

State of New Hampshire

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PERSONNEL APPEALS BOARD

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

1991-0-100

Sgt. Richard L. Parrish
Request for Removal of Disciplinary Letter
Appeals of Parrish and Reiger - May 14, 1987 Personnel Appeals Eoard Decision

January 22, 1992

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Rule) met Wednesday, November 27, 1991, to consider Sgt. Richard L. Parrish's letter dated November 15, 1991, requesting the removal of a disciplinary letter dated June 20, 1986, from his personnel file. In that request, Sgt. Parrish argued that the letter had damaged his professional reputation and his ability to effectively perform his duties when appearing in Court on behalf of the State of New Hampshire.

The letter to which Sgt. Parrish refers is part of the New Hampshire Personnel Appeals Board's file in the above-noted appeal. The Board reviewed the various pleadings by the parties, as well as any motions filed by the parties throughout the Board's consideration of the appeal. The Board's file indicates that the only portion of the record which was sealed was that involving testimony about and by an inmate, including that information which was gathered by polygraph examination of the inmate. Neither party made a motion to seal the record.

Per-A 205 of the Rules of the Personnel Appeals Board provides the following:

- Per-A 205.01 Right to Public Hearing. In appeals by permanent employees, both the appealing employee and the appointing authority shall have the right to be heard publicly in accordance with these rules and the procedures provided for adjudicative proceedings in RSA ch. 541-A.
- Per-A 205.02 Closed Hearings. The Board may close the hearing to the public upon its own motion or upon motion of one of the parties.
- Per-A 205.03 Presumption. In the absence of such order to close the hearing by the Eoard, all hearings shall be open to the public; and all tapes, transcripts, exhibits, decisions, motions or other portions of the record of any hearing shall be available to the public.

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On October 23, 1986, the Union Leader Corporation, by and through its Attorney, Donald A. Kennedy, filed in Hillsborough County Superior Court a Petition to Release Records. That petition, in part, states as follows:

"4. That the employees who were the subject of this hearing, by and through counsel, requested that the hearing remain open to the public. This request was denied. After the lunch break was taken and the hearings were reconvened, the employees, through counsel, again requested that the hearing be open to the public, and again that request was denied.

"5. That this hearing is governed by the Right to Know Law and should be open to the public. Further, there are no exemptions that apply to this hearing, and in fact RSA 21-A:4II(a) specifically provides a public hearing if the employee affected requests and open hearing. This was requested in this case.

"6. That the rules and regulations that were promulgated by the Personnel Appeals Board (a copy of which is attached to this Petition) specifically provide that the employee shall have the right to be heard publicly. The rules further presume that all hearings shall be open to the public. ..."

On October 27, 1986, the Hillsborough County Superior Court issued a Notice of Decision (No: 86-E-799) that on October 24, 1986, the following order was entered:

"Motion granted with the modification that transcript shall be sanitized to delete such information relative to identification of informants as defendants deem appropriate. Order may be complied with by audio presentation after deletions as above within 7 days from date."

Given the clear order of the Superior Court in this matter, the Board believes itself to be without the authority now to order that any additional portion of the record be expunged. Any employee or agency appearing before the Board risks the possibility that embarrassing or professionally damaging information may become part of a public record. While the appellants in this case may have assumed that the record would be sealed or destroyed if they were to prevail in their appeal, no such relief was requested or granted.

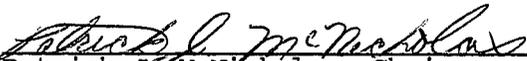
The Board has a statutory obligation to maintain a public record of its proceedings. Even in the absence of a Superior Court order to release this record, the Board is not persuaded that the public interest would now be served by sealing this record or any portion thereof.

M: Parrish's request for removal of the June 20, 1986 letter from the Appeals Board's record is therefore denied.

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Inasmuch as the Board's order dated May 14, 1987, did not address what records would remain on file in either the Division of Personnel or the Department of Corrections, the Board makes no ruling in that regard. As a matter of practice, however, while an agency or the Division of Personnel might agree to the removal of certain information from an employee's file, a copy of the Board's decision or order in such cases would generally be incorporated into an employee's permanent record unless otherwise specified by Board order.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Sgt. Richard L. Parrish, N.H. Department of Corrections
Commissioner Ronald L. Powell, Ph.D., N.H. Department of Corrections