



STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
OFFICE OF THE COMMISSIONER

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HELEN E. HANKS
COMMISSIONER

PAUL D. RAYMOND, JR.
ASSISTANT COMMISSIONER

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June 28, 2023

His Excellency, Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the NH Department of Corrections (NHDOC) to make a one-time **retroactive** salary payment to 23 Probation and Parole Officers, in the amount of \$38,998.59, effective upon Governor and Executive Council approval for the period of 4/8/2022 through 6/30/2022. 100% General Funds

Funds are available in the account, 02-46-46-464010-83020000 District Offices, as follows:

Employee Name	Personnel Services-Permanent Class 10 010-500100	Police Retirement 31.28% 060-500606	Medicare Coverage Permanent 1.45% 060-500631	Family Leave 0.21% 060-500624	Total Benefits Class 60	Grand Total Class 10 and Class 60
Brian Bernard	1,102.58	344.89	15.99	2.32	363.20	1,465.78
John Clemons	1,395.57	436.53	20.24	2.93	459.70	1,855.27
Samuel Derven	1,066.42	333.58	15.46	2.24	351.28	1,417.70
William Duffy III	1,043.57	326.43	15.13	2.19	343.75	1,387.32
Serene Eastman	1,189.99	372.23	17.25	2.50	391.98	1,581.97
Tanya Emerson	1,132.14	354.13	16.42	2.38	372.93	1,505.07
Michael Farrell	1,207.11	377.58	17.50	2.53	397.61	1,604.72
Kimberly Gordon	1,052.20	329.13	15.26	2.21	346.60	1,398.80
Eric Goyette	1,505.53	470.93	21.83	3.16	495.92	2,001.45
Idrissou Anas	1,358.07	424.80	19.69	2.85	447.34	1,805.41
Scott Leblanc	1,037.08	324.40	15.04	2.18	341.62	1,378.70
Clayton Legault	1,470.53	459.98	21.32	3.09	484.39	1,954.92
Marc Miller	1,006.78	314.92	14.60	2.11	331.63	1,338.41
Jason Myers	1,035.10	323.78	15.01	2.17	340.96	1,376.06
Kelly Olsen	1,031.65	322.70	14.96	2.17	339.83	1,371.48
Bryant Pake	1,273.56	398.37	18.47	2.67	419.51	1,693.07
Seifu Ragassa	1,983.56	620.46	28.76	4.17	653.39	2,636.95
Christopher Regan	1,240.16	387.92	17.98	2.60	408.50	1,648.66
Megan Sherman	2,116.00	661.88	30.68	4.44	697.00	2,813.00
Ian Stringer	1,251.19	391.37	18.14	2.63	412.14	1,663.33
Charles Wolfert	1,363.14	426.39	19.77	2.86	449.02	1,812.16
Patrick Wright	1,088.88	340.60	15.79	2.29	358.68	1,447.56
Kelsey Wyatt	1,384.68	433.13	20.08	2.91	456.12	1,840.80
Total	29,335.49	9,176.13	425.37	61.60	9,663.10	38,998.59

EXPLANATION

The NH Department of Corrections requests authorization to make a one-time **retroactive** salary payment to 23 Probation and Parole Officers (PPOs) totaling \$38,998.59, for the period referenced above due to an arbitration decision dated May 11, 2023. Pursuant to the collective bargaining agreement between the State of NH and the NH Probation and Parole Officers Association and the State of NH and the NH Probation and Parole Command Staff Association, section 18.30, a reallocation study was conducted on PPO positions.

