

State of New Hampshire



PERSONNEL APPEALS BOARD
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APPEAL OF ROLAND J. SPARKS ***Docket #98-P-2***

Department of Transportation

October 30, 1997

The New Hampshire Personnel Appeals Board (Rule, Johnson and Barry) met on Wednesday, September 10, 1997, under the authority of RSA 21-I:58, to hear the appeal of Roland J. Sparks, an employee of the NH Department of Transportation. Mr. Sparks was appealing his non-selection for promotion to the position of Public Works Project Manager IV. The appellant was represented at the hearing by Jean Chellis, SEA Field Representative. Kathryn Bradley, Assistant Attorney General, appeared on behalf of the State.

Over the appellant's objection, the appeal was heard on offers of proof by the representatives of the parties. The parties had been advised by notice dated August 12, 1997, that the matter would be heard on offers of proof; that the parties would be permitted to offer documentary evidence, oral argument and offers of proof; and that if the Board then determined that it had insufficient evidence to fairly decide the appeal, the Board could compel the production of additional evidence up to and including the testimony of witnesses. The Board determined that it had sufficient evidence to decide the case without hearing live witness testimony.

The record in this matter consists of the audio tape recording of the hearing on the merits, orders and notices issued by the Board, pleadings submitted by the parties, and exhibits admitted into evidence as follows:

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State's Exhibits

1. April 24, 1997 letter from Matthew E. Moore to Margo Steeves
2. Summary sheet of interview scores for top three candidates
3. Performance Summaries for Michelle Juliano
4. Performance Summaries for Roland J. Sparks
5. Appointing Authority's summary sheet for top three candidates

Appellant's Exhibits

1. Per 602.02 of the Rules of the Division of Personnel
2. Mr. Sparks' Application for position #20006
3. Non-selection letter to Mr. Sparks
4. Interview Score Sheet
5. Per 103.01
6. Correspondence through informal settlement process
7. February 12, 1997 memo from Paul Hedstrom to Matthew Moore transmitting interview committee recommendation
8. June 4, 1996 memo from Matthew Moore to Roland Sparks concerning Appellant's upgrading request
9. June 7, 1997 memo from Mr. Sparks to Mr. Moore concerning training for Project Manager IV position
10. May 26, 1995 memo from Mr. Sparks to Mr. Marshall concerning problems within the Bureau of Public Works
11. June 5, 1995 memo from Mr. Marshall to Mr. Sparks discussing concerns about the Bureau of Public Works
12. June 9, 1995 memo from Mr. Sparks to Mr. Marshall responding to June 5, 1995 memo
13. Permit for Canad Cinemas driveway obtained by Matthew Moore
14. May 1, 1995 memo from Mr. Sparks to Mr. Moore concerning Request for Work
15. Memos dated 4/28/95, 5/2/95 and 5/15/95 regarding use of private vehicles
16. May 15, 1995 memo from Mr. Sparks to Mr. Soper and Mr. Hedstrom regarding use of personal property for state use without compensation
17. Memo dated June 12, 1995 from Mr. Hedstrom to Mr. Sparks regarding Rest Area Septic Systems
18. Memo dated June 12, 1995 from Mr. Sparks to Mr. Hedstrom in response to June 12, 1995 memo

Ms. Chellis argued that over time, the appellant had raised a number of legitimate concerns about management practices in the Bureau of Public Works. Documents offered into evidence by the appellant include a May 26, 1995, letter to James Marshall, Director of the Bureau of Public Works

in which the appellant outlined his various concerns and complaints about management of the Bureau. His complaints included lack of proper training to do field work, a reprimand he received for ordering materials tests without prior approval, delays in approval of contracts, insufficient access to design equipment, and the requirement that he place his own P. E. stamp on substandard work that had been completed by others. He also complained that although the Department refused to pay for his septic system design licensing fees, he had been required to stamp plans for the department, even though his job description carried no such requirement. He indicated that unless the department intended to compensate him, he would forward all future septic design plans to Mr. Soper for his approval and stamping.

