. As part of her alumni relations responsibilities, Ms. Morton designed and delivered what she described as "educational events," including one-day or two-day professional development workshops provided for alumni as often as sixteen times a year in some years.

### Rulings of Law

- A. Per 102.59 of the Personnel Rules defines "supplemental job description" as "a document identifying the scope of work, duties, and accountabilities of an agency-level position falling within a specific class."

B. RSA 21-I:42, II, requires the Director of Personnel to prepare, maintain, and periodically revise, "... 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.."

### Decision and Order

The Board found that the evidence did not support the Appellant's claim that the rejection of her application for Associate Vice-President of Academic Affairs was related in any way to alleged anti-union animus. Instead, the evidence seems to indicate that when Ms. Morton raised issues concerning her rights under the Rules or the Collective Bargaining Agreement, System staff addressed those concerns promptly and professionally. The single email message from the Interim President is insufficient to support the Appellant's allegation.

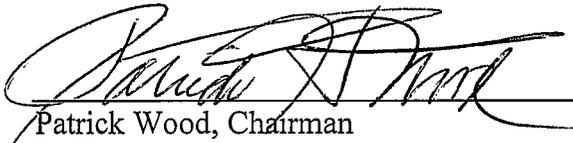
The Board found that Ms. Morton's duties as a Program Specialist II (Keene Center Coordinator) were similar in nature to the operational responsibilities of the Administrator III, Associate Vice-President of Academic Affairs, and were treated as qualifying experience for consideration to the position of Association Vice-President of Academic Affairs. The remainder of her experience, however, was not sufficiently similar in scope or level of responsibility in the areas of teaching, or academic or higher education administration to satisfy the remainder of the experience requirement at the level of Administrator III. Accordingly, the Board found that the evidence presented would not support Ms. Morton's assertion that she possesses the required work experience to qualify as a candidate for Associate Vice-President of Academic Affairs.

For the reasons set forth above, the Board found that the Community College System of NH acted reasonably in rejecting Ms. Morton's application for promotion to the position of Associate Vice-President of Academic Affairs. Further, in finding that the Appellant

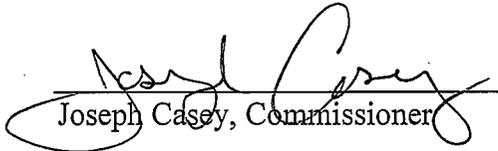
did not meet the minimum qualifications, the Board also found that the agency was under no obligation to consider her application for appointment, regardless of her status as a laid-off employee.

Accordingly, the Board voted unanimously to DENY Ms. Morton's appeal, and to affirm the Community College System's decision in this case.

THE PERSONNEL APPEALS BOARD

  
Patrick Wood, Chairman

  
Robert Johnson, Commissioner

  
Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel, 25 Capitol St., Concord, NH 03301  
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