

# State of New Hampshire



## PERSONNEL APPEALS BOARD

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### *APPEAL OF NANCY GIRARD*

*Docket #97-D-6*

*Department of Fish and Game*

March 13, 1997

The New Hampshire Personnel Appeals Board (Miller, Bennett, Barry) met on Wednesday, January 8, 1997, under the authority of RSA 21-I:58, to hear the appeal of Nancy Girard, an employee of the New Hampshire Department of Fish and Game. Ms. Girard appeared *pro se*. Assistant Attorney General Martha Moore appeared on behalf of the Department. The appeal was made on offers of proof. The record in this matter consists of the documents submitted by the parties prior to the hearing and the audio tape of the oral argument and offers of proof made by the parties at the hearing. Ms. Girard was appealing an August 9, 1996 letter of warning, which she received on August 12, 1996, for allegedly violating Per 1001.03 by failing to meet the work standard based on uncooperative and disruptive behavior.

Ms. Girard is employed as Legal Coordinator counsel for the Fish and Game Department where she is considered a member of the senior staff. In July, 1996, with the impending retirement of Judy Kenison, the Administrative Assistant assigned to the Executive Director's Office, the Department took applications from in-house applicants to fill the expected vacancy. Ms. Girard encouraged her own secretary Dorene Hartford to apply for the position. She also requested and obtained the Director's approval to serve as a member of the panel that would interview the candidates. Ms. Hartford was one of three in-house applicants certified by the Division of Personnel as meeting the minimum qualifications for selection.

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After the interviews, Director DiStefano discussed the candidates with the interview panel members indicating that he would prefer to suspend the process so that applications could be solicited from outside of the agency. Ms. Girard offered her opinion, which she said was shared by others on the panel, that any reservations the Director might have about selecting one of the in-house candidates could be resolved during the probationary period. The day after that discussion, Ms. Girard went to see Richard Tichko, the Department's SEA Steward, to ask for a copy of the Personnel Rules, relative to probationary periods. She also asked for information concerning compensatory time, the apparent subject of a dispute between herself and Director DiStefano.

On July 20<sup>th</sup>, The Director informed Ms. Girard that he had decided to take the weekend to consider his alternatives. On July 23<sup>rd</sup> Mr. DiStefano told Ms. Girard he had decided to look at candidates from outside the agency. The candidates were informed of that decision on July 26, 1996, and they were offered an opportunity to discuss the decision with the Director.

The State offered to prove through the testimony of Susan O'Donnell, one of the three promotional candidates, that she knew on Friday, July 19, 1996, that none of the in-house candidates would be selected, and that she had learned through Mr. Tichko and Ms. Girard that the Director was seeking an "older" candidate. In a later written statement, she said she had not "contacted Nancy Girard regarding [her] interview" and that "Nancy Girard never contacted [her] relative to seeking private counsel."

The State also offered to prove through the testimony of Veronique Soucy that after the decision had been made to seek candidates from outside of the Department, Ms. Girard had approached her suggesting that she encourage the other two candidates to join with her in protesting the selection decision. Although Ms. Girard denied initiating contact with the individual applicants to suggest that they make a collective protest, in her October 18, 1996 letter of appeal to Personnel Director Virginia Lamberton, Ms. Girard stated, "With respect to the charge that I suggested that the applicants meet collectively in order to develop a stronger case against the selection process, one applicant did complained [sic] to me about the decision. As a matter of procedure, I advised her to

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check with her fellow applicants to reevaluate the situation. I also suggested to that same individual that she speak with the Executive Director about her concerns, which she did. I did not advocate or attempt to influence the applicants' course of action relative to the decision and no one else sought my advice."

Ms. Girard stated that she had also been a candidate for appointment to the position of Executive Director of the Fish and Game Department in 1994, when Mr. DiStefano was appointed to the position. She indicated that she had decided not to participate in the selection process to appoint Mr. DiStefano's successor in the Spring of 1996, having concluded that the process was too highly publicized and politicized. Ms. Girard said she resented complaints from Director DiStefano that she had been lobbying members of the Executive Council, or criticizing his management.

The State argued that the 1994 selection process for Executive Director had no effect on Mr. DiStefano's relationship with Ms. Girard, although within days of his appointment as Executive Director, he was cautioned about Ms. Girard's demeanor and aggressiveness. The State argued that Mr. DiStefano was sensitive to the potential for conflict because of the fact that he had been successful in earning appointment to a position she had sought, and that if anything, he was guilty of being too slow in reacting to the appellant's inappropriate conduct. While the State agreed that comments about the Director's alleged preference for an "older" or "more seasoned" candidate may have been initiated by Ms. Kenison, the charges in the letter of warning essentially were unaffected.

Clearly, there is some "history" between the parties to this appeal. Ms. Girard, who described herself as overworked, overburdened, and in need of additional compensation for work which she could not complete during the normal work week, resented the Director's questions about the appropriate use of her work time, and compensation she expected to receive for working beyond her regular schedule. Nevertheless, she made a formal written request and received permission to participate as a member of the interview team to fill the Administrative Assistant vacancy assigned to the Executive Director's office. She encouraged her own secretary to apply for the position, and ultimately recommended her secretary for promotion to the position. When the Director expressed his reluctance to promote from within, the appellant found the time to research rules to support her

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position which she later expressed as follows: "Clearly, probation was the alternative if one of the three in-house applicants was selected and didn't work out."

Her arguments concerning the propriety of the warning included open criticism of the Director's management of Ms. Kenison's activities, such as, "I was also concerned as I observed her ongoing activities and increased hostility since it appeared that you had not taken appropriate measures to assure that the process was not compromised by her behavior." Ms. Girard also wrote, "It is particularly disturbing that you have chosen to take this action given the behavior of your own secretary and the fact that you have acknowledged to me that her actions in the past have been far less than exemplary."

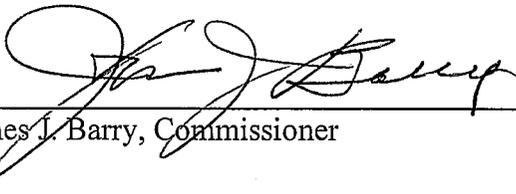
Finally, contrary to the appellant's assertion in her October 18, 1996, letter to Virginia Lamberton requesting removal of the warning, the affidavits submitted in support of her appeal do not "negate" the charges in the letter of warning. As the State argued, they are as notable for what they do not say.

On the evidence, argument and offers of proof, a majority of the Board (Bennett and Barry) voted to uphold the warning, thereby denying Ms. Girard's appeal. The Board found that Ms. Girard's conduct was disruptive and demonstrated a lack of cooperation. The Board found that the warning was justified, and should serve as notice that similar conduct would not be tolerated in the future.

THE PERSONNEL APPEALS BOARD



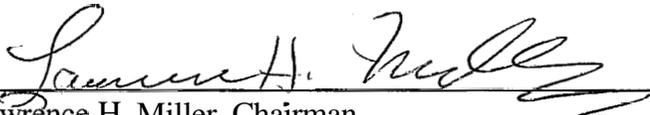
Mark J. Bennett, Commissioner



James J. Barry, Commissioner

DISSENT:

I disagree with the conclusions reached by a majority of the Board. I consider the incident to be more indicative of a personality conflict and a breakdown in communications between the appellant and the Director, and do not believe that issuing a warning was the appropriate response.

  
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Lawrence H. Miller, Chairman

cc: Virginia A. Lamberton, Director of Personnel  
Nancy Girard, RR 1, Box 700 - Loon Pond Road, Gilmanton, NH 03237  
Martha Moore, Assistant Attorney General, Department of Justice