

State of New Hampshire



PERSONNEL APPEALS BOARD

25 Capitol Street
Concord, New Hampshire 03301
Telephone (603) 271-3261

Appeal of Stacy Zabrycki
Department of Corrections
Docket #00-T-13

December 14, 2000

The New Hampshire Personnel Appeals Board (Wood, Johnson, and Bonafide), met in public session on August 23, 2000, October 4, 2000, and October 5, 2000, under the authority of RSA 21-I:58 and the Rules of the Personnel Appeals Board to hear the appeal of Stacy Zabrycki, a former employee of the Department of Corrections. Ms. Zabrycki, who was represented at the hearing by Michael Reynolds, SEA General Counsel, was appealing her March 24, 2000 termination from employment as a Corrections Officer assigned to the Women's Prison in Goffstown, New Hampshire. The Department of Corrections was represented by Attorney John Vinson, Corrections Staff Counsel.

The State alleges that Ms. Zabrycki stole a book from a fellow employee, attempted to interfere with an investigation into the smuggling of contraband into the Prison, and failed to pay full attention to her post while guarding an inmate who was hospitalized. Ms. Zabrycki denies both the factual allegations and the conclusions drawn by the State and requests to be reinstated to her position as a Corrections Officer and be awarded back pay.

The record of the hearing in this matter consists of the testimony presented at the hearing, the audio tape recordings of the hearing on the merits of the appeal, the pleadings filed by the parties, and copies of various documents admitted into evidence and identified as follows:

State's Exhibits

1. Copies of letter of appeal by Ms. Stacy Zabrycki dated April 3,2000, and letter of termination dated March 24,2000.
2. Copy of hand-written note addressed to "Stacy" from "Cindy".
3. Copy of Intra-department Memorandum from Mark L. Wefers to Warden Jane Coplan dated April 25,2000, re: "Investigation of Allegations of Employee Misconduct Correctional Officer Stacy Zabrycki" with copy of report of investigation attached.
4. Letter dated August 11,2000, from Attorney Reynolds to Attorney Vinson setting forth a list of facts Ms. Zabrycki "will stipulate to."
5. Copy of RSA 642:1 and RSA 642:3.
6. Definition of "Public servant."
7. Yearly Performance Evaluation forms for Stacy Zabrycki dated 11-1-99, 11-2-98, and 11-4-97.
8. Videotape of interview of Ms. Cindy Lou Abbott held at the Vermont Department of Corrections on March 13,2000.

Appellant's Exhibits

- A. Transcript of the videotape interview of Ms. Cindy Lou Abbott held at the Vermont Department of Corrections on March 13,2000.
- B. 1999-2001 Collective Bargaining Agreement between State Employees Association of New Hampshire Local 1984 Service Employees International Union AFL-CIO, CLC and State of New Hampshire, dated July 1, 1999.
- C. March 15,2000 letter to CO Stacey Zabrycki from Warden Jane Coplan informing Ms. Zabrycki of her suspension with pay pending the outcome of an investigation.

The Board received sworn testimony from the following persons:

Ms. Stacy Zabrycki,

Ms. Daurice Ducharme,

Lt. Zelda Ziemer,

Ms. Cindy Abbott,

Mr. Steven J. McCormack,

Warden Jane Coplan,

Ms. Wendy Dickey,

Ms. Rosemary Monroe,

Ms. Lucille A. Mullen,

Lt. Gerald Haney, and

Cpl. Gasy Smith.

Ms. Abbott, a former inmate of the New Hampshire Women's Prison, completed her testimony on direct examination by the State's representative on August 23, 2000. Ms. Abbott was expected to be available on October 4, 2000, for cross examination. However, prior to her second scheduled appearance before this Board, Ms. Abbott was incarcerated in Vermont and was not available to testify. Accordingly, with the agreement of the State, Attorney Reynolds was allowed to present on October 5, 2000, an offer of proof concerning the testimony he would elicit from Ms. Abbott on cross examination.

