

# State of New Hampshire

WPPID994



## PERSONNEL APPEALS BOARD

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### APPEAL OF THOMAS MURPHY Docket #92-P-1

October 1, 1992

The New Hampshire Personnel Appeals Board (McNicholas and Johnson) met Wednesday, March 2, 1992, to hear the appeal of Thomas Murphy, an employee of the Department of Transportation (DOT), who had appealed his non-selection for promotion to the position of Carriage Operator. Mr. Murphy appeared on his own behalf at the hearing. The Department of Transportation was represented by Attorney Jeff Spencer of the Transportation Bureau, Department of Justice.

James Colburn, Administrator of the Traffic Bureau at DOT, described the overall responsibilities of Carriage Operators during and after the pavement marking season. DOT Exhibit 3, the supplemental job description for Carriage Operator, listed the position's scope of work and accountabilities as follows:

SCOPE OF WORK: Operates, maintains and performs general repairs to pavement marking equipment utilized in applying various pavement markings on the State maintained system.

#### ACCOUNTABILITIES:

- 1) Assembles/disassembles, inspects and adjusts pavement marking material spray and related equipment to ensure proper operations.
- 2) Regulates pressure and electrical valves during operations to ensure correct flow of marking materials.
- 3) Performs minor field repairs as required.
- 4) Operates the paint carriage to ensure proper alignment and pattern of paint and bead application.
- 5) Supervises the loading of paint and beads onto the striper.
- 6) Performs operator level maintenance on striper and related hardware [including dismantling, cleaning, repairing and replacing equipment, valves and parts].
- 7) Assumes the foreman's duties in his absence, to include driving and aligning pavement marking truck to apply appropriate pavement markings.

Mr. Colburn testified there were two Carriage Operator openings in May, 1991. After receiving approval to fill those positions, Mr. Colburn directed Jeff Jenkins, Traffic Maintenance Supervisor, to choose three more individuals to form a selection panel. The panel, which was chaired by Mr. Jenkins, included Kenneth Brannock, Garret Garstang, William Petersen. The panel devised questions to test the technical, leadership and management skills of each candidate. The questions were submitted to Mr. Colburn for review. Those he approved for use in the interview were as follows:

1. What do you have to offer in line of experience that would make you the best candidate?
2. At times this position would require you to supervise other workers. What type of relationship should exist between you and your fellow workers and how would you make this work for you?
3. This job consists of long hours and at times staying overnight. Would this pose a problem for you?
4. Do you have any previous job related problems or areas of concern with product, personnel, or whatever?
5. What do you think of when we talk about "safety"?
6. What would you do for your part in "safety"?
7. How do you feel about respirators and why?
8. What do you conceive as the responsibilities that go with the job of Carriage Operator?
9. What is a MDS sheet?
10. What is the MUTCD?
11. What is the minimum sight distance for a passing zone when the speed limit is 50 mph? How about at 35 mph?
12. You are laying out a truck lane. At the end of the truck lane, as usual, there is a lane drop. What facts do you need to know to construct your taper?
13. What is a gore marking and how wide would they be?
14. What is the length of a letter to be stenciled or applied with permanent tape to the roadway?
15. When doing center line, you need to know where to cut the double yellow in an intersection. If the stop bar is not present but you can see a crosswalk, what relationship or how far from the crosswalk would a stop be expected to be?
16. You are getting a good line but it is not wide enough. What would you do?
17. Your line just started to look glossy. What might cause this?
18. Where would you put a moisture separator for the bead tank?
19. What is a "bulge" and how would you decide how wide one should be?
20. On the interstate we have three types of pavement marking lines. Please name them.
21. What is the correct width and spacing of lines used to form a double yellow on our primary highway system?

22. As a member of a striping crew, your big truck had an accident with no personal injury but it split a pipe or tank letting paint leak out. The truck is no longer movable. Take me step by step. What would you do?
23. If you had the power and resources what or how would you improve the present pavement marking operation?
24. What are your future job aspirations? Where would you like to see yourself 5 years from now?

He testified the department was looking for technical knowledge, good work habits, positive attitude, potential for future promotions within the department, and a clear demonstration the candidate was safety conscious. After the interviews, Mr. Colburn met with Mr. Jenkins to discuss each of the candidates and the ratings of the interviews. Mr. Colburn agreed with the recommendations of the panel for selection to fill the two Carriage Operator vacancies. Thomas Murphy placed fifth out of the six candidates for promotion.

