



State Employees Association of New Hampshire, Inc.

Local 1984, Service Employees International Union
AFL-CIO, CLC

RECEIVED

NOV 30 1992

DOC COMMISSIONER'S OFFICE

November 24, 1992

John Vinson, Esq.
NH DEPARTMENT OF CORRECTIONS
105 Pleasant Street
Concord, NH 03301

RE: Robert W. Clark, Jr. v. NH Department of Transportation
DOI: March 2, 1992

Dear John:

Please forward the enclosed letters to Michael Cunningham, Warden, from Robert W. Clark, Jr.

Please ensure copies of the originals are in Mr. Clark's files at Department of Corrections and any other personnel files of Mr. Clark.

I will assume all the necessary paperwork has been accomplished so that Mr. Clark's separation from employment from Department of Corrections will heretofore be considered and referred to as a resignation.

Thank you for your attention to this matter.

Sincerely,

Michael C. Reynolds
General Counsel

MCR/ba
Enclosures

cc: Robert W. Clark, Jr.

JAN 25 12 32 PM '93
RECEIVED
DIV. OF CORRECTIONS

October 19, 1992

Michael J. Cunningham, Warden
NH DEPARTMENT OF CORRECTIONS
Division of Adult Services
281 North State Street
Concord, NH 03301

Dear Mr. Cunningham:

I hereby respectfully request that I be allowed to resign from my position as a Correctional Officer Trainee. Upon review of the letter of termination, I certify this resignation is in full consideration of the evidence used in support of this decision. I also certify my understanding that this resignation is in lieu of appeal and precludes any other settlement of this dispute.

Sincerely,



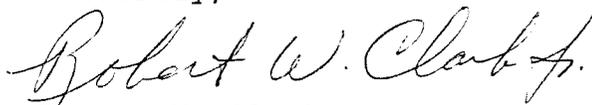
Robert W. Clark, Jr.

Michael J. Cunningham, Warden
NH DEPARTMENT OF CORRECTIONS
Division of Adult Services
281 North State Street
Concord, NH 03301

Dear Mr. Cunningham:

I hereby resign my position as a Correctional Officer Trainee
with the Department of Corrections effective March 2, 1992.

Sincerely,



Robert W. Clark, Jr.



State Employees Association of New Hampshire, Inc.

Local 1984, Service Employees International Union
AFL-CIO, CLC

95-T-16

RECEIVED
DIV. OF PERSONNEL
MAR 6 12 56 PM '92

March 6, 1992

HAND DELIVERED

Mary Ann Steele
Executive Secretary
NH PERSONNEL APPEALS BOARD
State House Annex
Concord, NH 03301

*RE: Appeal of Robert W. Clark, Jr. (Termination from
employment from N.H. Department of Corrections)*

Dear Ms. Steele:

Please be advised that this office represents the above-named Robert W. Clark, Jr. relative to his March 2, 1992 termination from employment from the Department of Corrections (DOC). Mr. Clark was working as a Correctional Officer on the date of termination; it appears that Mr. Clark was a probationary employee. Enclosed please find a copy of the March 2, 1992 letter of termination from Michael J. Cunningham, Warden. Mr. Clark alleges that the termination was arbitrary, capricious, illegal, and/or made in bad faith on the following grounds.

Mary Ann Steele
March 6, 1992
Page 2

Mr. Clark did in fact successfully complete the training academy, as the passing score was articulated to him before he began. He obtained a passing score on all the tests (physical, academic and firearms) and scored quite high in many of the tests.

Even if, as he was later told, Mr. Clark scored below passing on one of the many specific tests, that standard by itself must be seen as arbitrary, capricious, illegal, and/or made in bad faith. It was also arbitrary, capricious, illegal, or in bad faith because it was changed and/or never really a standard. The termination would therefore, have to have been arbitrary, capricious, illegal, and/or made in bad faith.