18.30. In recognition of the issues raised by bargaining unit employees related to the wage disparity and compression of wages as compared to other law enforcement officers employed by the State of New Hampshire the parties agree to establish a Task Force composed of not more than three (3) bargaining unit employees to be appointed by the Union and three (3) persons appointed by the Director of the Division of Personnel. The purpose of the Task Force is to determine the proper compensation of bargaining unit members. The Task force shall have their first meeting no later than September 1, 2021. The Task Force shall meet monthly on the second Tuesday of each month or as necessary per the agreement of the Task force. The Task force shall produce a written report to be presented to the Employer and the Association no later than March 31, 2022 unless an extension is agreed upon by the Task Force. To the extent that the report results in a consensus for an agreed upon resolution the agreement shall be memorialized in a Memorandum of Understanding for approval of the Governor and the bargaining unit body. Any such agreement will be incorporated into the successor collective bargaining agreement. Both parties agree to take the necessary steps for the funding of any wage adjustments

The two unions submitted their proposed reallocation to the NH Department of Administrative Services, Division of Personnel. A determination was made, dated 6/22/2022, with an effective date of 7/15/22. The effective date was later adjusted to 7/1/22 by the Division of Personnel. Reallocation means a determination by the Director of the Division of Personnel or designee that the labor grade assigned to a class be revised in relation to the position classification under RSA 21-I:42, II. The reallocation of a class affects the labor grade of all positions assigned to the class. Reallocation is justified when there are measurable, permanent changes in job functions, characteristic duties and/or required qualifications that ultimately result in a modification to the criteria used to arrive at a labor grade for a particular class. Below is the outcome of the reallocation:

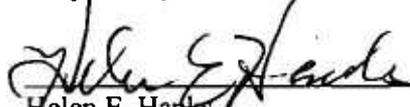
Class Title	Current Labor Grade	Requested Labor Grade	Labor Grade Prior to Agency Input	New Labor Grade	Comments
Probation Parole Officer Trainee	18	N/A	N/A	N/A	Class title will be inactivated
Probation Parole Officer I	20	22	22	22	
Probation Parole Officer II	22	28	23	24	
Probation Parole Officer III	24	30	25	27	
Probation/Parole Officer IV	26	32	N/A	N/A	Class title will remain inactive

The two unions filed a grievance with the DAS Division of Personnel requesting that the reallocation be retroactive to the 91st day from the filing of the reallocation. The matter was referred to arbitration and the decision was made 5/11/23 that the effective date should have been the 91st day following the 1/7/22

reallocation filing date resulting in the effective date of the original reallocation to be changed from 7/1/22 to 4/8/22.

The department, on behalf of the employees affected by the arbitrator decision, seeks your favorable support to pay these retro-active payments associated with the events described herein.

Respectfully Submitted,



Helen E. Hanks
Commissioner

IN THE MATTER OF ARBITRATION BETWEEN

**THE NEW HAMPSHIRE PROBATION AND PAROLE OFFICERS
ASSOCIATION
AND
THE NEW HAMPSHIRE PROBATION AND PAROLE COMMAND STAFF
ASSOCIATION**

AND

STATE OF NEW HAMPSHIRE

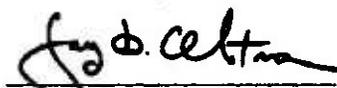
(Grievance: Retroactive Payments)

AWARD OF THE ARBITRATOR

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties AWARDS as follows:

For the reasons set forth in the attached Decision, the grievance is sustained. Retroactive payment should have been paid from the first pay period following the 91st day of the January 7, filing of the reallocation request. This was not done in the present case and accordingly the grievance is sustained. Accordingly, all affected bargaining unit employees must receive a retroactive adjustment effective from the first pay period after April 8, 2022.

May 11, 2023
Brookline, Massachusetts



Gary D. Altman,

IN THE MATTER OF ARBITRATION BETWEEN

**THE NEW HAMPSHIRE PROBATION AND PAROLE OFFICERS
ASSOCIATION
AND
THE NEW HAMPSHIRE PROBATION AND PAROLE COMMAND STAFF
ASSOCIATION**

AND

STATE OF NEW HAMPSHIRE

(Grievance: Retroactive Payments)

ARBITRATION DECISION AND AWARD

Introduction

The New Hampshire Probation and Parole Officers Association and New Hampshire Probation and Parole Officers Command Staff Association (collectively referred to as the ("Union")) are parties to a Collective Bargaining Agreement with the State of New Hampshire. Under the Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration. The parties presented their case in Arbitration before Gary D. Altman, Esq., on February 2, 2023. The Union was represented by John S. Krupski, Esq., and the Employer was represented by Jessica King, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted written briefs after the conclusion of the hearing.

