

SUPREME COURT OF NEW HAMPSHIRE

Appeal of Vicky Morton

158 N.H. 76, 960 A.2d 332 (2008) · No. Nos. 2008-105, 2008-107 · Decided November 7, 2008

SUMMARY

The Supreme Court of New Hampshire affirmed decisions of the New Hampshire Personnel Appeals Board concerning Vicky Morton's layoff and her qualifications for an Associate Vice President of Academic Affairs position. The court held that the applicable personnel rules required evaluation of other positions for reassignment rather than reinstatement to an abolished position, and that a supplemental job description could lawfully specify substantially and reasonably similar qualifications tailored to the position.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Broderick, C.J.; Dalianis, J.; Galway, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	November 7, 2008
DOCKET	Nos. 2008-105, 2008-107
DISPOSITION	affirmed
PROCEDURAL POSTURE	Morton appealed two decisions of the New Hampshire Personnel Appeals Board to the Supreme Court of New Hampshire: one concerning the remedy for her layoff and one concerning her qualifications for an Associate Vice President of Academic Affairs position.
STANDARD OF REVIEW	Under RSA 541:13, Morton bore the burden of showing that the PAB's decision was clearly unreasonable or unlawful. The decision would not be set aside except for errors of law unless a clear preponderance of the evidence showed it was unjust or unreasonable. The court reviewed the PAB's interpretation of statutes and administrative rules de novo, while according the PAB deference that was not absolute.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Vicky Morton v. State

TOPICS

employment law

administrative law

appellate procedure

statutory interpretation

remedies

PRACTICE AREAS

employment law

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QUESTIONS PRESENTED

1. Whether the Personnel Appeals Board selected the proper remedy for Morton's layoff by ordering evaluation of another Program Specialist II position for possible reassignment rather than reinstatement to her abolished position.
2. Whether RSA 21-I:42, II prohibited NHCTCS from establishing position-specific minimum qualifications in a supplemental job description that were tailored to the position but substantially and reasonably similar to the general class qualifications.
3. Whether Morton preserved a challenge to NHCTCS's authority to abolish her former position.

HOLDINGS

1. Morton's challenge to NHCTCS's authority to abolish her position was not preserved because she raised it for the first time in her motion for reconsideration.
2. When an employee's position has been abolished, reinstatement to the former position does not require restoration of that nonexistent position; the proper remedy may require evaluating other positions in the same class and offering reassignment if the employee is qualified and more senior than the current holder.
3. RSA 21-I:42, II does not require the qualifications in a supplemental job description to be exactly identical to those in the general class specification; the qualifications must instead be substantially and reasonably similar.

KEY QUOTATIONS

"We therefore hold that "the same" in RSA 21-I:42, II, does not require the exact same requirements in the SJD and class specification. Rather, the SJD must contain substantially and reasonably similar qualifications as those in the class specification." (at 337)

FACTUAL BACKGROUND

NHCTCS abolished Morton's Program Coordinator position, classified as Program Specialist II, and laid her off. Another Program Specialist II position was held by a less-senior employee, but NHCTCS did not offer it to Morton in lieu of layoff; the PAB ordered reevaluation of that position. Morton later applied for an Associate Vice President of Academic Affairs position requiring seven years of relevant experience, including four years of management-level experience, but state personnel officials determined that her experience did not satisfy the requirement.

PROCEDURAL HISTORY

NHCTCS laid Morton off after abolishing her Program Coordinator position and rejected her application for the Associate Vice President of Academic Affairs position. The Personnel Appeals Board ordered NHCTCS to reevaluate a different Program Specialist II position for possible reassignment to Morton and upheld the determination that she lacked the required management-level experience. The PAB denied reconsideration, and Morton appealed; the Supreme Court consolidated the appeals and affirmed.

DISPOSITION

affirmed

CASES CITED

- N.H. Dep't of Envtl. Servs. v. Marino, 155 N.H. 709, 713, 928 A.2d 818 (2007)
- State v. Elementis Chem., 152 N.H. 794, 803, 887 A.2d 1133 (2005)
- Appeal of Flynn, 145 N.H. 422, 423, 764 A.2d 881 (2000)
- Appeal of Alley, 137 N.H. 40, 42, 623 A.2d 223 (1993)
- Mt. Valley Mall Assocs. v. Municipality of Conway, 144 N.H. 642, 654-55, 745 A.2d 481 (2000)
- Sklar Realty v. Town of Merrimack, 125 N.H. 321, 328, 480 A.2d 149 (1984)
- Appeal of N.H. Troopers Assoc., 145 N.H. 288, 290, 761 A.2d 486 (2000)
- Great Traditions Home Builders v. O'Connor, 157 N.H. 387, 388, 949 A.2d 724 (2008)