Because of a congenital eye problem, Mr. Clark scored lower than he was capable of on the one firearm test with which DOC claimed dissatisfaction. With an opportunity to practice and to adjust to this relatively minor disabling condition, Mr. Clark could have scored considerably higher on that firearm test, as high as anyone who achieved a "passing" score. In fact, one of the instructors had worked with him on one of the other firearm tests to help him adjust his disability to the particular gun; and Mr. Clark was able to achieve an excellent score on this part of the test because of this nonintrusive opportunity to practice. A simple unextensive opportunity to work with the gun, which DOC claims he did not score high enough with, would have enabled him to

Mary Ann Steele
March 6, 1992
Page 3

achieve a score anyone would have found acceptable. The DOC arbitrarily denied him this opportunity.

The real reason for Mr. Clark's termination, however, was not his score with the particular gun; it was because of DOC's inaccurate perception that he would not be able to physically keep up with the DOC job. He had in fact met or exceeded all the physical requirements for the academy and DOC.

Mr. Clark was meeting or exceeding the "work standards" for the correctional officer position at DOC. He achieved a score of 75% on a firearms test upon which DOC arbitrarily and after-the-fact imposed an 80% standard. This one score, especially measured against his total performance, cannot reasonably establish that he was not meeting the work standard. Mr. Clark was meeting and/or exceeding any work standard to the extent it was at all articulated. The termination was therefore arbitrary, capricious, illegal, and/or made in bad faith.

Therefore, on behalf of Mr. Clark I request a full hearing before the Personnel Appeals Board on this termination. Three hours is requested for this hearing.

Thank you for your attention to this matter. I look forward to hearing from you.

Mary Ann Steele
March 6, 1992
Page 4

Sincerely,

Michael C. Reynolds
(Ba)

Michael C. Reynolds
General Counsel

MCR/ba
Enclosure

cc: Robert W. Clark, Jr. (w/enc)
Michael J. Cunningham, Warden (w/enc)



State of New Hampshire

JUDD GREGG
GOVERNOR

DEPARTMENT OF CORRECTIONS
DIVISION OF ADULT SERVICES
281 NORTH STATE STREET — P.O. BOX 14
CONCORD, NEW HAMPSHIRE 03302
603/271-1800

RONALD L. POWELL, Ph. D
COMMISSIONER
MICHAEL J. CUNNINGHAM
DIRECTOR

March 2, 1992

Robert W. Clark, Jr.
99 Clinton Street, #509
Concord, NH 03301

Dear Mr. Clark:

This is to inform you that effective February 28, 1992, you have been officially terminated as a probationary state employee in accordance with State of New Hampshire Administrative Rules of the Division of Personnel, PER 302.23(c) Probationary Appointment.

Specifically, on November 15, 1992, you were hired with the Department of Corrections as a Correctional Officer Trainee with the understanding that your continued employment was contingent on your successful completion of the Corrections Training Academy. On February 28, 1992, the Department was notified by the Academy, that you failed the weapons certification, thus disqualifying you from any further participation with the Academy.

Based on the fact that you did not successfully complete the Academy, the Department of Corrections has no choice but to terminate your employment on the basis that you have not met the required work standard for this position.

If you wish to appeal this action you have fifteen (15) days in which to initiate such an action to the Personnel Appeals Board alleging specific facts sufficient on their face, establishing that this dismissal is improper under the applicable standard as cited in my first paragraph.

Sincerely,

Michael J. Cunningham, Warden
Director of Adult Services

LC/dma
cc: NH Division of Personnel
DOC Personnel

Receipt Acknowledged:

Signature

3/3/92
Date

State of New Hampshire



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

DATE: March 16, 1992

FROM:

Mary Ann Steele
MARY ANN STEELE
Executive Secretary

TO:

Michael C. Reynolds, General Counsel
State Employees' Association
163 Manchester Street
Concord, N.H. 03301

SUBJECT:

Appeal of Robert W. Clark - Termination

Your notice of appeal dated March 6, 1992 was received by the Personnel Appeals Board on March 6, 1992.

This matter has been assigned docket number 92-T-16. It has been so marked for identification purposes only and should not be considered notice that the appeal has been accepted for review by the Board.

