

State of New Hampshire

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PERSONNEL APPEALS BOARD
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APPEAL OF MICHAEL BEADLE
Docket #90-P-11
(Department of Corrections)

April 3, 1991

The New Hampshire Personnel Appeals Board convened a Promotion Appeals Tribunal on Wednesday, February 20, 1991, for the purposes of hearing Michael Beadle's appeal of his non-selection for promotion to the position of Corrections Lieutenant, N.H. Department of Corrections (State Prison). The Tribunal consisted of Patrick J. McNicholas, Chairman, N.H. Personnel Appeals Board; Sarah Hopley, Human Resource Coordinator, New Hampshire Technical Institute; and John Roller, Human Resource Coordinator, Department of Environmental Services. The appellant was represented by Stephen J. McCormack, SEA Field Representative. Mr. Beadle also testified on his own behalf. Warden Michael J. Cunningham appeared on behalf of the Department of Corrections (N.H. State Prison). Also testifying on the State's behalf was Viola Lunderville, Administrator of Security at the State Prison.

In his May 21, 1990 letter of appeal, Sgt. Beadle asked that his appeal be decided without evidentiary hearing, arguing that several essentially identical issues were pending before the Personnel Appeals Board. He asked that the Board issue an order finding that the Department of Corrections had violated PART Per 302.03 (b) and PART Per 302.02 (c) of the Rules of the Division of Personnel, and that the Department of Corrections had violated its own promotional policies. The appellant asked that the Board then order his immediate promotion to Corrections Lieutenant.

The Board, however, found that there were material facts in dispute concerning both the promotional process, and Mr. Beadle's standing on the promotional roster for the rank of Lieutenant. Accordingly, the Board voted to deny the appellant's request for disposition without evidentiary hearing and to schedule the matter for a hearing on the merits before the Promotion Appeals Tribunal.

Based upon the evidence and testimony received at Mr. Beadle's promotional hearing, the Tribunal unanimously voted to deny Mr. Beadle's appeal. In so doing, the Tribunal made the following findings of fact.

When vacancies occur in the ranks of Corporal, Sergeant and Lieutenant at the State Prison, they are posted within the Department of Corrections as openings "for laterals only", allowing employees in the same rank as the vacant position to request a new duty assignment. Once requests for lateral transfer have either been approved or denied, the resulting promotional vacancy is filled without the position being re-posted. The promotion is offered to the employee ranking first on the promotional roster. If that employee declines the assignment, the promotion is offered, in order, to those candidates appearing on the promotional roster.

For the purposes of creating promotional rosters for the ranks of corporal, sergeant and lieutenant, promotion boards are convened twice each year. Those boards are conducted in accordance with Policy and Procedure Directive 2.2 .1., N.H. State Prison Personnel Policy for Selection, Promotion, and Retention, of certain uniformed personnel at the State Prison. P.P.D. 2.2.1 has at least conceptual approval by the State Division of Personnel.

As part of the promotional process detailed in that directive, each applicant's personnel file is reviewed by the human resource office at the Department of Corrections. By use of a standardized scoring method, each applicant's file is assigned a "factor rating", taking into consideration length of service, relevant education, performance evaluations, commendations and discipline. Following that review and rating, the applicants are interviewed by an oral board comprised of three departmental employees who individually score each applicant's answers to a uniform set of questions. The oral board members' scores for each applicant are averaged, and the applicant is assigned an "oral board score". The combined "factor rating" and "oral board score" determines the employee's initial rating for promotion. The resulting list is then reviewed by the Warden, with the assistance of senior Prison staff to establish a final promotional ranking for each candidate.

In determining the final promotional ranking for each of the candidates, the Warden meets with the Administrator of Security and Corrections Major, to assess each candidate's potential for performance at the higher rank. The basis for such discretionary review is founded in Per 302.03 (b) (2), which was read into the record:

"If the appointing authority finds certain professional and personal qualifications lacking in even ostensibly qualified candidates for promotion, employees may be denied promotion." [Per 302.03 (b) (2)]

At the conclusion of the first two phases of the scoring, Sgt. Beadle was rated fifth of all the applicants for promotion to the rank of lieutenant. Following the third phase of the promotional review process, Beadle was dropped from fifth to tenth on the final roster. Of particular concern to prison management in the case of Sgt. Beadle was their conclusion that Beadle was "a very rigid person", while the position of lieutenant requires the incumbent to demonstrate the ability to reason, and to use discretion in

making decisions concerning both inmates and staff. Beadle was also considered "more of a follower than a leader" who engaged himself too frequently in complaining about problems in the department rather than putting his energy into "positive" steps to correct the problems.

At the prison, the three platoon commanders hold the rank of captain. In their absence, whether on scheduled or emergency leave, the lieutenants must perform as acting platoon commanders and may "run the whole facility". Neither the Warden, Ms. Lunderville, nor Major Ash believed that Beadle was ready at the time of the promotional boards in May, 1990, to assume command at the facility. In the opinion of facility administrators, "As a corrections officer, the more rigid you are the better... As you move up the line you become more of a mediator." Beadle was deemed by the prison management to lack those essential skills.