Jeff Jenkins, Maintenance Supervisor, testified he was looking for applicants with a broad range of experience and a positive attitude about both the job and working with the crew. Mr. Jenkins testified the paint crews are generally seasonal employees receiving low wages who require intensive supervision, instruction in safety standards and "nurturing" to develop work acceptable work habits. Unless a Carriage Operator can build a relationship with the crew to keep them motivated, there is an increased likelihood they will engage in "horseplay", ignoring routine precautions, creating a safety hazard for both the crew and members of the public.

Mr. Jenkins testified the appellant had excellent mechanical experience from other positions he had held outside of the Department of Transportation. However, he believed the appellant should have had a better working knowledge of the Manual of Uniform Traffic Control Devices (MUTCD) from his experience as a fill-in Carriage Operator in prior seasons. He also testified the appellant seemed completely unaware of what Materials Safety Data Sheets are, where they must be posted and why employees need to understand and use the information on the variety of hazardous materials they handle in the course of a day. He also said he expected the candidates to demonstrate a sincere interest in the job and "put their best foot forward". He said Mr. Murphy demonstrated a very lax, almost bored approach to the interview, slouching in his chair and answering each question without attempting to elaborate or demonstrate a broad knowledge or interest in the subject.

Mr. Murphy testified he was notified June 26, 1991, he had not been selected for a position of Carriage Operator. He argued his experience, technical knowledge and supervisory capabilities, as well as his length of full-time service, should have resulted in his selection for one of the vacancies. The appellant said he felt his "past social life", which he characterized as a little "wild", may have been held against him.

Mr. Murphy argued one of the successful candidates, Mr. Jennison, was a probationary employee at the time of promotion who did not meet the minimum qualifications for the position when he was selected because he was not then licensed to drive paint truck itself. Mr. Murphy argued he was not selected because he was employed in the Maintenance Bureau instead of the Traffic Bureau. He said it was a commonly held belief the Traffic Bureau only selected candidates from their own ranks, even if it meant selecting probationary or part-time employees when experienced, full-time permanent employees from other bureaus applied for openings in Traffic. He said he had applied for positions in the Traffic Bureau on five previous occasions and had been denied selection each time. He said the successful candidate in each case had been a temporary and/or part-time employee of the Traffic Bureau. He said he wanted a position in that bureau because there were more opportunities for advancement and increased pay than in his own position and bureau.

Mr. Murphy argued he was rated as high or higher in the areas of experience and mechanical ability as the two successful candidates. He suggested DOT was obliged to consider his technical abilities and seniority, addressing any concerns about his attitude after appointment to the position of Carriage Operator. He cited Per 302.03(a) and (b)(3) of the Rules of the Department of Personnel which state:

"A vacancy shall be filled whenever possible and reasonable by promotion of a qualified permanent employee from within the department or agency."

"While probationary and part-time employees not having six months service within a one-year period can respond to a departmental posting, preference in selection must be given to permanent employees."

Attorney Spencer argued the State was obliged to hire the best qualified candidate for the vacant position, not necessarily the employee with the most seniority. He said the appellant lacked critical technical knowledge in areas related to safety, and lacked a positive attitude about the position. He argued seniority is the least critical element in a selection decision.

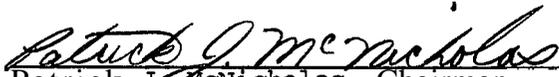
On the evidence, the Board made the following findings of fact:

1. In May, 1991, the Department of Transportation posted two vacancies for the position of "Carriage Operator" in the Traffic Bureau, Department of Transportation.
2. Six candidates were certified by the Human Resource Section at DOT as meeting the minimum qualifications for promotion to that class.
3. All six candidates were interviewed by a four-member selection panel consisting of Jeff Jenkins, interviewed for two openings of Carriage Operator, Bureau of Traffic.

4. Each interviewer individually ranked each candidate by awarding from 1 - 25 points for the interview, 1 - 25 points for Attitude, 1 - 20 points for Experience, 1 - 10 points for Mechanical Aptitude and Work Experience, and 1 - 20 points for Supervision Capabilities.
5. By combining the scores of the four interviewers, Mr. Murphy placed fifth out of six candidates considered for promotion. The top two candidates were recommended for selection.
6. The individual interviewers' ratings of Mr. Murphy in relationship to the other five candidates ranked him as follows:
  1. fourth/fifth
  2. fourth
  3. fourth
  4. third
7. In no instance did Mr. Murphy place higher than third of the six candidates for the two available positions.
8. If Mr. Jennison had not been selected, and the candidates ranking second and third over-all were selected, Mr. Murphy would not have been promoted.

Accordingly, the Board voted to deny Mr. Murphy's appeal.

THE PERSONNEL APPEALS BOARD

  
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Robert J. Johnson

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