

# State of New Hampshire

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## PERSONNEL APPEALS BOARD

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### NEW HAMPSHIRE PROMOTION APPEALS TRIBUNAL DECISION in re:

APPEAL OF KAREN CANN  
Docket #90-P-4  
N.H. Department of Corrections

February 25, 1991

The New Hampshire Promotion Appeals Tribunal (Mark J. Bennett, Personnel Appeals Board; Joan Day, Human Resource Coordinator, Department of Employment Security and John Roller, Human Resource Coordinator, Department of Environmental Services) heard the promotional appeal of Karen Cann, an employee of the Department of Corrections. Ms. Cann, who appeared *pro se*, was appealing her non-selection for promotion to the position of Administrator of Community Corrections. Michael Cunningham, Warden of the State Prison, represented the Department of Corrections.

Ms. Cann testified that she was one of five applicants certified as meeting the minimum qualifications for promotion. She stated that she met or exceeded all of the qualifications and believed that by virtue of experience, departmental longevity and relevant education, she was a more qualified candidate than the individual selected for promotion. Ms. Cann argued that in looking at the successful candidate's specific qualifications, she questioned whether or not he had sufficient background in Corrections to satisfy the criteria for promotion.

Chairman Bennett explained that it was the appellant's burden to prove that the selection was illegal and improper, or to offer clear proof that the most qualified candidate was not selected. Ms. Cann responded that the only person who could answer those questions was Warden Cunningham.

Ms. Cann testified that she believed the successful candidate possessed a bachelor's degree in economics, a field unrelated to community corrections. She indicated her own educational background included a bachelor's degree in psychology and postgraduate credits leading to an MBA. She testified that her experience as a Corrections Unit Manager demonstrated her ability to handle both fiscal and managerial affairs in a correctional setting. She argued that the successful candidate had no unit management experience.

Warden Cunningham testified that the selection process for the position Administrator of Community Corrections had been conducted in accordance with the provisions of Per 302.03 of the Rules of the Division of Personnel and the guidelines for promotion developed by the Department of Corrections. He indicated that there had been 5 candidates for the position, four who were permanent full time employees of the Department of Corrections, and a fifth a candidate from outside the agency. The successful applicant, Mr. Black, was a qualified in-house applicant for promotion.

Warden Cunningham testified that in order to make a selection decision, the Department considered capacity for the vacancy, suitability for the vacancy, departmental longevity, and ability based on past performance. He described the method utilized by the Department of Corrections for assessing applicant qualifications, including the use of a factor rating of the employees' applications and personnel records.

Warden Cunningham testified that the initial selection process included establishing a "factor rating" for all of the candidates based on an objective review of their personnel records by Department of Corrections' human resource staff. Applicants received points for departmental longevity, service in the area of specialty, decorations, commendations, the last three performance evaluations, education beyond the minimum and additional training related to the field of corrections. One point would be deducted from a candidates score for each letter of warning in his/her file. Once the factor ratings were established, the scores of certified candidates were given to a three-person selection and interview.

The interview panel, of which Warden Cunningham was a member, assessed candidates on the basis of appearance and demeanor, enthusiasm, oral expression, precision, reasoning, adaptability and a "can-do attitude", job skills and knowledge, and over-all presentation of suitability for the vacancy. Each member of the interview panel independently scored each candidate, and the combined score was then added to the factor rating derived from the personnel file review. Ability as demonstrated by past performance was assessed as an average score of the applicants last three performance evaluations. Departmental longevity was also determined by a review of the personnel file for each employee.

Warden Cunningham testified that Ms. Cann had the highest factor rating by 3 points over the other candidates, and attributed that rating to her departmental longevity. In the interview portion of the selection process, however, he testified that Cann rated 3rd out of the 4 candidates interviewed. Overall, Cann was also 3rd of the 4 in-house candidates, Warden Cunningham said the interview panel recommended that Commissioner Powell appoint the highest-scoring candidate, Mr. Black. Mr. Black was then appointed to the position of Administrator of Community Corrections.

Warden Cunningham stated that the appellant failed to demonstrate an adequate knowledge of the three primary components of the Administrator position, particularly with regard to the functions for which she would be responsible in the capacity of Chief of Staff. When Ms. Cann indicated that she did not have access to detailed information about the position prior to her interview, Warden Cunningham responded that it was the applicant's responsibility to find out what the job is all about and be conversant with the various aspects of the job prior to the interview. He further testified that during the interview, Ms. Cann concentrated on community corrections, and offering little information concerning inmate classifications, and no information on her own concerning the chief of staff component.

Warden Cunningham said the selected candidate was retired from the military and had held positions of great responsibility including supervision of administrative functions and personnel. He was also the classifications officer. That candidate received the highest combined score and was recommended for permanent appointment.

In consideration of the record before it, the Tribunal found that the appellant provided insufficient evidence to persuade the Tribunal that the selection process was illegal or improper, or that the candidate most clearly qualified for the position was denied selection for promotion. On that basis, Ms. Cann's appeal is denied.

Throughout the hearing, Warden Cunningham stressed the importance of an objective review of the various candidates for promotion, highlighting that during the interview, all candidates were asked the same six basic questions and that the factor evaluation scoring which formed the first component of the selection process is an absolutely objective review of an individual's personnel file. The Tribunal notes, however, that certain aspects of that review may provide an undue advantage to one candidate over another which is fortuitous at best. For instance, Warden Cunningham reported that candidates receive one point for each letter of commendation. One employee is not necessarily more qualified than another merely because he or she happens to be present during some incident such as an attempted escape and subsequently receives commendations from the Warden and the Commissioner for his or her role in thwarting the escape. An employee might receive two additional points during the factor evaluation merely by virtue of being present during an incident and responding to that incident consistent with his/her normal duties and responsibilities.

Similarly, an employee appointed to function in an "acting" capacity in the position for which he or she applies for permanent promotion may receive an undue advantage in both the interview and in consideration of length of service in the area of specialty. If, for instance, an employee is temporarily appointed to fill the position of Administrator of Community

Corrections, that employee would have both a working knowledge of the position's current duties and responsibilities, and would be eligible for additional consideration by virtue of time spent in the area of specialty.

Notwithstanding the Tribunal's concerns as described above, the appellant did not demonstrate that she was clearly the most qualified candidate for promotion. Further, the appellant did not provide sufficient evidence to persuade the Tribunal that her non-selection for promotion was either illegal or improper.

THE PROMOTION APPEALS TRIBUNAL



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Mark J. Bennett, Chairman  
For the Tribunal

Mark J. Bennett, Personnel Appeals Board  
Joan N. Day, Employment Security  
John Roller, Environmental Services

cc: Karen Cann, Unit Manager  
Department of Corrections

Warden Michael Cunningham  
New Hampshire State Prison

Lisa Currier, Human Resource Coordinator  
Department of Corrections

Virginia A. Vogel, Director of Personnel  
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