The appellant contended that the final review phase was too subjective, and that he should have been promoted in June based on his fifth-place ranking after the "oral board" portion of the promotional process. He argued that while the appointing authority certainly can exercise discretion in promotion, the re-ordering of the promotional list without the benefit of a personal interview at the third and last phase of the promotional process was neither objective nor equitable. Accordingly, he argued that the Tribunal should order his promotion retroactive to June, 1990, and that he be compensated at the higher rate for the period between June, 1990 and his eventual promotion in August 1990.

Based upon the record before it, the Tribunal found that the Department of Corrections reasonably exercised its discretion in denying Sgt. Beadle promotion to lieutenant based upon their finding that he lacked certain personal and professional qualifications for promotion in June, 1990. The appellant was considered too rigid to adequately fulfill the "mediator" role required of Corrections Lieutenants, and was found to lack a positive approach to problem solving within the institution. Management also determined that Beadle failed to demonstrate sufficient leadership qualities to justify his promotion to lieutenant at that time.

The appellant also complained of the agency's failure to post positions for promotion, or to consider promotional candidates along with lateral transfers within the same rank. It was unclear from the appellant's testimony whether he approved or disapproved of the agency's policy of promoting based on the ranking of candidates in the semi-annual promotional boards.

With regard to the promotional process itself, the State Prison argued that its promotional policy had been approved by the Division of Personnel, and therefore should be deemed a legal and appropriate process for promotional purposes. The Prison also argued that the policy of holding promotional boards twice a year and promoting individuals based upon their placement on the promotional roster was the only practical way to address promotions in light of the turn-over rate in those positions filled through the promotional

roster. Finally, the Prison argued that it was not unreasonable to expect a candidate to wait six months, from one promotional board to the next, to improve his placement on the promotional roster. The Tribunal does not agree.

First, the Department of Corrections offered no evidence or corroborative testimony to support its contention that the agency policies and procedures for selection, promotion and retention of uniformed officers have received formal approval by the Division of Personnel. Being mindful of the long history of controversy surrounding the selection of candidates for promotion within the Department of Corrections/State Prison, the Tribunal appreciates why a well-written, carefully implemented policy for selection and retention would be beneficial to both the agency and the employees. In this instance, however, in spite of the appellant's contention that the policy could be further revised to make it more objective, the Tribunal believes the policy itself may already have become too cumbersome.

The Tribunal believes that the department's efforts to streamline the promotional process by only holding qualifying boards every six months may deny certain qualified candidates the opportunity for promotion, in violation of Per 302.03 (c) of the Rules of the Division of Personnel:

"All vacancies shall be posted on departmental bulletin boards so that employees may have the opportunity to apply for promotion..." [Per 302.02 (c)]

Of particular concern to the Tribunal is the possibility that a candidate might be within days of meeting one or more of the qualifications for promotion, but would be deemed ineligible for ranking during the promotional board in progress. Should a promotional vacancy occur prior to the expiration of the previous board's ranking, the now qualified candidate would be ineligible for promotional consideration until the establishment of a subsequent promotional board. The Tribunal believes this process fails to satisfy the intent of the Rules that all qualified candidates be considered for promotion when a promotional vacancy occurs. Since Sgt. Beadle did meet the minimum qualifications for promotion, and did receive a promotional ranking during the May, 1990 promotional boards, however, such finding is not dispositive of the instant appeal.

The Tribunal considered appellant's argument that posting vacancies for "lateral transfer only" precluded qualified employees from applying for promotion. The Tribunal does not agree. Per 302.05 of the Rules of the Division of Personnel addresses Transfer Within a Department or Agency.

"(a) A vacancy may be filled by the appointing authority by the transfer of a departmental employee from any position within the same labor grade to the vacant position upon written notice to the director and approval by him as to minimum qualifications."

"(b) It is the prerogative of management to determine who [sic] and when employees are to be transferred, keeping in mind that they can be made only for the best interests of the agency. Such transfers are subject to appeal to the [personnel appeals board] by the employee affected if he feels that the transfer was made for some other reason."

Inasmuch as the appointing authority may elect to fill a vacancy through transfer, with or without the agreement of the employee to be transferred, provided that the Director of Personnel has certified that employee as meeting the minimum requirements of the position into which the employee will be transferred, the Tribunal does not find posting for "laterals only" to be a violation of the promotional rules. In fact, the Tribunal finds the initial postings for "laterals" to be a prudent approach both for the purposes of cross-training and career advancement within the ranks of uniformed personnel. The Tribunal does, however, believe that once all the applications for transfer have been implemented or rejected, the position vacancy must be posted for promotional opportunities.