Please identify any further communication with the Board concerning this matter with the above docket number. If the Board accepts this appeal, you will be notified in writing of a scheduled hearing date.

Parties to the appeal shall comply with all applicable portions of the "Rules of the Personnel Appeals Board", as amended, effective March 25, 1988. Copies of the Board's procedural rules are available for review at the Division of Personnel, State House Annex, Concord, New Hampshire.

NOTE:

All parties to this appeal will be expected to familiarize themselves with the Board's rules, and to conduct themselves in accordance with the provisions therein. Inexperience shall not be deemed an acceptable excuse for violation of any pre-hearing, or hearing procedures.

Any motions, exhibits or documents filed with the Board in this matter shall be filed in an original and three copies. Further, copies of any correspondence with or submissions to the Board shall be forwarded simultaneously to the other party(s) to this appeal.

cc: Virginia A. Vogel
Lisa Currier, Corrections
Ronald Powell, Commissioner - Corrections
Michael J. Cunningham, Warden



State Employees Association of New Hampshire, Inc.

Local 1984, Service Employees International Union
AFL-CIO, CLC

January 12, 1993

Mary Ann Steele
Executive Secretary
NH PERSONNEL APPEALS BOARD
State House Annex
Concord, NH 03301

RE: Robert W. Clark, Jr. v. NH Department of Corrections
DOCKET #92-T-16

Dear Ms. Steele:

Upon information from your office that you have received Mr. Clark's resignation letter from the New Hampshire Department of Corrections, and that this letter will be placed in Mr. Clark's permanent personnel file reflecting separation from Department of Corrections effective when he withdraws his termination appeal, on behalf of Mr. Clark, I hereby withdraw that termination appeal, Docket #92-T-16, with prejudice.

Thank you for your attention to this matter.

Sincerely,

Michael C. Reynolds
General Counsel

MCR/ba
Enclosure

cc: Robert W. Clark, Jr.
John Vinson, Esq.

RECEIVED
JAN 13 11 37 AM '93

State of New Hampshire



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

September 16, 1992

The New Hampshire Personnel Appeals Board, under the authority of RSA 21-I:58, has scheduled hearings in the following termination appeals on Wednesday, October 14, 1992, beginning at 9:00 a.m. in Room 411, State House Annex, Concord, New Hampshire.

- Docket #92-T-15 Robert Joyce Resources and Economic Development
Termination from employment through termination of his seasonal Maintenance Mechanic II position
- Docket #92-T-8 Frederick Clews NH State Port Authority
Termination from part-time employment for alleged failure to maintain minimum certification for position of Harbormaster
- Docket #92-T-14 Carolyn Michaud Health & Human Services
Termination from employment as a Secretary Typist II for failure to successfully complete her probationary period
- Docket #92-T-16 Robert Clark Department of Corrections
Termination from employment as a probationary Correctional Officer Trainee upon disqualification at the Corrections Training Academy for failure to achieve weapons certification
- Docket #92-T-18 Andrew Dearborn Department of Corrections
Termination from employment as a Corrections Lieutenant upon receipt of a third and final warning for Absenteeism without approved leave

All persons involved in these matters should be present for the hearing.

The hearings and all prehearing activities shall be conducted in strict compliance with the Rules of the Personnel Appeals Board. Failure to comply with those rules may result in sanctions as outlined in Per-A 206, up to and including dismissal of an appeal.

The Board has also scheduled mandatory prehearing conferences in each of the above-listed appeals on Wednesday, September 30, 1992 at 9:00 a.m., Room 411, State House Annex, Concord, New Hampshire. All parties shall assure that a representative appears to address any pre-hearing motions, special scheduling requests or outstanding discovery issues at that time.

FOR THE PERSONNEL APPEALS BOARD

A handwritten signature in cursive script that reads "Mary Ann Steele".

