

# State of New Hampshire

PERSONNEL APPEALS BOARD  
Edward J. Haseltine, Chairman  
Gerald Allard  
Loretta Platt



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

1988-C-000

## APPEAL OF CONSERVATION OFFICER LIEUTENANTS (Appeal of Lieutenant Brian Howe)

January 11, 1988

On Tuesday, December 8, 1987, the Personnel Appeals Board, Commissioners Platt, Allard and Cushman sitting, heard the classification appeal of Conservation Officer Lieutenants filed by Lieutenant Brian Howe. Lieutenant Jeff Gray appeared on behalf of the appellants. Edward J. McCann, Classification and Compensation Administrator, represented the Division of Personnel.

The appellants requested that their positions be upgraded from salary grade 21 to salary grade 23, amending their original request that the positions be upgraded to salary grade 26. Witnesses appearing on behalf of the appellants also argued that the Board should correct "an inequity" by also upgrading the Conservation Officer Captain and Conservation Officer Major positions, despite the fact that no appeal of those classifications had been filed and no position review for those classifications had been requested.

The appellants requested increasing the point allocations for the job attributes of Initiative, Errors, Personal Relationships, Supervision and Working Conditions. Their principal argument, however, centered upon "the tremendous impact the Garcia<sup>1</sup> decision with its resulting overtime restrictions has had on the Conservation Officer Lieutenant positions. Under the State's implementation of the Fair Labor Standards Act, all Conservation Officers below the rank of Lieutenant can work no more than 171 hours in 28 days unless they are paid overtime. Although an officer can be requested to let his Lieutenant know where he will be when he is off duty, he can not be made to stay available or even within the State unless he is paid for being on-call. The Department has no money for on-call pay; therefore, the Conservation Officers are unavailable outside their working hours...The impact on the Conservation Officer Lieutenants is that they, being the only field officers not eligible for overtime compensation under the Fair Labor Standards Act, are required to be on call 24 hours per day on all working days." The appellants also argued that when overtime may be required during search and rescue

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<sup>1</sup>Garcia v. San Antonio Metropolitan Authority, US, 105 s. Ct 1005 (1985) (Fair Labor Standards Act applicable to employees of the State and local governmental units)

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operations, Conservation Officers and Conservation Officer Sergeants earning overtime compensation at time and one half make more money than the Lieutenants working the same number of hours. The Lieutenants therefore argued that an inequity was created when a subordinate earns more than his supervisor.

The other argument offered by the appellants was that their positions should at least have parity with comparable ranks in the State Police and that their positions are more complex and more hazardous than positions of the same rank in the State Police. The Board reviewed its earlier decision of September 4, 1986 in the appeal of Conservation Officer Trainees, Conservation Officers and Conservation Officer Sergeants and affirmed its ruling that the duties of officers in the Fish and Game Department are not equivalent in complexity to those of officers holding the same rank within the Department of Safety, Division of State Police.

Commissioners Allard and Cushman, however, agreed that the over-time compensation issue had created an inequity and agreed that a supervisor should earn more than his subordinate. Having determined that the apparent inequity in compensation between the Conservation Officer Lieutenants and their subordinates should be addressed, the Board voted to temporarily upgrade the positions of Conservation Officer Lieutenant to salary grade 22, increasing the attribute of Working Conditions by one degree. This temporary upgrade shall remain in effect until the State addresses the compensation issue.

Commissioner Platt dissented. A copy of the dissent opinion is attached.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

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cc: Director, Department of Fish and Game

Brian Howe, Lieutenant  
Department of Fish and Game

Virginia A. Vogel, Director  
N.H. Division of Personnel

Thomas F. Manning  
Bureau of Employee Relations

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## NEW HAMPSHIRE PERSONNEL APPEALS BOARD DECISION

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### MOTION FOR RECONSIDERATION APPEAL OF CONSERVATION OFFICER LIEUTENANTS (Appeal of Lt. Brian Howe)

February 8, 1988

The Personnel Appeals Board, Commissioners Cushman and Platt sitting, met on Monday, January 25, 1988 at 3:00 p.m. to hear oral argument on the Motion for Reconsideration and Request for Rehearing filed by Virginia A. Vogel, Director of Personnel and Thomas F. Manning, State Negotiator and Manager of Employee Relations, in the above noted appeal. The Motion, filed on January 12, 1988, requested that the Board reconsider its January 11, 1988 decision to temporarily upgrade Lieutenants in the N.H. Department of Fish and Game from salary grade 21 to salary grade 22. In its decision, the Board temporarily increased the Working Conditions attribute by one degree, noting that the temporary upgrading had been approved to address a compensation issue relating to the application of the Fair Labor Standards Act to exempt employees of the Department of Fish and Game.

Virginia Vogel, speaking on behalf of the Division of Personnel, argued that the Board had exceeded its statutory authority in ordering a temporary increase of the appellants' positions to salary grade 22. Mrs. Vogel further argued that the Board was empowered under RSA 21 to address issues arising from the application of the Personnel Rules, not to alter a compensation structure created through the collective bargaining process or to order a review by the State of the conditions of that agreement. Mrs. Vogel also noted that, in its findings, the Board had determined that the positions of Conservation Officer Lieutenant were properly evaluated for each of the nine position attributes in the classification plan described in the Evaluation Manual.