In consideration of the foregoing, the Tribunal hereby directs the Department of Corrections/State Prison, to make adequate provision for any and all qualified candidates to apply for promotion when any vacant position is to be filled by some method other than demotion or lateral transfer. In so doing, the Tribunal directs the Department of Corrections/State Prison to reconvene promotional boards on an as-needed basis, (1) should a candidate for promotion be able to demonstrate that he/she could not have met the minimum qualifications for promotion at the time the previous promotional roster was established, but has met those qualifications at the time a promotional vacancy occurs, or (2) should the candidate be able to document sufficient changes in work assignment, experience or education which might improve his/her placement on the roster at the time a promotional vacancy occurs.

The Tribunal does not object to consideration for promotion on the basis of a roster of eligibles, provided however, that any candidate who meets the minimum qualifications for promotion may be added to the roster, in a ranking consistent with his "factor rating" and oral board score. The oral board, whenever possible, shall be comprised of the same three members who conducted the semi-annual promotional interviews. The Tribunal understands that the addition of candidates to the list of eligible employees might affect the placement of one or more candidates on the final selection list. Given management's prerogative in selection, however, the Tribunal does not consider the addition of candidates to the roster, or the possible re-ranking of the candidates already on the roster, to be inconsistent with the Rules of the Division of Personnel.

The most obvious problems the Tribunal found with the selection process as it now exists are (1) the failure on the part of the Department of Corrections to supply the reasons for non-selection in writing and (2) the establishment of a final ranking for promotional purposes without the benefit of a personal

interview of the candidate by the individual(s) making the selection decision or, in the alternative, a discussion with the candidate's immediate supervisor to assess his/her capacity for performance at the higher rank. In the first instance, the Tribunal fully concurs with the appellant that simply telling an employee he is now tenth rather than fifth on the promotional roster does not satisfy the requirements of Per 302.03(e) that, "An employee who is not selected after applying for a posted position shall be informed in writing of their non-selection and, if requested, the reason therefore."

The Rules of the Division of Personnel specifically provide that when requested, the employee shall be provided with a written explanation of the reasons for his/her non-selection for promotion. The agency's failure to comply with Per 302.03 (e), has no bearing on the legitimacy of the decision to deny the appellant promotion in June, 1990. The agency, acting reasonably and lawfully exercising its discretion, found that Mr. Beadle lacked certain personal and professional qualifications for promotion in June, 1990, and was therefore denied promotion.

With regard to the second issue, Sgt. Beadle had complained that the third and final phase of the promotional review was neither objective nor equitable, as he was given no opportunity for a face-to-face meeting with the Warden and senior management staff. The Tribunal did not find the absence of a final interview to constitute a violation of the Rules of the Division of Personnel. In the absence of such an interview, however, the Tribunal found that a more thorough assessment of candidate qualifications might have been accomplished if the process included at least a comprehensive review of each candidate's performance through discussion with the employee's immediate supervisor and a review of the supervisory comments on the employee's performance evaluations.

The record reflects that employee performance evaluations are considered only as a part of the initial factor rating. Inasmuch as neither the Warden, the Administrator of Security nor the Corrections Major may have personal, supervisory knowledge of each candidate, the final assessment of the candidate's ability to perform at the higher rank might be more effective if based upon the supervisory comments on each candidate's performance.

Had the process described above been in place during the June, 1990 promotions to Lieutenant, however, the Tribunal found that the results of Mr. Beadle's application for promotion would have remained unchanged. The Tribunal found that Warden Cunningham, Ms. Lunderville and Major Ash were all sufficiently familiar with the appellant and with his performance to determine that in June, 1990, he lacked certain personal and professional qualifications for promotion.

Ms. Lunderville counselled Beadle on several occasions after the final promotional rankings were established, and verbally informed him of those

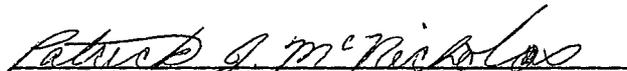
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factors which had resulted in his being placed tenth rather than fifth on the promotional roster. After receiving counselling, Beadle showed immediate and measurable improvement. Because of the positive manner in which he had responded to his discussions with Ms. Lunderville, in the subsequent promotional postings and rankings by senior staff at the prison, he placed second on the list and was promoted to the rank of lieutenant when a vacancy occurred.

His later promotion to Lieutenant, following counselling by Ms. Lunderville, further supports the conclusion that *Mr.* Beadle's non-selection for promotion in June, 1990, was appropriate. Having found that the appellant was reasonably denied promotion in June, there is no legal basis upon which to conclude that he should be compensated at the higher rank retroactively.

In the case of *Mr.* Beadle, both the employer and the employee appear to have benefited from post-selection counselling, and a thorough explanation, albeit verbally, of the reasons he was not selected for promotion in June, 1990. The employee corrected and improved his performance sufficiently to warrant his promotion later that summer.

FOR THE PROMOTION APPEALS TRIBUNAL


Patrick J. McNicholas, Chairman
Personnel Appeals Board

cc: Virginia A. Vogel, Director of Personnel
Stephen J. McCormack, SEA Field Representative
Warden Michael J. Cunningham, N.H. State Prison
Lisa A. Currier, Human Resource Coordinator, N.H. Dept. of Corrections