

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603)271-3261

**Appeal of Wendy Parent**  
**Docket #2008-D-001**  
**Community College System of New Hampshire**  
**PAB Decision in Response to Agency Motion for Reconsideration**  
**and Appellant's Response**

April.25,2008

3 By letter dated December 17,2007, Sara Sawyer, CCSNH Director of Human Resources, submitted the agency's Motion for Reconsideration of the Board's November 15,2007 decision in the above-titled appeal. SEA Grievance Representative Randy Choiniere submitted Appellant's Response to that Motion, which the Board received on December 21, 2007.

In accordance with the Rules of the Personnel Appeals Board, "Such motion for reconsideration or rehearing shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable" [Per-A 208.03(b)], and "A motion for rehearing in a case subject to appeal under RSA 541 shall be granted if it demonstrates that the board's decision is unlawful, unjust or unreasonable." Per-A 208.03(e)]

The grounds offered in support of the State's Motion are as follows:

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1. "There is no statutory basis cited in the decision to grant a State employee, even if a union steward, the cloak of invincibility to defame a reputable and honorable president of the New Hampshire Community Technical College-Laconia."
2. "There is no provision in the Collective Bargaining Agreement which grants any protected status to a union steward, especially to exceed all bounds of civility and reasonableness as the Board found occurred here..."
3. "There is no case law presented by the SEA or cited by the Personnel Appeals Board in the State of New Hampshire which grants a steward a cloak of invincibility to defame his/her supervisors."
4. "There is in New Hampshire a separate disciplinary process from the Collective Bargaining Agreement, which is nearly unique to the State of New Hampshire and exists because the state has insisted throughout the history of the bargaining process that it alone retains the rights to impose discipline on employees. This decision may seriously impair hard-working collective bargaining rights."
5. "All else aside, it seems only reasonable and just that the State retain the right to insist that its employees remain civil, courteous, and respectful in the conduct of State business and the use of State resources even if the person is arguably acting as a union steward."
6. "In and of itself, the finding of fact and/or ruling of law that Ms. Parent was acting in her steward capacity is unlawful, unjust, and unreasonable and, further, provides good cause to reconsider and rehear this matter because the email is a gratuitous excoriation of President Edelstein, completely outside any conceivable parameters within which legitimate steward representation or communication could fall. In addition no legitimate union business purpose is served by the State allowing this type of baseless and defamatory communication."
7. "The Board's conclusion of law is a mistake of law;"
8. "The Board failed to state and/or failed to apply the proper legal standards to the facts;"
9. "The Board failed to cite any compelling or relevant legal authority for its conclusions;" and

10. "The findings of fact by the Board are inconsistent with the applicable law and legal standard."

In response to the Motion, the Appellant argued that the agency mischaracterized the Board's findings of fact and rulings of law, and misrepresented the evidence upon which the Board based its decision. Mr. Choiniere cited several cases from the National Labor Relations Board and the US Supreme Court that reportedly support of the appellant's position that union stewards have a "special legal status" in the performance of their duties as stewards<sup>1</sup>. Mr. Choiniere argued that the Board's decision to have the dispute between Ms. Parent and the agency "...resolved within the parameters of the collective bargaining relationship is fair, appropriate and legally sound."

While it is clear that the State disagrees with the Board's findings, that disagreement does not constitute good cause for reconsideration, nor will it support an allegation that the Board's order was unreasonable, unlawful or unjust.

There is no dispute that Ms. Parent is a union steward, and that stewards are permitted to use the State's email system for union business "...provided that said mailings are clearly identified as the property of the Association." [CBA 3.3.1] As the Board found in its decision, Ms. Parent's email was marked as "SEA BUSINESS" and related to both the formation of a labor-management committee, and communications by management to college employees regarding proposed office relocations. While the Board agreed with the State that Ms. Parent's email was "disrespectful, inappropriate, unprofessional," it was union business nevertheless, and the Board did not find, nor does it now find the communication to be malicious or defamatory, nor did it find that the email "exceed[ed] all bounds of civility and reasonableness" [State's Motion, page 3, paragraph. B].

The State offered neither evidence nor persuasive argument to support its assertion that ordering the warning removed from Ms. Parent's file would provide the appellant with "a

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<sup>1</sup> There were no copies of those cases provided for the Board's review or for inclusion in the record of the appeal.