Ms. Chellis argued that the appellants' complaints about Mr. Moore and Mr. Soper in the Bureau of Public Works were at the heart of the Department's refusal to promote Mr. Sparks to Public Works Project Manager IV. Ms. Chellis argued that after Mr. Moore's promotion to Bureau Administrator, the position of Project Manager IV was vacant for a significant period of time. She said that Mr. Sparks was led to believe that he had assumed the Project Manager IV duties, which he performed well. She argued that problems between Mr. Moore and Mr. Sparks escalated when Mr. Sparks asked to be reclassified and receive appropriate compensation for his expanded duties.

Ms. Bradley argued that there was a significant period of time that the Project Manager IV position remained vacant because of a hiring freeze. She argued that during that time, Mr. Moore was performing the Project Manager IV duties in addition to his own responsibilities as Bureau Administrator, and that there was no basis in fact to Mr. Sparks' assertion that he had been performing the duties of a Project Manager IV.

Ms. Bradley argued that an appointing authority's responsibility in selecting a candidate to fill a vacancy is to find the person best suited to the vacancy. She said that although Mr. Sparks scored better on the initial interview, the memo from Paul Hedstrom made it clear that any of the top three candidates were well within the "recommended" scoring range. She said that the position of Public Works Project Manager IV involves frequent contact with State officials, contractors and members of the public, and that in the Administrator's opinion, Mr. Sparks did not possess the

communication skills the position required. She noted that under Per 602.02 of the Rules of the Division of Personnel, an applicant may be denied selection if, in the opinion of the appointing authority, the candidate is deemed to lack personal or professional qualifications for promotion. She said that communication means more than the ability to transmit technical information, and that in Mr. Moore's opinion, Mr. Sparks' communication skills were lacking.

Ms. Bradley stated that before selecting a candidate, Mr. Moore rated the top three candidates using criteria from the Public Works Project Manager IV supplemental job description and accountabilities. She stated that Mr. Moore believed Mr. Sparks' performance was poor in several categories, specifically with respect to communications, coordinating projects and the ability to establish and maintain cooperation. He rated the successful candidate's performance as excellent in those areas. She argued that as Mr. Sparks' immediate supervisor, Mr. Moore had formed certain opinions about Mr. Sparks' personal and professional qualifications, and that he had also discussed the other top two candidates with their supervisors. She said that Ms. Juliano's supervisor had nothing but praise for her work.

Ms. Bradley said that before notifying the candidates of his decision to select Ms. Juliano for the position, he also discussed his decision with DOT Human Resources Administrator Fran Buczynski and with Mr. Marshall. She said they concurred with Mr. Moore's decision.

Ms. Chellis argued that Mr. Moore was never given permission to review or discuss Mr. Sparks' performance evaluations. She also said that in his last several evaluations, there had been no complaints about Mr. Sparks' communication skills. She stated that if Paul Hedstrom were to testify, he would say that although he himself is not a Civil Engineer, he believed Mr. Sparks met all the qualifications for the position. She argued that in spite of Mr. Moore's later complaints about the appellant's communication skills, Mr. Hedstrom would testify that in his opinion, the appellant's communication skills would not be detrimental to his performance of his work.

FINDINGS OF FACT

1. On February 12, 1997, Mi-. Sparks participated in an interview for the position of Public Works Project Manager IV.
2. The interview team was comprised of Paul Hedstrom, Assistant Public Works Administrator; John Bowyer, Chief, Engineering Division, Fish and Game Department; Michael P. Connor, Administrator, General Services Bureau of the Department of Administrative Services; and Brent Edmonds, Department of Resources and Economic Development.
3. The interview team asked each candidate a series of questions, scored their answers, and reported their recommendations to Matthew Moore, Public Works Administrator.
4. In a February 12, 1997, memo from Paul Hedstrom to Mr. Moore, Mr. Hedstrom indicated that the top three candidates, including Ms. Juliano, Mi-. Landry and Mi-. Sparks, had scores well within the "recommended" range, but that Mr. Sparks had a clear lead among the candidates.
5. The Committee recommended promoting Mr. Sparks.
6. Mr. Sparks scored approximately 7 points higher than Ms. Juliano on the interview phase of the selection process.
7. The interview committee had no authority to select the candidate to fill the vacancy.