Issue

The parties agreed that the issues in dispute should be framed as follows:

1. Whether the State of New Hampshire violated the respective collective bargaining agreements between the parties, in particular Article 18.14, when it failed to retroactively apply the new rate of pay granted by the reallocation from the first day of the pay period following the 91st day after January 7, 2022? If so, what shall be the remedy?

2. Is the above question proper for arbitration under the parties' collective bargaining agreements, namely 13.5.2?

Facts

At the outset of the hearing the parties agreed to the following stipulations:

1. The New Hampshire Probation and Parole Officers Association (Hereinafter "PPO") and the State of New Hampshire are signatories to a collective bargaining agreement. Joint Exhibit 1.

2. The New Hampshire Probation and Parole Command Staff Association (Hereinafter "Chiefs") and the State of New Hampshire are signatories to a collective bargaining agreement. Joint Exhibit 2.

3. The most recent pay chart is attached at Joint Exhibit 2A.

4. The parties agree that procedural arbitrability is not in dispute, but the State asserts that this is a matter of administrative rules and not of contract, and thus, the State asserts that the substantive arbitrability is in dispute.

5. The parties agree that the respective contracts read in relevant part,

18.14. Personnel Reclassifications: Any Unit Employee whose position is reallocated to a higher salary grade as a result of a decision by the Director of Personnel to reclassify or reallocate that position shall be entitled to the appropriate pay at the new rate on:

A. The first day of the pay period following written notification by the Director or the Director's designee of the decision if less than 90 days from filing; or

b. Retroactively to the first day of the pay period following the 91st day from filing if written notification by the Director or the Director's designee of the decision exceeds 90 days.

This section shall not apply to the decisions that are reconsidered or appealed.

6. On January 7, 2022, the PPO's and Chiefs requested an upward adjustment of their labor grades. At the time their labor grades were: PPO I at Labor Grade 20; PPO II at Labor Grade 22, and PPO III at Labor Grade 24. They requested adjustment to the Labor Grades as follows: PPO I to Labor Grade 22, PPO II to Labor Grade 28, and PPO III to Labor Grade 30. Joint Exhibits 3 & 17.

7. On January 28, 2022, the PPO and Chiefs requested a status report from the State through their representative. Joint Exhibit 4.

8. The State responded on January 28, 2022. Joint Exhibit 5.

9. Seifu Ragassa, President of the Chiefs Association, made a similar inquiry on January 28, 2022 which was responded to by the Director of Personnel Lorrie Rudis on February 1, 2022. Joint Exhibit 6.

10. On March 3, 2022, Marianne Rechy, Division of Personnel Classification & Compensation Administrator, sent an internal Division of Personnel email regarding an update to the PPO reallocation project. Joint Exhibit 23.

11. On March 8, 2022, the Chiefs and PPOs requested from the State another status report through their representative. Joint Exhibit 7.

12. On March 22, 2022, another status report was requested from the State. Joint Exhibit 8.

13. On March 24, 2022 the State provided that it expected the final decision would be issued in the last week of April. Joint Exhibit 9.

14. On April 25, 2022, the Division of Personnel met with the Department of Corrections to present a PowerPoint regarding the reallocation. Joint Exhibits 24 & 27.

15. On April 27, 2022, the Chiefs and the PPOs requested a status report from the State. Joint Exhibit 10.

16. On April 29, 2022, the Chiefs and the PPOs requested a status report from the State. Joint Exhibit 11.

17. On April 29, 2022, Peter Demas, Director of Employee Relations, responded that he was unsure of the timeline, but believed the Department of Corrections was supplying additional information. Joint Exhibit 12.

18. On May 3, 2022, The Chiefs and PPOs requested a status report from the State and offered to help expedite the process. Joint Exhibit 13.