Charge #1 - Theft of a Book from Daurice Ducharme

In January, 1999, Cindy Abbott, then an inmate in the Vermont Correctional System, was transferred into the custody of the New Hampshire Department of Corrections apparently because New Hampshire had programming available to assist her that was not available in the State of Vermont. During her incarceration in the State of New Hampshire, Ms. Abbott met Stacy Zabrycki, a Corrections Officer assigned to the Women's Prison. Ms. Abbott considered Ms. Zabrycki to be one of the Prison staff who would listen to her, counsel her, and offer encouragement for her successful rehabilitation. She considered Ms. Zabrycki to be her friend.

Daurice Ducharme, a psychiatric social worker assigned to the Women's Prison, frequently purchased books to add to a collection of "self-help" materials that she maintained for the inmates at the prison. Included in the collection were books that Ms. Ducharme had purchased for herself which she identified as her personal property by writing her name inside the covers.

Although these books were Ms. Ducharme's personal property, she regularly loaned them to inmates. Ms. Ducharme testified that she did not loan any of her books to staff at the prison, and did not specifically give Ms. Zabrycki permission to take a book from her office. She testified that she did recall discussing books with the prison staff and suggesting book stores where staff members could purchase the books. According to Ms. Ducharme, her office where her books were kept was locked most of the time, although staff members did have keys that would open the door.

Ms. Lucille Mullen, an inmate at the Women's Prison from June, 1999 until November, 1999, testified that Ms. Ducharme's books were available to both inmates and staff. Although there was no "sign out" procedure, Ms. Mullen recalled that inmates had to receive permission to borrow a book. Nevertheless, Ms. Mullen testified that she had observed copies of Ms. Ducharme's books in various parts of the prison and saw both inmates and staff reading the books.

Ms. Wendy Dickey, a former Corrections Officer, testified that it was her understanding that employees could borrow some of Ms. Ducharme's books. Ms. Dickey further testified that she had borrowed a murder mystery book from Ms. Ducharme's "library" without asking permission from Ms. Ducharme. She said that she returned it after reading it. It was Ms. Dickey's impression that Ms. Ducharme wanted every one at the prison to have the benefit of the self-help books, provided that they understood that inmates could not just walk into Ms. Ducharme's office without permission and take a book. On cross examination, Ms. Dickey testified that at least on one occasion, Ms. Ducharme specifically told her she could read one of Ms. Ducharme's books.

Ms. Zabrycki testified that she had borrowed and read a "Judge Judy" Sheindlin book from Ms. Ducharme's office and subsequently asked Ms. Ducharme if she had any other books by Ms. Sheindlin. She testified that she had borrowed many books from Ms. Ducharme's "library" and

that there was never any policy for "checking out" the books, so long as the books were returned. Ms. Zabrycki testified that she did not understand these books were only for inmates.

Ms. Zabrycki testified that she took a book written by Ms. Sheindlin from Ms. Ducharme's office and mailed it to Ms. Abbott in Vermont. The book had Ms. Ducharme's name clearly written on the inside. Ms. Zabrycki testified she expected to get the book back when she went to visit Ms. Abbott or that Ms. Abbott would mail it back after she had read it. Ms. Abbott testified that she had received the book less than a week before she gave it to the New Hampshire investigators who interviewed her on March 13, 2000.

The Board is troubled by the manner in which Department of Corrections investigative staff became aware of the "Judge Judy" book. Mr. Wefers became aware of the fact that Ms. Abbott had this book only as a result of his interview of Ms. Abbott on March 13, 2000. As the videotape and transcript show, Ms. Abbott told Mr. Wefers that she was expecting Ms. Zabrycki to call Ms. Abbott in the late afternoon of March 13, 2000. Mr. Wefers indicated he wanted to hear that conversation and, depending on Vermont law, perhaps tape record it. For this reason, Ms. Abbott allowed Mr. Wefers to come to her apartment in Barre, Vermont, to wait for the phone call from Ms. Zabrycki. It was apparently during the two or so hours that investigators were at Ms. Abbott's apartment that they were made aware of the book and other items presented as evidence by the State.

