

State of New Hampshire

PERSONNEL APPEALS BOARD
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Gerald Allard
Loretta Platt



EXECUTIVE SECRETARY
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PERSONNEL APPEALS BOARD
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Concord, New Hampshire 03301
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87-T-101 - Parrish
87-T-102 - Rieger

N. H. PERSONNEL APPEALS BOARD DECISION

In the Matter Of:

RICHARD PARRISH AND THOMAS RIEGER

May 14, 1987

On August 19, 1986, the Personnel Appeals Board, Commissioners Haseltine and Platt sitting, began to hear the appeals of Richard Parrish and Thomas Rieger, whose appeals had been consolidated at their request. The Board continued to receive testimony and submissions on this matter until December, 1986. The appellants were requesting reinstatement to their former positions at the New Hampshire State Prison. Mr. Parrish, formerly a Corrections Sergeant, was represented by Attorney Charles Meade. Mr. Rieger, formerly a Corrections Corporal, was represented by Attorney James Loring. Also acting as counsel for the appellants was William Briggs, SEA General Counsel. Warden Michael Cunningham presented the case on behalf of the Prison.

Prior to the presentation of testimony, the Board heard arguments from the State¹ and the appellants concerning the admissibility of the results of polygraph examinations taken by one of the appellants and an inmate informer. In reviewing this issue, the Board considered the administrative nature of the hearing as well as the long-standing practice of the prison in utilizing polygraph examinations in its investigations. The Board found that the appellants were aware that they might be asked to take polygraph tests during the course of their employment as part of an internal investigation. Finally, the Board noted that the formal rules of evidence did not apply to Board proceedings. The Board then agreed to accept testimony concerning the polygraph examinations, noting that it would determine the weight to be given to those examinations after receipt of all the evidence.

¹ Assistant Attorney General Ronald Rodgers presented the argument on behalf of the State.

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At the request of the Prison, the Board then agreed to go into executive session to receive information about the investigation leading to the termination of appellants. The investigation included the use of informants. The information presented to the Board included statements by inmates as well as the live testimony of one former inmate. The Board reviewed its decision to go into executive session at the close of the State's case and decided to remain in executive session as the parties anticipated continued reference to the statements of certain inmate informants who had participated in the investigation.

Upon review of all of the evidence submitted, the Board hereby makes the following findings of fact and rulings of law. During the first week of March, 1986, Corporal Rieger and Sergeant Parrish were employed by the New Hampshire State Prison. While on duty, in the presence of an inmate (Inmate A), Sergeant Parrish said, "I'd give five packs of coffee to have [Inmate B] piped." Corporal Rieger then added, "And I'd give a carton of cigarettes." During subsequent interviews by Prison staff, the officers denied having made the statements. In an interview with State Police Sergeant John Barthelmes, prior to administration of a polygraph examination, Sgt. Parrish admitted that he might have made the statement but would have made it to Corporal Rieger and not to an inmate. Her further admitted that it was possible that the inmate had overheard.

The Board further found that there was no animosity between Sergeant Parrish and Inmate A, that Inmate A had worked under the appellants' supervision at the Prison and had been cooperative. Finally, the Board found that the Warden had offered to find a disciplinary alternative to termination if the guards admitted that they had made the statements set forth above.

In making these findings of fact, the Board considered the testimony of Sergeant Barthelmes, an independent third party, who had no interest in the matter other than to perform the polygraph examinations. The Board also considered credible the testimony of Inmate A, who returned to testify before the Board after having been released from the Prison. The Board gave little consideration to the polygraph examination results, having had an opportunity to observe first-hand the demeanor of the various witnesses. The Board in considering the weight to be accorded to the polygraph exam results also noted that the questions asked of the examinees concerned whether the statements had been made in the inmate's presence rather than whether there had been any actual attempt to solicit. Having already determined from the testimony presented to the Board that the statements had been made in the inmate's presence, the Board found that in this case the polygraph results added little to the evidence.