RULINGS OF LAW

- A. Per 602.02 (a) states, "Whenever possible, selection by the appointing authority to fill a vacancy shall be made from within an agency and shall be based upon the employee's: (1) Possession of the knowledge, skills, abilities and personal characteristics listed on the class specification for the vacant position."
- B. Per 602.02 (c) states: "Candidates may be denied selection if, in the opinion of the appointing authority, they are deemed to lack personal or professional qualifications for promotion."

DECISION

Both the appellant and Ms. Juliano were candidates from within the agency within the meaning of Per 602.02 (a). Mr. Sparks' status as an employee of the bureau where the vacancy existed did not entitle him to preference over any other employee from within the agency. The Board found that Mr. Sparks met all the professional qualifications for promotion, and in each of his evaluations he was rated as having "met expectations" for each of the categories of work assessed. The same was true of Michelle Juliano, the candidate selected for promotion. Mr. Sparks received a higher score from the interview panel than did Ms. Juliano, but both candidates' scores were ranked within the "recommended" range. However important the interview was in determining the candidates' qualifications for promotion, the interview was only a part of the selection process. Whatever impression the panel had of the candidates' skills, abilities and capacity for the vacancy, that impression did not form a complete picture of the candidate.

Documented past performance provides one of the most significant tests in selecting candidates for promotion. In Ms. Juliano's case, her performance evaluations, her supervisors' assessment of her personal and professional qualifications, and Mr. Moore's impressions of her after their discussion of the Project Manager IV position persuaded Mr. Moore that Ms. Juliano was the superior candidate. By comparison, Mr. Moore has first-hand knowledge of the appellant's apparent inability and unwillingness to develop cooperative and harmonious working relations within the bureau. Mr. Sparks was openly critical of his supervisors stating in his May 26, 1995, letter to James Marshall, Director of Public Works, "Due to recent events I have become frustrated with the Public Works administration and their inability to perform their jobs." He accused the administration of negligence and of sweeping problems "under the rug." He also wrote, "Currently Matt and I have a poor working relationship. He has lied to me and lied in the statements that he has put on my evaluation." He offered his opinion that Mr. Moore felt threatened by Mr. Sparks' relationship with client agencies, and accused him of using the performance evaluation process as a way of demeaning the appellant so that he would "do less work."

In the appointing authority's opinion, Mr. Sparks lacked personal qualifications for promotion. Appointing authorities are given broad discretion in selecting candidates for promotion. The Board

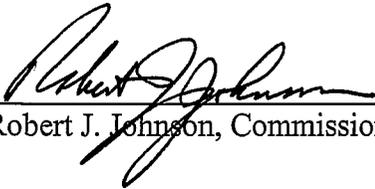
found no abuse of that discretion in the selection of Michelle Juliano for the position of Project Manager IV. She was a qualified, in-house candidate who, in the opinion of the appointing authority, possessed the personal and professional qualifications for promotion.

The appellant failed to persuade the Board that his non-selection violated the Rules of the Division of Personnel, or constituted an abuse of discretion on the part of the Department of Transportation. Therefore, on the evidence, argument and offers of proof, the Board voted unanimously to deny Mr. Sparks' appeal.

THE PERSONNEL APPEALS BOARD



Lisa A. Rule, Acting Chair



Robert J. Johnson, Commissioner



James J. Barry, Commissioner

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