19. On May 16, 2022, the Chiefs and PPOs provided requested supplemental information to the State. Joint Exhibit 14.

20. On May 23, 2022, the Department of Corrections submitted supplemental job descriptions for the PPOs and Chief to the State. Joint Exhibits 15 & 24.

21. On May 31, 2022, in an internal email, Marianne Rechy indicated that she met with Department of Corrections for final input that morning, May 31, 2022. Joint Exhibit 25.

22. On June 1, 2022, The PPOs and Chiefs requested an update from the State. Joint Exhibit 16.

23. On June 22, 2022, the State issued their PPO and Chief reallocation in which the PPO is were upwardly adjusted from a Labor Grade 20 to 22, PPO IIs were upwardly adjusted from a Labor Grade 22 to a 24, and

PPO IIIs were adjusted from a Labor Grade 24 to a 27. Joint Exhibit 17.

24. The State's reallocation report indicates that agency input raised the PPO IIs from Labor Grade 23 to 24 and PPO IIIs from Labor Grade 25 to 27.

25. On August 12, 2022, the State was informed that the Chiefs and the PPOs did not receive any retroactive pay increase based on Article 18.4 of the collective bargaining agreement. Joint Exhibit 18.

26. In August of 2022, the Division of Personnel had internal email discussions with the State's Manager of Employee Relations, Peter Demas, about the PPO and Chief's contract claim. Joint Exhibit 26.

27. On September 2, 2022, the State provided a response to the PPO's and Chiefs August 12 communication. Joint Exhibit 19.

28. The grievance chronology is attached as Joint Exhibit 20.

29. Example paystubs for a PPO and Chief are attached as Joint Exhibit 21.

30. Certain sections of the personnel rules are attached as Joint Exhibit 22.

Relevant Provisions of the Collective Bargaining Agreement

Article 13.5.2 The arbitrator shall have no power to render a decision that will add to, subtract from or alter, change or modify the terms of this agreement, and his/her power shall be limited to interpretation or application of the express terms of this Agreement, and all other matters shall be excluded from arbitration. To the extent that a matter is properly before an arbitrator in accordance with this provision, the arbitrator's decision thereon shall be final and binding providing it is not contrary to existing law or regulation nor requires an appropriation of additional funds, in either of which case it be advisory in nature. The parties further agree that

questions of arbitrability are proper issues for the arbitrator to decide.

* * *

18.14. Personnel Reclassifications: Any Unit Employee whose position is reallocated to a higher salary grade as a result of a decision by the Director of Personnel to reclassify or reallocate that position shall be entitled to the appropriate pay at the new rate on:

The first day of the pay period following written notification by the Director or the Director's designee of the decision if less than 90 days from filing; or

Retroactively to the first day of the pay period following the 91st day from filing if written notification by the Director or the Director's designee of the decision exceeds 90 days.

This section shall not apply to the decisions that are reconsidered or appealed.

Position of the Parties

Summary of the Union's Arguments

The Union first contends that the issue in dispute is covered by the terms of the parties' Agreement, and is therefore arbitrable. Specifically, the Union points to Article 18.4 of the Agreement where the parties agreed to a time period for payment for reallocations. The Union states that the question presented, in this case, is whether the State's payment to those employees who were reallocated to higher pay grades met the agreed upon timeline set forth in Article 18.4. The Union concludes that this is clearly a dispute that is covered by the express terms of the parties' Agreement, and is therefore arbitrable.

The Union maintains that the fact that the Division of Personnel has rules and regulations for reallocations, does not divest the arbitrator of jurisdiction. The Union states

that this is not a case of the arbitrator having to interpret and apply rules of the Personnel Division, but a simple case of whether the Employer complied with time lines agreed upon in Article 18.4 for paying employees once the reallocations were granted. The Union further argues that to the extent that the State asserts a conflict between the rules and the contract, the rules require deference to the parties' Collective Bargaining Agreement, as they state that "in the case of terms and conditions of employment which are negotiated, the provisions of the collective bargaining agreements shall control." The Union maintains that the issue in dispute must be resolved through the grievance arbitration process of the parties' Collective Bargaining Agreement.

