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THE SUPREME COURT OF NEW HAMPSHIRE

Personnel Appeals Board
Case No. 2024-0511
Citation: Appeal of Cass, 2025 N.H. 51

APPEAL OF CLAUDIA CASS
(New Hampshire Personnel Appeals Board)

Argued: September 16, 2025
Opinion Issued: December 3, 2025

Milner & Krupski, PLLC, of Concord (John S. Krupski on the brief and orally), for the petitioner.

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Mary A. Triick, senior assistant attorney general, on the brief and orally), for the New Hampshire Department of Corrections.

MACDONALD, C.J.

[¶1] The petitioner, Claudia Cass, appeals a decision of the New Hampshire Personnel Appeals Board (PAB) upholding a decision of the New Hampshire Department of Corrections (DOC) to terminate her employment as a corrections officer. The petitioner argues that the PAB: (1) failed to consider whether her termination violated certain statutes; and (2) made logically inconsistent or unsupported findings in its order. We vacate and remand.

I. Background

[¶2] The record supports the following facts. The petitioner was hired by the DOC as a corrections officer in 2006. In 2022, the DOC had low staffing levels. On December 16 to December 17, 2022, the petitioner was working a shift (the December shift) at the New Hampshire State Prison for Men in Concord (the prison), and she believed that the staffing levels were at a “critical minimum.”

[¶3] The petitioner emailed the prison warden on December 20, reporting that she believed the staffing levels at the prison had consistently been below the minimum required by policy. She told the warden that “policy dictates when we are below minimum, we are in lockdown,” and that:

Residents adjust better to change when they know it is coming. I recommend they are informed that there will be a change in the chow and medication schedule before the weekend. Going forward I will not be releasing them when we cannot meet the critical minimum staffing. It is not safe, it violates policy, and it is irresponsible.

[¶4] The warden initiated an investigation into the petitioner’s actions, including the petitioner’s intent to follow certain procedures if a low staffing situation arose. As part of the investigation, the petitioner met with two DOC officers to discuss the contents of her email. The petitioner told the officers at that meeting that, if the staffing levels were the same on the upcoming weekend as they were during the December shift, “she would not be opening the residents’ doors and would lockdown the unit.” The officers explained to the petitioner that, as a corrections officer, she was not authorized to make unilateral decisions to lock down units and that higher levels of leadership needed to make those decisions. The officers then asked the petitioner what she planned to do if given a direct order to send residents to get medication or food, and she said that she would not follow such an order if she believed it to be unsafe or a violation of policy. The petitioner was suspended with pay pending the outcome of the investigation, and her employment was later terminated.

[¶5] The petitioner appealed the termination decision to the PAB. The petitioner argued, among other things, that her termination was unlawful and unreasonable, and in violation of RSA chapter 275-E (2023), New Hampshire’s Whistleblowers’ Protection Act, and RSA chapter 98-E (2023), which protects public employees’ rights to freedom of speech and expression. The PAB upheld the petitioner’s termination.

[¶6] The PAB concluded that it lacked jurisdiction to consider issues raised under RSA chapter 275-E and RSA chapter 98-E, and that the petitioner

failed to prove that her termination was “unjust, unfair, or contrary to law.” The PAB found that the petitioner did not fail to obey an oral order, nor did she attempt, aid, or conspire to commit an offense in violation of the DOC’s rules. It also found, however, that the petitioner violated numerous DOC policies and procedures and administrative rules. See N.H. Admin. R., Per 1003.08. The PAB explained that the petitioner violated these policies and rules because she: (1) failed to follow proper prison procedures and notify the shift commander of her safety concerns during the December shift; and (2) demonstrated an unwillingness to follow standard prison procedures in the future if she determined that the staffing level was dangerously low. The petitioner unsuccessfully moved for reconsideration. This appeal followed.

II. Analysis

[¶7] Our review of the PAB’s decision is governed by RSA 541:13 (2021). See Appeal of N.H. Div. of State Police, 175 N.H. 229, 234 (2022). The petitioner, as the appealing party, has the burden to show that the PAB’s decision “is clearly unreasonable or unlawful.” RSA 541:13. The PAB’s findings of fact “shall be deemed to be prima facie lawful and reasonable.” Id. We will not vacate or set aside the PAB’s decision except for errors of law, unless we are satisfied, by a clear preponderance of the evidence, that its order is unjust or unreasonable. See N.H. Div. of State Police, 175 N.H. at 234. However, we review the PAB’s interpretations of statutes and administrative rules de novo. Id. When interpreting both statutes and administrative rules, we ascribe the plain and ordinary meanings to the words used, looking at the rule or statutory scheme as a whole. Id.

[¶8] The petitioner argues that the PAB erred because it failed to consider whether her termination violated RSA chapter 275-E and/or RSA chapter 98-E. The DOC counters that the PAB did not fail to consider the legality of the petitioner’s termination, but “simply declined to make any specific, enforceable finding under RSA 275-E and RSA 98-E:2” or to “formally adjudicate claims [under] RSA 275-E and RSA 98-E.” We agree with the petitioner.

