State of New Hampshire

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PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) **271-3261**

RESPONSE TO APPELLANT'S MOTION FOR RECONSIDERATION

Appeal of Trudy L. Stene
Docket #89-O-21

April 3, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, April 3, 1991, to consider the Motion for Reconsideration filed by SEA Field Representative Stephen McCormack on behalf of Trudy Stene relative to the Board's February 27, 1991 decision dismissing her appeal.

The appellant argued that "the Personnel Appeals Board has no right to consolidate appeals without proper notice and concurrence by the parties having separate appeals already properly before the Board." The appellant, however, is in error and her argument is without merit. Per-A 202.07 of the Rules of the Personnel Appeals Board specifically provides that:

"(a) The Board, upon its own motion or the motion of any party, may consolidate related cases.

"(b) The Board, upon its own motion or if it agrees with the motion of any party, may defer hearing related cases, whether or not consolidated, pending the decision and appeal of a test case selected by the Board."

Appeals need not be identical to be considered "related" for the purposes of consolidation and review as related cases. Ms. Stene's appeal arises from the Director's refusal to review her position for possible reclassification or reallocation, the same basis for appeal cited in Bailey, Burton and Eaton.

> "Notwithstanding any other provision of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991." [Chapter 209:4 of the Laws of 19901

The appellant's continued disagreement with the correct interpretation of the statutory language, or its application to a position "review" or "reevaluation" fails to establish grounds upon which to argue that the Board's dismissal of her appeal was either unreasonable or unlawful.

The appellant also argued that she "has been affected by a decision of the Director of Personnel. As such, the appellant has the right to have her appeal heard before the Personnel Appeals Board." In cases where there are no facts in dispute, the Board may decide an appeal without evidentiary hearing./1 The only issue in dispute is the appropriate interpretation of the statutory prohibition against position reviews, and whether or not a "review" or "reevaluation" are synonymous in this context to a "request for reclassification or reallocation". Again, a difference in interpretation does not constitute a fact in dispute.

In consideration of the foregoing, the Board voted unanimously to affirm its decision of February 27, 1991, and accordingly the appellant's Motion for Reconsideration is denied.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Thomas K. Tarr, Director, Division of Field Services, Dept. of Corrections
Stephen J. McCormack, SEA Field Representative
Civil Bureau - Attorney General's Office

/1 "The Board does not believe that either side has an absolute right to an oral hearing. Where the facts are not in dispute, an oral hearing is not required. In the matter of Gary Blake and Donald LaPlante (November 3, 1986) aff'd without written opinion, Appeal of Blake et al (No. 86-493, October 1, 1987). The same principles apply when the well-pleaded facts are taken as true for the purposes of a Motion to Dismiss." [See: Appeal of Conservation Officer David Lovequist - Order on Motion for Rehearing, Personnel Appeals Board Decision, May 22, 19891

State of New Hampshire

WPPID698

PERSONNEL APPEALS BOARD
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Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF TRUDY L. STENE
Docket #89-O-21
Department of Corrections

February 27, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, February 13, 1991, to consider the above captioned appeal which was received by the Board on September 11, 1990. The matter had been held in abeyance pending a final order in the appeals of Susan Bailey (No. 89-O-16), Linda Burton (No. 89-O-14) and Christine Eaton (No. 89-O-15) relative to the refusal of the Director of Personnel to review their positions for possible reclassification or reallocation. Having found the instant appeal to also arise from the Personnel Director's refusal to accept the appellant's position review request, the Board, upon its own motion, voted to consolidate this appeal with the appeals of Bailey, Burton and Eaton. (Per-A 202.07 N.H.C.A.R.)

The Director of Personnel had determined that under the provisions of Chapter 408:105 effective June 5, 1989, no classification, allocation or evaluation reviews received on or after that date could lawfully be conducted. Chapter 209:4 of the Laws of 1990 clarified the General Court's ban on position reclassifications or reallocations:

> "Notwithstanding any other provision of law, the director of personnel shall not consider any requests for reclassification or reallocation until July 1, 1991."

The Board's final order, dismissing the appeals of Bailey, Burton and Eaton, provides in pertinent part:

> "The instant appeals are dismissed. The Director of Personnel is ordered to consider the classification of the affected positions under the then lawful system pertinent thereto as soon as she is lawfully and reasonably able to do so in accordance with said system. The Director may require that the appellants submit new position classification questionnaires at that time, or such other information as may be warranted for consideration under the then applicable system." (A copy of the full text of the Board's order is attached herewith.)

Appeal dismissed.

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
Thomas Tarr, Director, Field Services Division, Dept. of Corrections
Lisa Currier, Human Resource Coordinator, Department of Corrections