State of New Hampshire

PERSONNEL APPEALS BOARD
State House Annex
Concord, New Hampshire 03301
Telephone (603) **271-3261**

Date: February 4, 1991

FROM: Mary Ann Steele
Executive Secretary

TO: Thomas F. Hardiman, Director of Field Operations
State Employees' Association of N.H., Inc.
163 Manchester Street
Concord, New Hampshire 03301

SUBJECT: Elizabeth Ward - Lay-off, Department of Transportation
Docket #91-O-13

Pursuant to your request dated January 24, 1991, the above-captioned appeal has been withdrawn. Please be advised that the Board's file on this appeal will be closed, and the matter removed from the Board's docket of appeals awaiting disposition and/or scheduling.

The Board notes that the appeal has been withdrawn "without prejudice" and that the parties have reached a tentative settlement agreement.

cc: Virginia A. Vogel, Director of Personnel
Civil Bureau, Office of the Attorney General
Karen A. Levchuk, Assistant Attorney General, Transportation Bureau
Charles P. O'Leary, Commisisoner, Dept. of Transportation
Richard Williams, Human Resource Coordinator, Dept. of Transportation

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APPEAL OF ELIZABETH WARD
Department of Transportation

Docket #91-0-13

January 10, 1991

By letter dated October 22, 1990, Thomas F. Hardiman, SEA Director of Field Operations, filed an appeal on behalf of Elizabeth Ward, an employee of the Department of Transportation, concerning her conversion from full-time temporary to part-time temporary status in her position of Attendant I, and the Department's refusal to pay her for accumulated leave following a reduction in force. The appellant stated she was the most senior Attendant I at the Littleton Rest Area, and had worked as a full-time permanent employee since June, 1989. She further stated that the Department of Transportation had reduced the total staff hours for attendants at the Littleton Rest Area from 120 per week to 56 per week. The appellant, claiming that there were no material facts in dispute, asked that the Board decide the matter without evidentiary hearing and order that:

1. Ms Ward, as the senior Attendant I at the Littleton Rest Area, be allowed to maintain her full-time temporary position, at 40 hours per week;

2. all other less senior employees be given all their accrued leave payoffs and they be allowed to divide the remaining hours that are scheduled at the Littleton Rest Area; and

3. the Department of Transportation fully explain the rationale they followed to reach a decision that adversely affected these employees.

The appellant then requested that the Board schedule a full public hearing on the matter in the absence of an order as outlined above.

On November 29, 1990, Assistant Attorney General Karen Levchuk filed the Department's response, arguing that the Board does not have the authority to issue such orders. Additionally, the Department argued that Ms Ward had not been "laid-off" or separated completely from state service as defined by Per 101.21 of the Rules of the division of Personnel, but had been scheduled to work a reduced number of hours due to budgetary constraints. The Department

asked that the Board summarily dismiss the matter or, in the alternative, that the Board order the appellant to state with specificity the authority under which the suggested orders were requested and under which they could be granted.

First, in response to the appellant's request for a decision without an evidentiary hearing, there may not be any material facts in dispute. There are, however., too few facts available upon which the Board might make any informed decision within the limits of its statutory authority. Secondly, the appellant has asked the Board to issue an order which would provide Ms. Ward with a guarantee of full-time temporary employment while ordering substantially reduced hours for the other affected employees. To date, none of the correspondence between the parties and the Board indicate that any of the other affected employees are aware of the appellant's proposed order, or that any of the other employees who would be affected by the propsed order has filed a similar appeal with this Board. Finally, appellant's proposed order essentially would dictate what level of staffing the Department of Transportation must adopt, regardless of funding levels or other considerations which are well within management's discretion. Based upon the foregoing, the Board declines to issue the order as requested, finding it lacks the authority, under statute or administrative rule, to make such an order even if it were inclined to do so.

The Board, while declining to issue the appellant's requested order, also declines to grant the State's Motion to Dismiss. The State argues that "Lay-off" means the complete separation of an employee from the state classified service for an indefinite period by reason of abolition of position, change in organization, lack of work, insufficient funds, or other reasons outside the employee's control that do not reflect discredit on him." The State therefore concludes that Ms. Ward was not "laid-off", but was subject to a reduction in work hours caused by budgetary constraints. It is clear, however, that Ms. Ward's current part-time status is a result of a mandated reduction in force.

RSA 21-I:46 provides, in pertinent part, that "The personnel appeals board shall hear and decide appeals as provided by RSA 21-I:57 and 21-I:58 and appeals of decisions arising out of application of the rules adopted by the director of personnel...." If in fact Ms. Ward was a full-time temporary employee of the Department of Transportation and had worked for six months prior to notice of the reduction in her hours, the Board believes she is entitled to bring before the Board an appeal "arising out of application of the rules adopted by the director of personnel" [RSA 21-I:46].

In accordance with Per-A 202.01 (b) of the Rules of the Personnel Appeals Board, the appellant's notice of appeal must "...state the action complained of, and shall contain a detailed description of why the appellant believes the action was inappropriate." The Board, pursuant to the provisions of Per-A

202.01, hereby directs the appellant to provide the Board with an amended notice of appeal, which shall state specifically the rule which the appellant believes should be applied in considering her appeal. The appellant may also file an amended request for disposition without evidentiary hearing, provided that such request addresses those concerns noted above. If the appellant elects to propose an amended order, such request must cite the authority under which the requested order may be considered.

The Department of Transportation shall provide a memorandum of law, explaining fully the rationale it has employed in denying payment of accumulated leave, to the extent that such payment is legally allowed, for employees subject to reduction in force.

The parties shall make the required submittals to the Board, and to one another, within fifteen calendar days of the date of this order.

THE PERSONNEL APPEALS BOARD

Patrick J. McNicholas, Chairman

Robert J. Johnson

Mark J. Bennett

cc: Thomas F. Hardiman, SEA Director of Field Operations
Karen Levchuk, Assistant Attorney General, Transportation Bureau
Virginia A. Vogel, Director of Personnel