[¶9] The PAB concluded that, although the petitioner raised issues under those statutes, it “is beyond the jurisdiction of this Board to consider and make any such determinations.” At the time the PAB rendered its decision, RSA 21-I:58 (2020) provided that any full-time non-probationary employee could appeal termination decisions to the PAB, and:

If the [PAB] finds that the action complained of was taken by the appointing authority for any reason related to politics, religion, age, sex, gender identity, race, color, ethnic background, marital status, or disabling condition, or on account of the person’s sexual orientation, or was taken in violation of a statute or of rules adopted by the director, the employee shall be reinstated to the

employee's former position or a position of like seniority, status, and pay.

(Emphasis added.) Under the plain language of the statute, the PAB “shall” reinstate an employee if it finds that the action complained of was “in violation of a statute.” Id. Therefore, the PAB has statutory authority to make a finding as to whether the DOC’s personnel action violated RSA chapter 275-E and/or RSA chapter 98-E.

[¶10] The DOC nonetheless asserted at oral argument that — although the PAB’s order is “confusing on its face” — the PAB did consider whether the petitioner’s termination was in violation of those statutes, and that it was simply saying in its order that it did not have jurisdiction to adjudicate civil actions. The DOC points to the PAB’s order denying the petitioner’s motion for reconsideration to support this position.

[¶11] The interpretation of an agency’s order is a question of law, which we review de novo. See Appeal of Langenfeld, 160 N.H. 85, 89 (2010). In construing an agency’s order, we look to the plain meaning of the words used. See id. We construe subsidiary clauses so as not to conflict with the primary purpose of the agency’s decree. See id. As a general matter, an agency’s order is to be construed with reference to the issues it was meant to decide. See id.

[¶12] After the PAB issued its order, the petitioner filed a motion for reconsideration, arguing in part that the PAB erred by failing to consider whether her termination was in violation of RSA chapter 275-E and RSA chapter 98-E. The DOC objected, arguing that while the PAB “can certainly consider all the relevant underlying factual claims when determining if [the petitioner’s] termination was unlawful or unjust,” the PAB “lacks jurisdiction to formally adjudicate claims under RSA 275-E and RSA 98-E” and the petitioner must file a civil suit to make such determinations. The PAB adopted this reasoning in its order denying the petitioner’s motion for reconsideration.

[¶13] The flaw with the DOC’s and the PAB’s reasoning is that the petitioner never filed a civil suit with the PAB or asked the PAB to “formally adjudicate claims” under those statutes; instead, she asked the PAB to consider whether her termination violated those statutes because any such violation would require the PAB to reinstate her employment. See RSA 21-I:58. Neither of the PAB’s orders addressed the petitioner’s arguments on that point. Thus, contrary to its conclusion that it lacked jurisdiction to make such determinations, the PAB had authority and was therefore required to consider whether the personnel action on appeal violated those statutes for the limited purpose of determining whether to reinstate an employee. See id.; cf. Appeal of Booker, 139 N.H. 337, 343 (1995) (reversing a decision of the PAB because it erroneously concluded that an employee’s actions were unprotected under RSA 98-E:1). Because the PAB incorrectly concluded that it lacked jurisdiction to

consider whether the petitioner's termination violated RSA chapter 275-E or RSA chapter 98-E, it erred as a matter of law. Accordingly, we vacate its order and remand for the PAB to consider whether the petitioner's termination was in violation of either or both of those statutes.

[¶14] The petitioner also argues that the PAB's findings regarding her policy and rule violations were inconsistent or unsupported by the record. The PAB found that the petitioner violated numerous DOC policies and procedures and administrative rules. See N.H. Admin. R., Per 1003.08. Our standard of review of a board's decision presupposes that the board has made findings that provide an adequate record of its reasoning sufficient for a reviewing court to render meaningful review. Appeal of Panaggio, 172 N.H. 13, 18 (2019); see RSA 541-A:35 (2021). However, it is unclear from the PAB's order which facts it relied upon in support of each of its determinations. See Appeal of Walker, 144 N.H. 181, 184 (1999) (explaining that "we are unable to intelligently review [a board's] decision when it does not provide an adequate basis for its conclusions," and remanding for the board to make "appropriate factual findings" because we could not "discern from the board's order the facts upon which it relied [to support its] determination"). Rather than explaining what conduct gave rise to each policy violation and how the petitioner's conduct violated those policies, the PAB's order, without any analysis, provides only a narrative summary of the petitioner's conduct during the December shift and the investigation and then lists numerous policies, procedures, and rules that it found were violated. Thus, "we are left to speculate" as to both which facts the PAB relied upon in support of each policy and rule violation and its reasoning as to how the petitioner violated each of those policies and rules. Panaggio, 172 N.H. at 19. Accordingly, we conclude that the PAB has failed to sufficiently explain its reasoning, and we vacate its findings and remand for the PAB to reconsider and clarify its order. See Petition of Support Enforcement Officers, 147 N.H. 1, 10 (2001) (vacating PAB's decision when it "failed to provide [this court] with an adequate basis upon which to review its decision," and "therefore failed to satisfy the requirements of RSA 541-A:35").

[¶15] In sum, we conclude that the PAB erred as a matter of law in applying RSA 21-I:58. We also conclude that the PAB's findings were insufficiently explained. Accordingly, we vacate the PAB's order and remand for further proceedings consistent with this opinion. We have considered the parties' remaining arguments and conclude that they do not warrant further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993); Sup. Ct. R. 25(8).

Vacated and remanded.

DONOVAN, COUNTWAY, and GOULD, JJ., concurred.