

# State of New Hampshire

WPPID 825



## PERSONNEL APPEALS BOARD

State House Annex  
Concord, New Hampshire 03301  
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APPEAL OF JAMES B. BARTLETT  
Docket #91-P-24  
Department of Corrections

October 11, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, September 25, 1991, to review the request for hearing filed by SEA Field Representative Stephen McCormack on April 2, 1991, on behalf of the above named James B. Bartlett, an employee of the Department of Corrections. In that request, the appellant argued that the Department of Corrections had violated the provisions of PART Per 302 when it filled a vacant position of Sergeant by lateral transfer rather than posting the position for possible promotion. The appellant argued that the Department was obliged to post all vacancies for promotional opportunities and could not restrict applicants for any vacancy to those individuals seeking lateral transfer.

A similar question had been raised in the Appeal of Pierre Planchet (N.H. Supreme Court Case No. 91-183) in which the appellant alleged a violation of Per 302.02(c), when the Department of Corrections failed to post all vacancies for promotional purposes. The Board denied the appeal, finding in part that:

"...the appointing authority may elect to fill a vacancy through transfer, with or without the agreement of the employee to be transferred, provided that the Director of Personnel has certified that employee as meeting the minimum requirements of the position into which the employee will be transferred..."

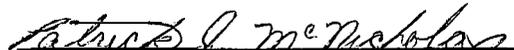
On August 22, 1991, the Court declined to hear the Planchet appeal. Absent any additional guidance from the Court, the Board has consistently applied the rationale utilized in deciding the Planchet appeal to all similar cases in which the appellant has alleged violation of Per 302. The Board has maintained that an agency may fill a position by lateral transfer and need not, in such instances, post that vacancy for promotional purposes.

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The Board does not find that the Department of Corrections violated the Rules of the Division of Personnel when it filled the Transportation Sergeant position by lateral transfer of another Corrections Sergeant. Accordingly, the Board voted unanimously to dismiss Mr. Bartlett's appeal.

THE PERSONNEL APPEALS BOARD

  
Patrick J. McNicholas, Chairman

  
Robert J. Johnson

  
Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel  
Stephen J. McCormack, SEA Field Representative  
Michael Brown, Esq., Department of Corrections  
Lisa A. Currier, Human Resource Coordinator, Department of Corrections