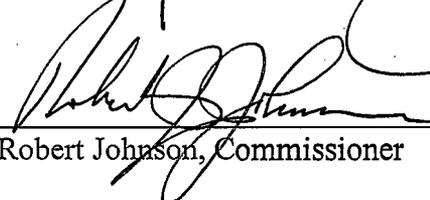
cloak of invincibility to defame [her] supervisors" [Motion, page 3, paragraph C]." It merely recognized that Ms. Parent's email was sent in her role as a union steward, and that the message was clearly labeled and pertained to "SEA BUSINESS," regardless of the intended recipient. Further, while the State retains the right to demand that its employees remain civil and courteous in conducting the State's business, the fact remains that Ms. Parent was conducting union business as permitted by the agreement between the State and the union with respect to use of the State's email system.

If, as the State alleges, there were more appropriate legal standards upon which the Board should have relied in reaching its decision, those standard were never provided for the Board's consideration.

After carefully reviewing the parties' pleadings, the Board voted unanimously to AFFIRM its decision and to DENY the State's Motion for Reconsideration.

THE PERSONNEL APPEALS BOARD

  
Philip Bonafide, Acting Chair

  
Robert Johnson, Commissioner

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Joseph Casey, Commissioner

cc: Karen Hutchins, Director of Personnel  
Sara Sawyer, HR Director, Community College System of New Hampshire  
Randy Choiniere, Grievance Representative, State Employees Association

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
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**Appeal of Wendy Parent**  
**Docket #2008-D-001**  
**Community College System of New Hampshire**

November 15, 2007

The New Hampshire Personnel Appeals Board (Bonafide, Johnson and Casey) met in public session on Wednesday, September 12, 2007, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Wendy Parent, an employee of the Community College System of New Hampshire. Ms. Parent, who was represented at the hearing by SEA Grievance Representative Randy Choiniere, was appealing a written warning issued to her on October 13, 2006 for failure to meet the work standard. Sara Sawyer, Director of Human Resources for the Community College System, appeared on behalf of the agency.

The Board heard the appeal on offers of proof by the representatives of the parties. The record of the hearing in this matter consists of pleadings submitted by the parties, notices and orders issued by the Board, the audiotape recording of the hearing on the merits of the appeal, and documents admitted into evidence as follows:

### State's Exhibits

1. Per 1002.04, Written Warning, Administrative Rules of the Division of Personnel, effective October 18,2006
2. Letter of counsel dated August 22,2005 issued to Wendy Parent for failure to meet the work standard
3. January 22,2007 performance evaluation issued to Wendy Parent
4. December 15,2006 revised letter of warning issued to Wendy Parent
5. December 15,2006 Step I appeal response issued by Dr. Mark Edelstein, President at NHCTC-Laconia
6. February 5,2007 Step II appeal response issued by Dr. Charles Annal, Deputy Commissioner of the NH Community Technical College System
7. July 5,2007 Step IV appeal response issued by Karen Hutchins, Director of the NH Division of Personnel
8. Affidavit of Dr. Mark Edelstein
9. April 27,2007 email from Alice Mowery, College Financial Officer at NHCTC-Laconia to Wendy Parent

### Appellant's Exhibits

1. Appeal of Wendy Parent with attachments
  - a. July 5,2007 decision by the Director of Personnel denying Ms. Parent's appeal
  - b. October 13,2006 letter of warning issued to Ms. Parent
  - c. September 15,2006 email from Ms. Parent
2. Articles from the Collective Bargaining Agreement in effect on the date the warning was issued
3. July 15,2004 email from Business Administrator Christine Hagewood
4. January 17,2002 email from Business Administrator Christine Hagewood
5. December 14,2001 email from Business Administrator Christine Hagewood
6. August 16,2000 email from Business Administrator Christine Hagewood

7. May 11,2000 email from Business Administrator Christine Hagewood
8. May 10,2000 email from Business Administrator Christine Hagewood
9. March 31,2000 email from Business Administrator Christine Hagewood
10. May 12,2000 email from Stock Clerk Scott Bryant

#### Position of the Parties

Mr. Choiniere argued that Ms. Parent was disciplined solely for having engaged in protected activities by sending an email related to legitimate union business. Mr. Choiniere argued that employees send personal emails all the time, saying it was common to see emails between employees regarding the football pool, the golf tournament or other inappropriate subjects, and that there was ample evidence of far more unprofessional and inappropriate emails circulated by staff in the Systems office. Mr. Choiniere argued that even if Ms. Parent she had not been acting in her capacity as a union steward, a written warning would have been a disproportionate response based on the seriousness of the alleged violation.