With respect to whatever "policy" there was for the borrowing of books from Ms. Ducharme's office, the testimony does not establish there was a blanket rule prohibiting staff from borrowing these books. Instead, the testimony reveals that both inmates and staff believed the books were available for their use.

Proof that a theft has occurred requires evidence of an intent to permanently deprive a person of property. The State has alleged, and Ms. Zabrycki admits, that Ms. Zabrycki took the book written by Ms. Sheindlin from Daurice Ducharme's office and that she sent the book to Ms.

Abbott in Vermont without obtaining Ms. Ducharme's permission to do so. There is no question that this action is evidence of extremely poor judgment on Ms. Zabryclti's part, and that the imposition of appropriate discipline would have been warranted. However, the Board does not find that Ms. Zabryclti intended to steal this boolt from Ms. Ducharme, but that she sent the book to Ms. Abbott with the intention of returning the boolt to Ms. Ducharme's office when she got it back from Ms. Abbott. Accordingly, the Board found that the charge of theft could not be sustained, nor would the evidence form a sufficient basis to support the Department's decision to terminate Ms. Zabryclti's employment.

Charge #2 - Interfering with an Investigation

In early March, 2000, Ms. Abbott was notified by the Vermont Department of Corrections that she was to be interviewed by staff from the New Hampshire Department of Corrections Internal Affairs Bureau. Some day shortly before March 13, 2000, Ms. Abbott mailed a letter to an address in Salem, New Hampshire, given to her by Ms. Zabrycki as a means by which Ms. Abbott could contact her after Ms. Abbott's release from the Women's Prison in Goffstown. This undated, hand-written note identified as State's Exhibit 2 informs Ms. Zabrycki that she, Ms. Abbott, is being required to meet with "Internal Affairs." In her note, Ms. Abbott is attempting to discover the reason for the meeting and suggests three possible reasons that Internal Affairs might want to talk to her. She ends the note with the following: "If you have any information about this meeting you need to call me immediately."

By letter dated March 10, 2000, Ms. Zabryclti had been notified by the Department of Corrections, pursuant to Section 27.22 of the Collective Bargaining Agreement, that an investigation was being opened to determine whether Ms. Zabryclti had given cigarettes to inmates in violation of Department Policies prohibiting officers from bringing contraband into the prison. When Ms. Zabrycki received Ms. Abbott's letter, she believed the only issue being investigated dealt with allegations that Ms. Zabrycki had supplied Ms. Abbott with cigarettes in

violation of the Department's policy, effective April 1, 2000, prohibiting the possession or use of tobacco products in the Women's Prison.

Early in the morning on March 13, 2000, Ms. Zabrycki called Ms. Abbott. According to the testimony of both Ms. Zabrycki and Ms. Abbott, the conversation was very brief and centered around the need for Ms. Abbott to tell the truth and not to worry about the meeting with the investigators. Both Ms. Zabrycki and Ms. Abbott testified that Ms. Zabrycki would try to reach Ms. Abbott later in the day to see how Ms. Abbott was doing.

It is important to note that the issue of smuggling cigarettes into the Women's Prison had been the subject of intense questioning in August of 1999. At that time, the new Collective Bargaining Agreement had only been in place a few weeks and the provisions of new Section 27.22 dealing with "Investigation of Employees" were being newly implemented. On August 27, 1999, Sergeant Dennis G. Lacerre met with Ms. Zabrycki and SEA Representative Steven McCormack, "about research [he] was looking into about allegations about her bringing in contraband (cigarettes) into the institution and also about involvement with inmate Cindy Abbott." Sergeant Lacerre had a series of "questions to research some rumors and allegations" that he asked Ms. Zabrycki, which questions are included as a part of State's Exhibit 3. In these written questions, there is the following paragraph that appears directed to the questioner:

Remind her she is obligated to be truthful, non truth can/will make her subject to termination if non-truths surface. You have no stake in the research results -just a messenger. Superintendent Coplan will get results of research to follow up as she feels is appropriate.

