

State of New Hampshire

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PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF EDWIN BIENIEK
Docket #91-T-22
Department of Corrections

May 21, 1992

The Personnel Appeals Board (Bennett and Rule) met Wednesday, April 29, 1992, with representatives of the parties in the above-captioned appeal to review a Request for Proposed Order jointly submitted by Attorney Michael K. Brown on behalf of the Department of Corrections, and General Counsel Michael C. Reynolds on behalf of the appellant.

The parties have jointly presented the attached Stipulation as agreed to and signed by the parties on December 31, 1991, to the Personnel Appeals Board. The Board is aware of it and its contents, but expresses no opinion as to the appropriateness or lawfulness of the stipulation and makes no finding with respect to any factual matters involved in this appeal. As the parties have agreed to comply with the terms of the stipulation, and it is dispositive of this case, the stipulation is approved to the extent that the Board has jurisdiction. So ordered.

THE PERSONNEL APPEALS BOARD

Handwritten signature of Mark J. Bennett in cursive script.

Mark J. Bennett, Acting Chairman

Handwritten signature of Lisa A. Rule in cursive script.

Lisa A. Rule

cc: Virginia A. Vogel, Director of Personnel
Michael K. Brown, Esq., Department of Corrections
Michael C. Reynolds, S.E.A. General Counsel

AGREEMENT

1. The Department of Corrections (DOC) shall seek and obtain permanent upgrading of the presently vacant Psychologist I position to Psychologist II. If DOC can obtain group II New Hampshire Retirement System status for said position, it shall do so. Mr. Bieniek shall then take said Psychologist II position at the maximum step, with no loss of seniority or longevity. Pursuant to HB 65, DOC shall appear at the next available fiscal committee meeting and make all reasonable efforts to reestablish Mr. Bieniek's former Psychologist II position to enable Mr. Bieniek to re-enter group II in the New Hampshire Retirement System. DOC shall make all reasonable efforts to cooperate with Mr. Bieniek and his representative prior to such fiscal committee meeting to present as strong a case as possible for reestablishing said position. Once the fiscal committee has issued its final decision as to reestablishing said position, if that decision does reestablish the position, Mr. Bieniek shall immediately be given that position with no loss of seniority, DOC shall then pay both the employee's and employer's share of New Hampshire Retirement System group II contributions, if possible, from June 14, 1991 until the date Mr. Bieniek enters the reestablished position to obtain maximum group II time coverage. If the final fiscal committee decision refuses to reestablish the group II position, Mr. Bieniek shall decide and give notice to DOC within one month whether to remain in the upgraded position or leave employment and continue the termination and other appeals presently pending.

The intent of this stipulation #1 is to reestablish Mr. Bieniek as a Psychologist II at DOC in group II of the New Hampshire Retirement System, if legally possible. If other avenues exist or arise through which this intent can be effected, the parties will cooperate to achieve such group II status for Mr. Bieniek if the appeal to the fiscal committee is unsuccessful.

Although Mr. Bieniek will receive full pay status only as of the date of this agreement, and will not receive retroactive pay, he shall be considered to have been a DOC employee continually from June 14, 1991.

2. The June 14, 1991 termination letter and letter of warning shall be considered rescinded and nullified as of the date the fiscal committee reestablishes Mr. Bieniek's former group II position and he re-enters it, or the date he elects to remain in the upgraded position should the

fiscal committee finally refuse to reestablish Mr. Bieniek's group II position.

3. The two prior letters of warning concerning sick leave are hereby rescinded. The related denials of requests for sick leave are hereby rescinded and said sick leave is approved.
4. The two remaining letters of warning remain on record and remain appealable through the personnel rules system, including appeal to the Personnel Appeals Board.
5. The appeal of the DOC's transfer of Mr. Bieniek from Secure Psychiatric Unit (SPU) to the prison already initiated, shall continue.
6. Mr. Bieniek shall enroll in and to the extent reasonably possible meaningfully participate in a bimonthly out-patient treatment at the New Life Center in Bedford, NH, or Riverbend Counseling Center in Concord, New Hampshire, with no control or choice as to which therapist is assigned to his case; provided, however, that admission by Mr. Bieniek to a drug or alcohol problem shall not be a condition of this agreement. Said out-patient treatment shall be paid by Mr. Bieniek or his Blue Cross/Blue Shield policy. Mr. Bieniek shall be paid his regular salary as administrative leave while participating in said treatment.
7. If the DOC prevails at the Personnel Appeals Board hearing on the November 9, 1990 letter of warning (see attached), Mr. Bieniek shall apply and make all reasonable efforts to enroll, be accepted and meaningfully participate in a thirty day residential substance dependency program of DOC's choice; DOC shall choose a program of which Blue Cross/Blue Shield ordinarily pays at least eighty percent (80%), and shall make reasonable efforts to find an acceptable program which Blue Cross/Blue Shield ordinarily pays as close to one hundred percent (100%) as reasonably possible; which program shall be paid for by Mr. Bieniek or his Blue Cross/Blue Shield policy; provided, however, that admission by Mr. Bieniek to a drug or alcohol problem shall not be a condition of this agreement and absence of such admission shall not be construed as failure to fulfil this or any of the other numbered stipulations of this agreement. During such residential program, Mr. Bieniek shall continue to be paid his regular salary as

administrative leave, with all other benefits continuing and accruing.

8. If Mr. Bieniek prevails at the Personnel Appeals Board hearing on the November 9, 1990 letter of warning, no further substance abuse/dependency treatment or programming shall be required of Mr. Bieniek. DOC does not by this stipulation waive any of its valid rights to take action under appropriate statutes, personnel rules or the Collective Bargaining Agreement should it in the future perceive the need to do so for any reason.
9. Mr. Bieniek agrees to work anywhere he is assigned, i.e. either at the State Prison or at the SPU, at DOC's discretion, pending the results of the appeal referenced in paragraph 5 above.
10. In the future, Mr. Bieniek shall agree to initially address and exhaust all complaints and grievances within the Department through the established chain-of-command and applicable appeal process.

12/31/91
Date

Ronald L. Powell
Ronald L. Powell, DOC Commissioner

12/31/91
Date

Michael R. Brown
Michael R. Brown, Esq.

12/31/91
Date

Edwin Bieniek
Edwin Bieniek

12/31/91
Date

Michael C. Reynolds
Michael C. Reynolds, Esq.