Mr. Choiniere argued that Ms. Parent was entitled to carry out her steward duties on state work time, and that any attempt by the agency to interfere with that right constituted a violation of the State CBA and State and federal labor law. Mr. Choiniere argued that although the email was mistakenly sent to Ms. Moore, Ms. McCord, the intended recipient was not offended by the email. He noted that misdirected emails are a common occurrence.

Mr. Choiniere asked the Board to find that the letter of warning and the personnel Director's decision upholding the warning violated the Collective Bargaining Agreement, including sections 12.2, 12.3, 14.1.2, 2, 1.5, and the Preamble, and that Ms. Parent's actions did not rise to the level of an allowable letter of warning under the terms of the Personnel Rules.

Ms. Sawyer argued that State employees are expected to communicate in a professional manner, and that Ms. Parent had received a written notice of counsel on August 22, 2005, for unprofessional communication in which management expressed its concerns about the inappropriate and inflammatory manner of Ms. Parent's communication with colleagues and external parties, and warned Ms. Parent that failure to communicate with co-workers and individuals outside the college would result in disciplinary action for failure to meet the work standard. She indicated that Ms. Parent's inappropriate style of communication was noted in her last performance evaluation as well.

Ms. Sawyer stated that on September 15, 2006, Ms. Parent forwarded an email message that was reportedly intended for Michelle McCord, SEA Field Representative, to Margo Moore, Compensation and Benefits Manager for the College. Ms. Sawyer argued that the content of the email was discourteous and unprofessional, and regardless of the intended recipient, the unprofessional tone of the email constituted a failure to meet the work standard, as well as a violation of the directive given to Ms. Parent in an earlier counseling memo and performance evaluation. Ms. Sawyer argued that the disciplinary action was unrelated to Ms. Parent's union affiliation, and that a written warning was an appropriate level of discipline for a supervisor in the college business office who fails to communicate appropriately and professionally.

Having carefully considered the evidence, arguments and offers of proof made by the representatives of the parties, the Board made the following findings of fact and rulings of law:

## Findings of Fact

1. Ms. Parent's supervisors consider her to be "a highly technically skilled employee" who has problems with her manner of communication.
2. On August 22, 2005, Ms. Parent received a written notice of counsel for unprofessional communication (exhibit 2). Management expressed concerns about the inappropriate and inflammatory communications in her emails, and informed her of management's expectations that she would communicate with others appropriately and professionally. She was advised that if she continued to communicate in an inappropriate and unprofessional manner, she would be subject to discipline.
3. Concerns with Ms. Parent's communications, specifically as they related to her use of email, were noted in her performance evaluation signed by Ms. Parent on January 19, 2007, covering the period of May 2005 to April 2006. In that evaluation, Ms. Parent's supervisor's found her meeting expectations overall, but described Ms. Parent's emails as sometimes being "curt, abrasive or incomplete." The evaluation concluded by describing Ms. Parent as "a very capable employee," but cautioned that she needed "to work on her professionalism, attitude and organization..."
4. On October 16, 2006, the agency issued a written warning to Ms. Parent, which was later revised and reissued on December 15, 2006, for failure to meet the work standard as a result of an email message Ms. Parent forwarded to Margo Moore at the Systems office.
5. The email, which Ms. Parent reports she intended to send to SEA Field Representative Michelle McCord rather than Ms. Moore, began as an email to College President Dr. Mark Edelstein under the subject of "Labor/Management Committee" outlining Ms. Parent's reasons for suggesting that the campus create its own labor management committee. In the same email, Ms. Parent raised specific concerns that reportedly had been brought to her by staff regarding the relocation of several staff offices.

6. The email that Ms. Parent sent to Ms. Moore stated, "Just an FYI, the President responded to this [email] verbally that everyone knows about the moves and everything is all sunshine & flowers, what a crock of sh%^".
7. The offensive and inappropriate emails offered into evidence as Appellant's Exhibits 3 – 10 are dated between March 2000 and July 2004. None are more recent than that.