The questions end with the following: "When I have finished my research and the superintendent has had the opportunity to examine it, you will be notified if an investigation will follow."

The Collective Bargaining Agreement does not define "investigation." Section 27.22 reads, in pertinent part, as follows:

Any unit employee against whom a complaint is made from any source shall be afforded, as a minimum, the following rights:

..

- b. In every case when the Employer determines that an investigation of the facts or circumstances behind the complaint is to be undertaken, the employee shall be so notified in writing within seven (7) work days. Notification shall include the reason(s) and/or cause(s) for the investigation and the anticipated date of completion of the investigation.

The State has argued that its questioning of Ms. Zabrycki in August 1999 was not part of an investigation but rather was research to determine whether an investigation should be undertaken. The Board does not agree. The Board found that the evidence clearly demonstrates that Ms. Zabrycki was the subject of a complaint on August 24, 1999, made by Lieutenant Zelda Ziemer that Ms. Zabrycki was "supplying a couple of inmates with cigarettes . . ." In a detailed four page report, Lt. Ziemer discussed a number of allegations concerning Ms. Zabrycki, other officers, and a number of inmates. In that report, Lt. Ziemer indicates that she had instructed her sergeants to conduct further "research."

The Board's conclusion that Lt. Ziemer's report was a "complaint" is supported by the report made by Mr. Mark L. Wefers, Chief, Internal Affairs Bureau, to Warden Jane Coplan dated April 25, 2000, State's Exhibit 3, in which Mr. Wefers refers to Lt. Ziemer's document as "Complaint of Lt. Zelda Ziemer, dated August 24, 1999." Particularly in light of Sgt. Lacerte's warning to Ms. Zabrycki that "she is obligated to be truthful, non truth can/will make her subject to termination if non-truths surface," the Board considers it somewhat disingenuous for the Department to try drawing a distinction between doing "research" and conducting an investigation.

Ms. Zabrycki was not provided notice of this "research/investigation" into the complaint as required by the Collective Bargaining Agreement, although the allegations clearly indicated Ms. Zabrycki was considered as a potential source of the tobacco found in the Women's Prison. She was provided, however, with the opportunity to have an SEA representative with her when she was interviewed by Sgt. Lacey. If the Board accepts the date of the interview, August 27, 1999, as the formal notice of the investigation, the Department had until the middle of October to complete its investigation and prepare a final report, unless the Commissioner extended this time frame and notice of the extension was delivered to the affected employee.

No final report appears to have been prepared nor was there approval by the Commissioner to extend the investigation. It is clear, however, that the Department kept the matter open, as Lt. Ziemer prepared a "Supplemental Statement relative to allegations of misconduct by Stacy Zabrycki" on or about 3 December 1999. The allegations concerning Ms. Zabrycki supplying cigarettes to Ms. Abbott were again set forth. According to Lt. Ziemer, Ms. Zabrycki "is out of control and will continue to display the same behavior until stopped."

Even though the Department received complaints that Ms. Zabrycki was responsible for supplying contraband to inmates at the Women's Prison, no notice of an "investigation" into these complaints was given to Ms. Zabrycki until March 10, 2000. Ms. Zabrycki, indeed, was told by Sgt. Lacerte that she was not being investigated in August 1999, although the Department had previously received a complaint that Ms. Zabrycki was involved in supplying contraband to inmates. No "investigation" arose from the "research" conducted by the Department in August 1999 until six and one-half months later. During that time, many of the other Correctional Officers had resigned or left the Women's Prison and many of the inmates purportedly involved in the receipt of contraband had been transferred, paroled, or released from the Women's Prison.

According to Section 27.22 of the Collective Bargaining Agreement, if a complaint against an Employee is filed "from any source," the employee is "afforded, as a minimum" certain rights.

