

State of New Hampshire

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PERSONNEL APPEALS BOARD
State House Annex
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APPEAL OF ROBERT REINHARD
Docket #91-P-10
Department of Transportation

March 19, 1992

The Personnel Appeals Board (Bennett, Rule and McGinley) met Wednesday, January 8, 1992, to hear the promotional appeal of Robert Reinhard, an employee of the Department of Transportation. Mr. Reinhard, who was represented at the hearing by SEA Director of Operations Thomas Hardiman, was appealing his non-selection for promotion to the position of Highway Patrol Foreman. The Department of Transportation was represented by Assistant Attorney General Michael Walls, Transportation Bureau, Department of Justice.

Mr. Hardiman argued that Mr. Reinhard did not receive full and fair consideration for promotion because the successful candidate's uncle was one of the three-member selection panel, and that the Department of Transportation failed to use the Division of Personnel's structured oral examination procedures or forms in conducting promotional interviews. Mr. Hardiman also argued that the successful candidate had the advantage of additional experience through temporary promotion to Acting Patrol Foreman and that Mr. Reinhard had been denied an equal opportunity.

James Nelson, another unsuccessful candidate for promotion to Patrol Foreman, testified that the only question he had been asked during his interview was whether or not he felt he would be able to work for Brian Charland, the successful candidate. He said he felt he was not asked pertinent questions during his interview. He also testified that Mr. Charland had received an unfair advantage by being temporarily promoted to Acting Highway Patrol Foreman before the actual selection process commenced.

The appellant is employed by the Department of Transportation as a Highway Maintainer III. He testified that he had never been given the opportunity to fill in as the Acting Patrol Foreman. He also testified that during his promotional interview, he was asked whether or not he felt he could work for Brian Charland. He testified he was never asked if he could work for any of

the other candidates for promotion. He said he believed that the selection process was not conducted fairly as Mr. Charland's uncle, Richard Thompson was a member of the selection panel. He also testified that he had more full-time service with the Department than did Mr. Charland.

Richard Morneau, Assistant District Engineer testified that selecting a candidate for promotion to the position of Highway Patrol Foreman involved requesting approval to fill the position, posting the position, having the applications certified, and setting up an interview committee. He testified that when the Department of Transportation chose the selection panel, they had no way of knowing that Mr. Thompson's nephew would be a certified applicant for promotion. He testified that the Department continued to believe that Mr. Thompson's participation in the selection process was necessary because of his knowledge of the job and the patrol area for which the promotional selection was being made. He also testified that D.O.T. was fully convinced that Mr. Thompson would be unbiased.

Mr. Morneau testified that the candidates all had more than ten years of service with the Department. Therefore, length of service would only have been a deciding factor if all the candidates had been considered equally qualified for promotion. He testified that Charland's temporary promotion to Acting Highway Patrol Foreman had been based on the recommendation of the retiring Patrol Foreman and that since Mr. Charland and Mr. Nelson had both served as Assistant Patrol Foreman, but that the selection panel had still rated Mr. Nelson third in the rankings. He said the selection panel unanimously recommended that Mr. Charland be promoted, and had ranked the other candidates as follows: Reginald Howe^{1/}, James Nelson and Robert Reinhard.

In consideration of the record before it, the Board found the following:

There is currently no requirement that the Department of Transportation or any other State agency use the resources of the Division of Personnel in interviewing applicants for promotion. While the assistance of the Division of Personnel would undoubtedly be beneficial to the process, failing to request or use such aid does not render the promotional process invalid.

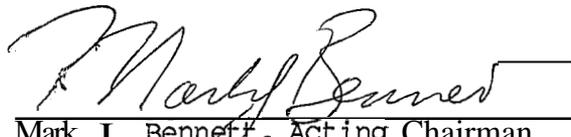
^{1/} Reginald Howe appealed his non-selection for promotion to Highway Patrol Foreman, but subsequently withdrew his appeal.

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The successful candidate undoubtedly gained valuable experience during his temporary promotion to the position of Acting Highway Patrol Foreman. When faced with selecting an employee for temporary promotion, however, the Highway Patrol Foreman recommended Brian Charland, and that recommendation was accepted by the District Engineer John Ross. The Board found no impropriety in the temporary promotion. The Board further found that that in the event Brian Charland had not been selected for promotion, the selection committee would have unanimously recommended Reginald Howe for promotion. The committee placed Mr. Reinhard fourth out of the four candidates for the vacancy.

In consideration of the foregoing, the Board voted unanimously to deny Mr. Reinhard's appeal of non-selection for promotion to Highway Patrol Foreman.

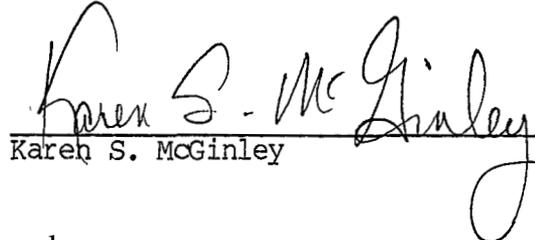
THE PERSONNEL APPEALS BOARD



Mark J. Bennett, Acting Chairman



Lisa A. Rule



Karen S. McGinley

cc: Virginia A. Vogel, Director of Personnel
Michael Walls, Assistant Attorney General, Justice Department
Richard D. Williams, Human Resource Coordinator, Dept. of Transportation
Thomas Hardiman, SEA Director of Field Operations