Thomas Manning presented the following exhibits for the Board's review:

1) Recognition of an Exclusive Representative, case no. 5-0307, dated December 7, 1976, Public Employee Labor Relations Board, certifying that "for the purposes of collective negotiations, settlement of grievances and other rights accompanying certification as provided by RSA 273-A:11" the State Employees' Association of New Hampshire, Inc., shall represent "All classified employees of the Fish and Game Department, State of New Hampshire;

2) the cover sheet from the 1987-1989 Collective Bargaining Agreement between the State Employees' Association of New Hampshire, Inc. SEIU Local 1984 and State of New Hampshire dated July 1, 1987;

- 3) Article VIII - Overtime for Law Enforcement Employees and Non-standard Workweek Employees (Collective Bargaining Agreement - 1987-1989);
- 4) Appendix G - Law Enforcement Employees and Non-Standard Workweek Employees (Collective Bargaining Agreement - 1987-1989);
- 5) Article XXII - Collective Bargaining Agreement (Sub-unit agreement, Department of Fish and Game); and
- 6) the signature page, Collective Bargaining Agreement - 1987-1989.

Mr. Manning argued that in their initial appeal to the Board, the Lieutenants had omitted certain relevant details regarding their over-time compensation. He cited Article 22.13 of the Collective Bargaining Agreement whereby "Exempt law enforcement employees who are required to work on a scheduled day off, will be paid at one and one-half (1 1/2) times the regular rate for all hours worked and shall be guaranteed a minimum of eight and one half (8.5) hours compensation. Such employees may choose to take compensatory time off at the rate of one and one-half (1 1/2) hours for each hour worked in lieu of payment. This provision does not apply to court appearances." Further, Mr. Manning directed the Board's attention to Article 8.3 (a) 1. "Exempt law enforcement employees shall not be entitled to any additional compensation for overtime worked." Mr. Manning argued that the appellants, through their bargaining representative the State Employees' Association, had agreed to this provision through the collective bargaining process. Mr. Manning also indicated that the appellants had not apprised the Board of the provisions of Article 8.7. from the Collective Bargaining Agreement, "Non-exempt employees called back to work without prior notice on the same day after once leaving work or before the next regular starting time, shall be guaranteed a minimum of not less than three (3) hours compensation."

Based upon the foregoing, the Division of Personnel requested that the Board rescind its decision of January 11, 1988 and return the appellants to their former salary grade.

Lieutenant Brian Howe, who was unable to attend the original hearing in this matter, spoke on behalf of the appellants. He first indicated that while the appellants were aware of the contract provisions, they felt they had not been properly consulted prior to conclusion of the agreement, and therefore did not feel their position had been adequately represented in the collective bargaining process. Further, Lt. Howe stated that the written submissions addressed the issue of over-time compensation under the provisions of the Fair Labor Standards Act simply to demonstrate the number of additional hours they were required to work. In addressing the classification issues, Lieutenant Howe contended that the majority of their work time was spent doing the same work as the Conservation Officers and Conservation Officer Sergeants, and must therefore be performed under the same working conditions experienced by the Conservation Officers and Sergeants. Therefore, Lt. Howe asked that the Board uphold its original decision in their classification appeal, upgrading the Lieutenant positions to salary grade 22.

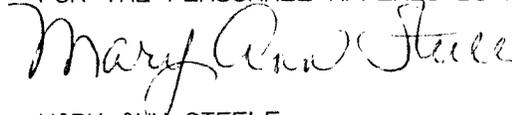
Upon review of the testimony and evidence before it, the Board voted to rescind its decision of January 11, 1988 and, thus, deny the appeal of the Conservation Officer Lieutenants, finding that their positions were properly allocated at salary grade 21. Although the Board found Lieutenant Howe's presentation both pertinent and well organized, the Board also found that if it were to accept the argument that the Lieutenants perform exactly the same work as the Sergeants and Conservation Officers a majority of the time, it must also find that their supervisory responsibilities could not be rated at the 4th degree requiring "supervision and administration from 75% to 100% of the time." Therefore, a twenty point increase in the Working Conditions attribute would necessitate a twenty point decrease in the Supervision attribute. Requiring those changes therefore would not alter the current salary grade of the appellants.

Based upon the foregoing, the Board voted to deny the appeal of Conservation Officer Lieutenants.

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<sup>1</sup>The Board also found that the evidence presented to support the requested upgrade was from a time period subsequent to the original review and thus not relevant to a determination by the Board as to whether the results of that review were correct.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE  
Executive Secretary

cc: Lt. Brian Howe  
Department of Fish and Game

Donald Normandeau, Executive Director  
Department of Fish and Game

Virginia A. Vogel, Director  
Division of Personnel

Thomas F. Manning, Manager  
Bureau of Employee Relations and  
State Negotiator