#### Rulings of Law

- A. Per 1002.04 (b) (1) provides that, "An appointing authority may issue a written warning to an employee for unsatisfactory work performance or conduct including, but not limited to, ..Failure to meet any work standard.."
- B. RSA 21-I:46, I describes the Board's jurisdiction, providing that, "The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel.."
- C. Per 102.01 (b) of the Personnel Rules describes the relationship between the Personnel Rules and the Collective Bargaining Agreement by stating, "In the case of terms and conditions of employment which are negotiated, the provisions of the collective bargaining agreements shall control." While the Rules provide that the bargaining agreement will control in those instances where the Rules and Contract do not agree, there is no provision in the Rules concerning the conduct of stewards, nor is there a provision in the CBA concerning the issuance of written warnings.
- D. Article XIV of the Collective Bargaining Agreement establishes a grievance procedure through which the parties are expected to address "disputes arising with respect to interpretation or application of any provision of this Agreement." If an employee believes that an agency has interfered with his/her rights as a steward, the appropriate means of redress would be a grievance filed under the provisions of Article XIV.

E. In accordance with Per-A 207.12 (b), "In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves by a preponderance of the evidence that: (1) The disciplinary action was unlawful; (2) The appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal; (3) The disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence; or (4) The disciplinary action was unjust in light of the facts in evidence."

### Discussion

Mr. Choiniere argued that the email was clearly identified as "SEA Business," and that disciplining the appellant for conducting legitimate union business under the provisions of the Collective Bargaining Agreement constituted "steward discrimination." The evidence does not support such a conclusion. First, there is a lack of credible evidence that Ms. Parent was treated differently than anyone else engaging in similar conduct with respect to use of the agency's email system. Further, the Board believes that Ms. Parent's failure to identify the intended recipient in the body of the email, and to clearly identify herself as a steward engaged in union activity substantially weakens her argument for protection under the terms of the contract.

Although the message that Ms. Moore received was titled "FW: Labor/Management Committee SEA Business," the message came from Ms. Parent's email account at the college, and everything else in her electronic signature identifies her as an employee of the agency, not as a steward for the union.<sup>1</sup> Although Ms. Parent asserts that the message

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<sup>1</sup> The mailing address, email address, fax and phone numbers all identify the sender as an employee of NHCTC-Laconia.

was intended for Michelle McCord at the SEA offices, there is nothing in the body of the message itself indicating that it was intended for Ms. McCord rather than Ms. Moore.

As Mr. Choiniere noted, misdirected emails are a fairly common occurrence. If for no other reason than that, Ms. Parent would have been well-advised to give her message more careful thought before clicking the "Send" button. If it was possible for Ms. Parent to misaddress this particular email, it would be equally possible for her to misdirect similar emails to persons inside or outside the system who might not be familiar with Ms. Parent or her affiliation with the union and would not immediately recognize the email as privileged or protected communication. Moreover, were it not for the attached email that was being forwarded, nothing other than the subject line would even suggest that the message involved union activity.

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#### Decision and Order

What transpires between stewards and their union is unquestionably the union's business. Nevertheless, the Board believes that the college has a legitimate interest in maintaining a reputation for integrity and professionalism. Emails like the one Ms. Parent sent to Ms. Moore do little to foster such an image. At the very least, the State deserves some assurance that stewards take reasonable precautions when communicating with anyone inside or outside the agency to make it clear that they are acting as agents of the union and not as official representatives of the agency.

The Collective Bargaining Agreement allows the union access to the agency's email system in much the same way as it allows the union to post notices on bulletin boards. The Agreement also includes provisions for both parties to deal with material that could

be considered offensive or defamatory. Particularly in light of the ease with which email can be forwarded and reach an unintended audience, perhaps the agency should take the issue of email to the State Labor Management Committee in order to address what content the parties would consider inappropriate or unacceptable. The State Labor Management Committee might also be asked to clarify how stewards should be required to identify themselves in their emails, beyond using the phrase "SEA Business."

Having considered the evidence, arguments and offers of proof, the Board found that the email sent by Ms. Parent was disrespectful, inappropriate and unprofessional. That problem, however, must be addressed with the union. Ms. Parent expected the email to be delivered to her union and not to agency staff, despite her lack of care in addressing the email or identifying herself as a steward. She believed that her communication, however inappropriate, was protected by her status as a steward. Thus, the Board found that the warning was inappropriate given the facts in evidence and orders the letter removed from her file.

Therefore, for the reasons set forth above, the appeal is GRANTED

THE PERSONNEL APPEALS BOARD

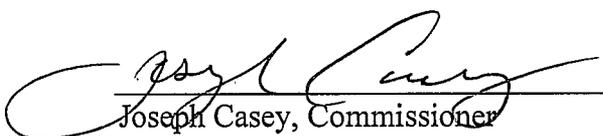
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Philip Bonafide, Acting Chair



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Robert Johnson, Commissioner



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Joseph Casey, Commissioner

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