The Union further contends that the Employer's reliance on the Division of Personnel Rules is immaterial and irrelevant to the contract dispute. The Union states that the Employer points to Division of Personnel Rule 303.2 which addresses when a reallocation request is considered complete. The Union maintains that the reference to the definition of a "complete" submission of a reallocation is not contained in the collective bargaining agreement, and that the Collective Bargaining Agreement simply provides for a time line for payment based on the initial filing of the reallocation request.

The Union argues that the Employer violated the clear and unambiguous language of the parties' Agreement, that requires payment to be made on the first day of the pay period following the 91st day from filing of the reallocation. The Union states that it is undisputed that the request for a reallocation was submitted on January 7, 2022. Moreover, it is undisputed that the decision of the

Director of Personnel granting the upgrades was June 22, 2022. The Union further states that it is undisputed that the labor grade adjustment was not put into effect until August 12, 2022, which was months later than the 91st day after the January 7th submission as required by the Agreement.

The Union concludes that the grievance must be sustained and that the Arbitrator issue a make whole remedy in conformance with the contract; and that all affected bargaining unit employees receive a retroactive upward adjustment the first day of from the first pay period after April 7, 2022.

Summary of the Employer's Arguments

The Employer first maintains that the issue is not substantively arbitrable. The Employer states that Article 18.4 sets forth a timeline for the reallocation process. The Employer contends, however, that the Agreement neither governs nor dictates any other part of the reallocation process; that these matters are governed by the State's Personnel Rules. Specifically, the Employer states that the Personnel Rules 3.02 describe the factors necessary for there to be a completed request for a reallocation, and that Rule 303.03 provides that a request for reallocation that does not include all of the information required by 303.02 shall "not be deemed received by the division."

The Department states that the intent of Article 18.14 is to ensure that once the Personnel Department receives a completed request, that a reallocation request is not delayed, and if an improper delay does occur, then employees will be compensated based on the timelines of Article 18.4. The Employer argues that it rests within the Division of Personnel to determine what constitutes a

completed reallocation request. Once the request is filed, or "deemed received" by the Department of Personnel, then Article 18.14 governs the timeline of the effective date of reallocation. The state thus claims that Article 18.14 is dependent on the application of the Personnel Rules, but it does not conflict with the Personnel Rules.

The Employer maintains that it was the Division of Personnel that determined that the reallocation request was not received until May 31, 2022, when all the information required by Rule 303.2 was finally submitted, and it was then that the reallocation request was determined to be complete. The Employer argues that any question or challenge to when the complete package was received is subject to the Division's Rules and Procedures and is not governed by the contract, and accordingly any dispute over this issue cannot be subject to the grievance arbitration process of the parties Agreement.

The Employer maintains that any challenge to the Personnel Division's decision as to when the reallocation request was considered to be received, must therefore go before the Personnel Appeals Board. The Employer concludes that since the Agreement does not allow for interpretation of the Division of Personnel's rules as to when an allocation request is filed, or received, any such resolution would be outside the scope of the express terms of the Agreement and excluded from arbitration pursuant to Article 13.5.2.

The Department argues that even if it is concluded that the grievance is arbitrable, the grievance must be dismissed. The Department states that the Division of Personnel correctly determined the reallocation request was "received" on May 31, 2022, when it obtained the final

information needed to perform the reallocation review, and that accordingly, paying the higher rates of pay in July was correct. The Employer states that Section 303.03 of the regulations provides that "a request for review of a position shall not be deemed received by the division until the request is complete, and the request was not complete when the reallocation request was first submitted on January 7, 2022.

Specifically, the Employer states that the evidence shows that the initial reallocation request failed to provide information required under Section 302.02. The Department contends that there were not supplemental job descriptions outlining the new job responsibilities, and more information was needed from the Department of Corrections. In addition, the initial request did not include a proposed organizational chart, and failed to establish agency input on the Position Classification Questionnaires.