The Department must first notify the Employee of an investigation into that complaint. Then the Department must complete its investigation and prepare a final report within 45 days of beginning the investigation. Based upon the results of the investigation, the Department must either note that the complaint is "unfounded" or the Department may begin disciplinary actions against the Employee. By providing for notice to the Employee and a prompt resolution of the complaint, the Employee is assured that the Department will not be able to take disciplinary action against the Employee based upon information that is stale or upon statements made by witnesses who would not be readily available to the Employee. The purpose of Section 27.22 of the Collective Bargaining Agreement appears quite clear to the Board, and by failing to provide timely or accurate notification of an investigation, the Department deprived Ms. Zabrycki of the opportunity to respond in a timely or appropriate fashion to the allegations against her.

As of March 10, 2000, Ms. Zabrycki was aware of the Department's investigation into allegations that she had violated the Department's policy banning the use of tobacco products in the Women's Prison and/or delivering those products to inmates at the Prison. When Ms. Zabrycki received the note from Ms. Abbott, she knew that Ms. Abbott was about to be interrogated by investigators from the Prison, and reasonably assumed that the issue of contraband was the subject of the Department's investigation.

The Department alleges that the phone call from Ms. Zabrycki to Ms. Abbott in the early morning hours of March 13, 2000, was made for the purposes of interfering with the investigation. The Department claims that Ms. Zabrycki "attempted to violate RSA 642:1 by interfering with Chief Wefers, a public servant in his attempt to investigate the charges against [Ms. Zabrycki]." The State alleges that when Ms. Zabrycki telephoned Ms. Abbott, she discussed the investigation and informed Ms. Abbott that Chief Wefers was going to be meeting with Ms. Abbott. The State goes on to allege that this phone conversation violated RSA 642:3 "by warning former inmate Abbott of the pending interview about smuggling contraband into the Prison."

A plain reading of the note from Ms. Abbott to Ms. Zabrycki, State's Exhibit 2, makes it very clear that Ms. Abbott knew about the "visit from" the investigators before Ms. Zabrycki spoke to her. In an often grueling interrogation of Ms. Abbott in Vermont, and after advising Ms. Abbott that "[t]he only (sic) that has a chance of going to jail in these matters is the person that's under suspended sentence from the court," Chief Wefers was able to elicit from Ms. Abbott that Ms. Zabrycki had indeed called her on the morning of his interview with Ms. Abbott. (Appellant's Exhibit A, page 51, lines 20 - 23.) Mr. Wefers went on to tell Ms. Abbott that Ms. Zabrycki "committed a crime when she called you this morning." (Appellant's Exhibit A, page 57, lines 9 and 10.) Ms. Abbott and Ms. Zabrycki both testified that Ms. Abbott asked Ms. Zabrycki why the investigators were coming to Vermont to interview Ms. Abbott and that Ms. Zabrycki explained that it was about cigarettes in the Women's Prison. When pressed about the conversation, Ms. Abbott repeatedly stated to Mr. Wefers that Ms. Zabrycki told her that Ms. Zabrycki had "no doubt [Ms. Abbott will] do a wonderful job" during the interview. (Appellant's Exhibit A, page 64, lines 15 and 16; page 67, lines 2 and 3; page 70, lines 9 and 10. See also, State's Exhibit 3, page 2 of hand-written statement of Ms. Abbott given on March 13, 2000, at 12:20 p.m.)

It is clear from the testimony and the documents admitted into evidence that Ms. Zabrycki did not call Ms. Abbott to "warn" Ms. Abbott about the interview by investigators from the Department, since Ms. Abbott already knew she was going to be interviewed. Indeed the evidence shows that it was Ms. Abbott who contacted Ms. Zabrycki to find out what the investigation was about. It is also clear from the testimony and the documents submitted that Ms. Zabrycki and Ms. Abbott did discuss the purpose of the investigation being the smuggling of cigarettes into the Women's Prison. However, the evidence does not support the State's allegation that Ms. Zabrycki called to warn Ms. Abbott, or that Ms. Zabrycki attempted to interfere with the investigation.