MARY ANN STEELE
Executive Secretary

APPEALS OF:

Robert Joyce	Resources and Economic Development
Frederick Clews	NH State Port Authority
Carolyn Michaud	Health & Human Services
Robert Clark	Department of Corrections
Andrew Dearborn	Department of Corrections

copies:

Virginia A. Vogel, Director of Personnel
State House Annex, School Street, Concord, NH 03301

Michael C. Reynolds, General Counsel, State Employees' Association
P.O. Box 1403, 105 North State Street, Concord, NH 03301-1403

Stephen Rice, Commissioner, Dept. of Resources and Economic Development
172 Pembroke Road, Concord, NH 03301

Kenneth Plourde, Administrator, Dept. of Resources and Economic Development
172 Pembroke Road, Concord, NH 03301

Thomas Orfe, Chief Harbormaster, New Hampshire State Port Authority
555 Market St., Box 506, Portsmouth, NH 03801

Robert Pliskin, Director, Division of Human Services
6 Hazen Drive, Concord, NH 03301

Jan D. Beauchesne, Human Resource Coordinator, Health & Human Services
6 Hazen Drive, Concord, NH 03301

Michael Brown, Attorney, Commissioner's Office, Dept. of Corrections
State Office Park South, 105 Pleasant Street, Concord, NH 03301

Lisa A. Currier, Human Resource Administrator, Dept. of Corrections
State Office Park South, 105 Pleasant Street, Concord, NH 03301

Ronald Powell, Commissioner, Dept. of Corrections
State Office Park South, 105 Pleasant Street, Concord, NH 03301

Michael J. Cunningham, Warden, New Hampshire State Prison
281 North State Street, Concord, NH 03301

NEW HAMPSHIRE PERSONNEL APPEALS BOARD

Wednesday, October 14, 1992
Room 411 - State House Annex
Concord, New Hampshire

Chairman: Mark J. Bennett

Commissioners: Lisa A. Rule, Karen S. McGinley

9:00 a.m. Robert Joyce
Docket #92-T-15

Robert Joyce, a former seasonal employee of the Department of Resources and Economic Development, appears appealing his termination from employment when his position of Maintenance Mechanic II was eliminated. Mr. Joyce is represented by SEA General Counsel Michael Reynolds. The Department of Resources and Economic Development is represented by Kenneth Plourde, Administrator.

The parties were notified of scheduling at the prehearing conference held by the Board on September 30, 1992.

Noon Recess

1:30 p.m. Robert Clark, Jr.
Docket #92-T-16

Robert Clark, a former probationary employee of the Department of Corrections, appears appealing his termination from employment upon his dismissal from the Correctional Academy for failure to successfully complete firearms certification. Mr. Clark is represented by SEA General Counsel Michael Reynolds. The Department of Corrections is represented by Attorney Michael Brown.

The parties were notified of scheduling at the prehearing conference held by the Board on September 30, 1992.

*Settled by the parties prior to hearing -
D.O.C. will allow Clark to replace
notice of termination with resignation*



State Employees Association of New Hampshire, Inc.

Local 1984, Service Employees International Union
AFL-CIO, CLC

October 15, 1992

Michael K. Brown, Esq.
NH DEPARTMENT OF CORRECTIONS
105 Pleasant Street
Concord, NH 03301

RE: Robert W. Clark, Jr. v. N.H. Department of Corrections
DOI: March 2, 1992

Dear Mike:

Pursuant to our recent discussion, our understanding regarding the Department of Corrections' offer to Robert W. Clark, Jr. is as follows.

Mr. Clark will tender a resignation in accordance with PER 1001.08 (h), to be effective March 2, 1992. His separation from Department of Corrections will be legally considered a resignation.

In a document separate from the letter of resignation, and in accordance with PER 1001.08 (h) (2) and (3), Mr. Clark will certify that his resignation was given after review and consideration of the evidence used to support the decision to dismiss him.

Neither of the above-mentioned documents will deny the allegations against him, nor will they constitute an admission of the allegations.

Additionally, Mr. Clark will withdraw his appeal with the Personnel Appeals Board, Docket #92-T-16.

If your understanding of our settlement of the above matter differs from the terms outlined above, please let me know.

Sincerely,

Michael C. Reynolds
General Counsel

MCR/ba

cc: Robert W. Clark, Jr.