The Department maintains that the Division of Personnel and Department of Corrections worked together to address the incomplete portions of the initial reallocation request so as to have a complete and final package of material. The Department argues that the Division did not receive all items required under 303.02 until May 31, 2022, and that that was the appropriate time frame based on the time limits set forth in Article 18.4. The Employer concludes that the grievance should be denied, and the Union's request for additional retroactive payments should be denied.

Discussion

The dispute in the preset case is over the interpretation and application of Article 18.4, which reads as follows:

18.14. Personnel Reclassifications: Any Unit Employee whose position is reallocated to a higher salary grade as a result of a decision by the Director of Personnel to reclassify or reallocate that position shall be entitled to the appropriate pay at the new rate on:

A. The first day of the pay period following written notification by the Director or the Director's designee of the decision if less than 90 days from filing; or

b. Retroactively to the first day of the pay period following the 91st day from filing if written notification by the Director or the Director's designee of the decision exceeds 90 days.

This section shall not apply to the decisions that are reconsidered or appealed.

Simply stated, the issue is what should be the effective date for the salary increase that resulted from the reallocation of certain bargaining unit positions. The Union contends that the appropriate effective date of the reallocation, and resulting higher pay increases should be 91 days from January 7, 2022, the date the reallocations were initially filed.¹ The State, on the other hand, asserts that the effective date for triggering the time lines should be May 31 2022, the date that the Division of Personnel determined that reallocation request was considered complete and contained all items specified in Rule 303.02.

¹ April 8, 2022 is the 91st day after the reallocation was submitted to the Division of Personnel.

The initial question is whether this is a dispute that should be resolved through the grievance arbitration procedure. Article 13.5.2 provides that the arbitrator's authority is "limited to interpretation or application of the express terms of the Agreement".

It must be concluded that the issue in dispute arises from the specific terms of the parties' Agreement. Specifically, the parties agreed that the date of payment of the higher rate of pay after a successful reallocation shall be from "the day of filing" of the request. In other words, the inquiry is what the parties intended by adopting these terms. I would agree with the Employer that if the parties intended that the day of filing was to be the date of receipt as defined by Sections 303.2 and 303.03 that the matter would be subject to the Division Rules, and not require interpretation of the Agreement, but the parties made no mention of Division of Personnel Rules, but instead used the simple terms that timelines would run from the "day of filing". The interpretation of these terms is clearly a matter that can be submitted through the parties' grievance arbitration process.

I cannot conclude that the parties intended that the day of filing was meant to be anything other than what is expressed by the actual words used by the parties, which would mean the day of filing was the day that the application was first submitted to the Division of Personnel, and not the date it was deemed to be received by the Division of Personnel. There is nothing in Article 18.4 that indicates that the parties intended to incorporate the intricate definitions of what the Division of Personnel considered to be a complete filing under Rule 303.03. Indeed, there is nothing in the parties' Agreement that in

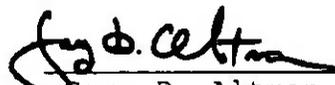
any way references the Division of Personnel Rules and Regulations as setting forth the time limits for retroactive payment. Rather, the parties agreed to a time line for retroactive payment based on the day the request for reallocation was filed, not when it was considered to be complete or considered received by the Division of Personnel.

The parties had the authority to agree to a timeline for determining payments for successful reallocation that is separate and apart from the Division of Personnel Rules and Regulations. The parties agreed to two payment periods. If the review is completed within 90 days of filing, then the payment of the upward adjustment is the first day of the pay period after the decision of the Director, or if the decision is made after 90 days, then the payment is retroactive to the first pay period following the 91st day after the filing. The clear and unambiguous terms of the parties' Agreement must be enforced.

Conclusion

Retroactive payment should have been paid from the first pay period following the 91st day of the January 7, filing of the reallocation request. This was not done in the present case and accordingly the grievance is sustained. Accordingly, all affected bargaining unit employees must receive a retroactive adjustment effective from the first pay period after April 8, 2022.

May 11, 2023
Boston, Massachusetts


Gary D. Altman