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Having determined that the statements had been made, the Board then found no actual intent to solicit on the guards' part. Rather the statements had been said in anger when the guards knew the inmate was present. Given the substantial possibility that the guards could have been taken seriously (as evidenced by this case), the Board found that the guards' actions constituted a serious error in judgment and evidenced a lack of respect for the importance of their roles as authority figures within the prison. The Board therefore found that disciplinary action was warranted by their actions.

.Inconsidering the action taken by the Warden, the Board considered his offer to find a disciplinary alternative to discharge. Although the Warden's offer was made in anticipation of the officers' cooperation in the investigation, the Board found that action short of termination would have been appropriate in this case. Given the guards' evidenced lack of respect for their positions as authority figures, the Board orders that they be demoted to Corrections Officers. Further, given the serious nature of the statements which they made, the Board orders that their reinstatement be made without any back pay and that their time of separation from State service be noted as a suspension.

The appellants shall be returned to State service as Corrections Officers within 30 days of the date of this decision, unless all parties agree to another return date. The appellants shall not receive any back pay nor be credited with accrual of any leave or any other benefits from the date of their termination to the date of their reinstatement.

The Board rules as follows with respect to the following pleadings:

<u>DATE</u>	<u>PLEADING</u>
8/19/86	Appellant Parrish's Request for Findings and Rulings Paragraphs 1, 2, 3, 4, 7, 8 11 12 <u>GRANTED</u> Paragraphs 5, 6, 9, 10, 11 <u>DENIED</u>
8/19/86	Appellant Rieger's Request for Findings of Fact Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 <u>GRANTED</u> Paragraphs 13, 14 <u>DENIED</u>

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8/18/86 Appellant Rieger's Motion to Reinstate Appellant's Employment
at the New Hampshire State Prison

GRANTED to the extent discussed in the foregoing opinion

10/28/86 Appellants' Supplemental Requests for Findings and Rulings

Paragraphs 1, 3, 5, 6, 7, 11, 14

GRANTED

Paragraphs 2, 4, 8, 9, 12, 15, 16, 17, 18, 19

DENIED

Paragraph 10

GRANTED to the extent that it reflects the information conveyed
to Appellant Parrish

Paragraph 13

GRANTED to the extent applicable to employment discharge cases
concerning state employees

Paragraph 20

GRANTED to the extent discussed in the foregoing opinion

12/15/86 Appellants' Motion to Exclude State's Requests for Findings
of Fact and to Exclude New Evidence

GRANTED - Documentary evidence submitted by the State subsequent
to the close of record was not considered by the Board

12/16/86 Motion for sanctions

DENIED - Although the Board found that as an employee of the
Department of Corrections, a party to this action, Mr. Pishon
was covered by the Board's order governing confidentiality,
the Board found insufficient evidence to indicate that Mr.
Pishon could not have obtained the information disclosed to
the press from records filed in the Superior Court or other
records not subject to the Board's jurisdiction. Contrary
to the allegations contained in the State's Response to Appellants'
Motion for Sanctions, however, the Board specifically ordered
that testimony presented in the case was to remain confidential.
See, e.g. Personnel Appeals Board Order of October 9, 1986.
Although the Board noted that the Warden might be required
to disclose the content and course of the proceedings to the
Assistant Commissioner for the Department of Corrections, the
Board further found its confidentiality order applicable to
said disclosures.

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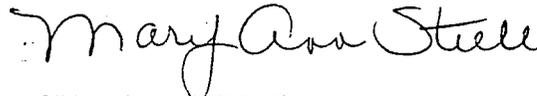
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DATE PLEADING

State's Request for Findings of Fact

The Board found this pleading to be untimely filed and therefore did not consider it.

FOR THE PERSONNEL APPEALS BOARD



MARY ANN STEELE
Executive Secretary

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cc: Attorney Charles Meade
Attorney James Loring
Attorney Michael Reynolds, SEA General Counsel
Assistant Attorney General Ronald Rodgers
Warden Michael Cunningham
Personnel Officer Conrad Chapman