# State of New Hampshire

PERSONNEL APPEALS BOARD
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## APPEAL OF KENNETH URQUHART

February 9, 1988

On Monday, January 25, 1988, the Promotion Appeals Tribunal, consisting of Chairman George R. Cushman, and Personnel Officers Sharon Sanborn (New Hampshire Hospital) and Edwin J. Goodrich (Department of Safety) met to hear the appeal of Kenneth Urquhart. Mr. Urquhart, represented by SEA Field Representative Ann Spear, was appealing his non-selection to the position of Labor Inspector I, New Hampshire Department of Labor. Jean Houghton, Director of the Inspection Division, Department of Labor, represented the agency.

Chairman Cushman opened the hearing asking if either party wished to make opening statements. At that time, Ms. Houghton moved that the appeal be dismissed, stating that the appellant was not an employee of the Department of Labor and was therefore not entitled to appeal his non-selection under the provisions of Per 302.01 of the Rules of the Department of Personnel. The State Employees' Association objected, arguing that pursuant to Part Per-A 201 of the Rules of the Personnel Appeals Board, Mr. Urquhart's appeal was valid. Ms. Spear specifically cited Per-A 201.02(a): "Any permanent employee who is dismissed, demoted, or suspended, or otherwise affected by any action of the appointing authority or the division of personnel..."

Ms. Houghton further argued that the appeal was not, in fact, an appeal of denial of promotion, but rather that Mr. Urquhart was denied a transfer from one department to another. Ms. Spear countered that she had previously been informed by the Board that denial of lateral transfers have, as a rnatter of practice, been heard by the Promotion Appeals Tribunal.

The Board went off the record briefly to assemble the cited rules for review, then made a motion to go into executive session to discuss the applicability of these rules to the motion to dismiss. Neither party to the appeal objected. The Chairman polled the members, who voted unanimously to discuss the rules in executive session.

After a brief executive session, the Tribunal voted unanirnously to call the parties back to the hearing and to return to public session. At that time, the Chairman indicated that the Tribunal had reviewed the original request for hearing, the order of notice in the appeal, the Rules of the Department of Personnel and the Rules of the Personnel Appeals Board. The chairman again polled the members, who voted unanimously to dismiss the matter.

The Tribunal hereby orders that the appeal be dismissed. Absent specific requests for findings and rulings, the Tribunal made findings and rulings as follows:

1. The original request for hearing, filed by the State Employees' Association on November 13, 1987, stated that, "Kenneth Urquhart wishes to appeal his non-selection to the position of Labor Inspector I. The position is located at the Department of Labor. Mr. Urquhart was informed of his non-selection on November 6, 1987. This appeal is made under the guidelines of the Rules of the Division of Personnel. A hearing is requested before the Promotion Tribunal as soon as scheduling permits."

2. The appellant was not an employee of the Labor Department at the time of his non-selection.

3. The appellant was not an employee of the Labor Department at the time of the scheduled hearing.

4. The appellant had requested a hearing before the Tribunal "under the guidelines of the Rules of the Division of Personnel."

5. The Tribunal's December 30, 1987 notice of scheduling stated the Tribunal would hear the appeal, "pursuant to the provisions of Per 302.03(g) of the Rules of the Department of Personnel."

6. Per 302.03 of the "Rules" relates to Promotions from Within a Department or Agency.

Based upon the above findings, the Tribunal made the following rulings:

Despite the appellant's contention at the hearing that he was entitled to proceed with his appeal under Per-A 201 of the Rules of the Personnel Appeals Board, the original appeal was "made under the guidelines of the Rules of the Division of Personnel." Mr. Urquhart was not an employee of the Department of Labor and therefore was not entitled to appeal his non-selection under the provisions of Per 302.03(g) of the Rules of the Department of Personnel. Further, the appellant's contention that "lateral transfers" were handled in the same manner as promotional appeals would not apply in this instance. When lateral transfers have been considered by the Tribunal, they have resulted from the refusal of the appointing authority to transfer one of the agency's permanent employees into another position of the same title and grade within that agency.

Having specifically requested a hearing before the Tribunal, under the guidelines of the Rules of the Department of Personnel, the appellant inferred that he was appealing his non-selection to a posted "in-house" vacancy. The Board was unaware of the appellant's employment status until the motion for dismissal of the appeal was made. Further, there was no objection to hearing the appeal before the Tribunal under the provisions of Per 302.03(g), indicating that this matter was, in fact, denial of promotion of an in-house candidate to a vacancy within his own agency.

Finally, the appellant's reliance upon the provisions of Per-A 201.02(a) to justify his right to a hearing before the Tribunal is inconsistent with the appeal itself. Among those appeals heard under the provisions of Rules of the Personnel Appeals Board are those filed by "Any permanent employee...otherwise affected by any action of the appointing authority or the division of personnel." In the case of Mr. Urquhart, while Commissioner Kelly certainly is the appointing authority at the Department of Labor, he is <u>not</u> the appointing authority relative to the appellant's current employment status. Consequently, this provision would have no bearing upon Mr. Urquhart's appeal.

For the foregoing reasons, the Promotion Appeals Tribunal dismissed the appeal of Kenneth Urquhart.

FOR THE PROMOTION APPEALS TRIBUNAL

Mary Ann Steele

MARY ANN STEELE, Executive Secretary
Personnel Appeals Board

cc: Ann Spear, SEA Field Representative

Jean Houghton, Director
Inspection Division, Dept. of Labor

Virginia Vogel
Director of Personnel