Nowhere in the testimony or evidence is there any indication that Ms. Zabrycki used any "force, violence, [or] intimidation" to interfere with Mr. Wefers. The testimony of Ms. Abbott and Ms.

Zabrycki is consistent in their recollection that Ms. Zabrycki gave encouragement to Ms. Abbott to do a "wonderful job" in the investigation interview. The Board is not persuaded that Ms. Zabrycki's phone call to Ms. Abbott or the encouragement that she offered during that conversation constitutes an "unlawful act with a purpose to interfere with" the investigation. Accordingly, the Board found that the charge of interfering with an investigation could not be sustained, and would not support the Department's decision to terminate Ms. Zabrycki's employment.

The Department and the witnesses indicated that Correctional Officers should not be providing inmates with personal addresses. The reasons for this "policy" were explained by both the State and Ms. Zabrycki. However, the testimony revealed that inmates regularly had access to telephone books and other similar material from which they could obtain personal addresses and telephone numbers of Correctional Officers. According to Ms. Abbott, this is how she obtained Ms. Zabrycki's home address. It was after Ms. Abbott presented that information to Ms. Zabrycki that Ms. Zabrycki, in order to protect her personal information, provided Ms. Abbott with an alternative address should Ms. Abbott desire to contact Ms. Zabrycki after Ms. Abbott was no longer an inmate.

During the hearings, the Department expressed considerable concern over the fact that Ms. Zabrycki had provided this alternative address to Ms. Abbott. While the Board also is concerned about this action by Ms. Zabrycki, the Board is more concerned about the situation that apparently allowed inmates to have access to that personal information without any safeguards. The Board believes the safety and well-being of Correctional Officers deserve substantially better treatment and protection from the Department.

Charge #3 - Failing to Pay Full Attention to Her Post

Lastly, the State alleges that Ms. Zabrycki failed "to pay full attention to [her] post, which was guarding an inmate who was hospitalized." The facts behind this allegation are that Ms.

Zabrycki was assigned on March 14,2000, to attend to an inmate, Ms. Rosemary Monroe, who was in Catholic Medical Center having just had heart surgery. According to the testimony, Ms. Monroe had just been brought to the room after the surgery, was still under the influence of the anesthesia, and was shackled to her bed. While at this post, Ms. Zabrycki made a number of phone calls to Ms. Abbott's residence, none of which resulted in a completed call being made to Ms. Abbott. The State alleges this action on the part of Ms. Zabrycki constitutes a violation of NH Department of Corrections Policy and Procedures Directive ("PPD") V. A. 30., which reads as follows:

Attention to Duty: Employees are required to give their entire time and attention to their duties during their hours of employment. No distracting amusement or occupation shall be engaged in by employees while on duty.

Although the Board finds that the phone calls made by Ms. Zabrycki were a "distracting . . . occupation" while she was on duty, under the facts presented, the Board does not find that such distraction interfered in any inaterial way with the performance of Ms. Zabrycki's duties or jeopardized the inmate she was assigned to watch. The Board recognizes that the Policy and Procedures Directive clearly warn an employee that a violation of this policy may result in disciplinary action "UP TO AND INCLUDING IMMEDIATE DISMISSAL." However, the Board does not believe that dismissal is the appropriate sanction for this infraction under the facts in evidence in this case.

Findings and Rulings

The Board believes that if an Employee is the subject of a complaint, questioning that Employee about the complaint constitutes an investigation. As such, the provisions of Section 27.22 of the Collective Bargaining Agreement apply and should be followed.

The Board also believes that the Department has been somewhat duplicitous in its dealings with Ms. Zabrycki as it relates to her suspension on March 15, 2000. On March 10, 2000, the Department advised Ms. Zabrycki that the Department was beginning an investigation into whether she had supplied contraband to inmates at the Women's Prison. The record, however, clearly indicates that this investigation began in August 1999, was continued in December 1999, and was finally brought to a conclusion in March 2000. Back in August 1999, the Department's "research" did not find any credible evidence supporting the complaint that Ms. Zabrycki had provided contraband to inmates. Yet in December, Lt. