

State of New Hampshire

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

APPEAL OF RICHARD PARRISH
Docket #90-0-9
Department of Corrections
(Denial of Request for Lateral Transfer)

February 28, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 13, 1991, to consider the appeal of Richard Parrish, an employee of the Department of Corrections. The appellant, through his SEA Field Representative Stephen J. McCormack, requested that the Board order his immediate transfer, or schedule a hearing before the Personnel Appeals Board to appeal denial of his request for lateral transfer.

In support of his appeal, the appellant argued that he had requested a lateral transfer into the vacant position of Sergeant in the Hearings Office of the Office of Legal Services, and that he had been denied transfer when the three-member interview panel concluded that he could not be fair or impartial. The appellant further argued that two of the interviewers, Major George Ash and Attorney Michael K. Brown, had been involved with Sgt. Parrish in previous disciplinary hearings, were themselves unable to be unbiased, and therefore should not have been involved in the selection interviews.

Per 302.01(b) states, "If the appointing authority can reasonably and properly fill the vacancy by promotion, transfer, or demotion of an employee presently employed within the department or agency, or by the reemployment of a former employee in accordance with the policies stated in Per 302.03, 302.04, 302.05, and 302.06 below, his recommendation shall be stated in the requisition.. ."

While the Board hesitates to consider promotional issues with those related to transfer within the ~~same~~ class, it is apparent that the Rules require that vacant positions be filled, whether through promotion, demotion, transfer or reemployment, "...based upon capacity for the vacant position, ability as evidenced by past performance, and length of service within the department". [Per 302.03 (b)]

Appellant admits that Major Ash and Attorney Brown have dealt with the appellant in the context of prior disciplinary actions. The Board does not find it unreasonable that while acting in their capacity as representatives of the appointing authority, they would give consideration to their personal knowledge of appellant's work history in assessing his capacity for the vacancy.

In challenging the impartiality of the three-member interview panel, the appellant cited **Per 301.12(b)** of the Rules of the Division of Personnel regarding oral examination.¹ That portion of the Rules to which appellant referred in support of his appeal relates to original certification for entrance into a class or classification, not the appropriate method of filling a vacancy through promotion, demotion, transfer or reemployment. Inasmuch as Sgt. Parrish has already attained the rank of sergeant, the Board does not find the participation of either Major Ash or Attorney Brown in the selection interview to be a violation of **Per 301.12.**, or to be determinative of Sgt. Parrish's standing upon any register for the class "Corrections Sergeant".

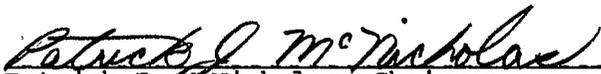
Appellant asked that the Board decide the matter without evidentiary hearing and, based on the facts as presented, order that Sgt. Parrish be laterally transferred into the subject position. In the alternative, should the Board decline to issue the requested order for immediate transfer², the appellant asked that the Board declare the original interview panel's results to be invalid and order that a new board be convened to consider Sgt. Parrish's request for lateral transfer.

1/ "Whenever practicable, all candidates for same class of position who qualify for the oral examination shall be rated by the same oral examination board. A member of an oral examination board shall disclose each instance in which he knows the applicant personally and refrain from rating such applicant." [Per 301.12 (b), Rules of the Division of Personnel, NHCAR.]

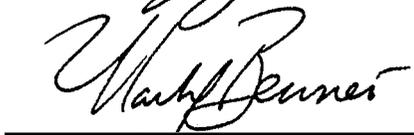
2/ "The Board does not believe that either side has an absolute right to an oral hearing. Where the facts are not in dispute, an oral hearing is not required. In the Matter of Gary Blake and Donald LaPlante (November 3, 1986), aff'd without written opinion, Appeal of Blake et al (No. 86-493, October 1, 1987). The same principles apply when the well-pleaded facts are taken as true for the purposes of a Motion to Dismiss." (See: Appeal of Conservation Officer David Lovequist, Order on Motion for Rehearing, May 22, 1989 - Personnel Appeals Board)

The Board found that if all of the appellant's allegations were deemed to be facts and were taken to be entirely true, there is insufficient reason to believe that they would . . . warrant a different outcome.^{/3} The Board therefore voted unanimously to dismiss *Mr.* Parrish's appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

^{/3} "Per 302.05 (b) establishes the standard by which the Board will judge appeals relating to transfers. That section establishes that 'It is the prerogative of management to determine who and when employees are to be transferred'. While the grammatical construction may be awkward, the intent seems clear. The Board construes this language to give broad authority to the appointing authority [in determining when to fill positions by lateral transfer]." (See: Appeal of Conservation Officer David Lovequist, Personnel Appeals Board Order on Motion for Rehearing, May 22, 1989)

cc: Richard Parrich
Lisa Currier-Human Resource Coordinator
Michael J. Cunningham
Michael K. Brown, Staff Attorney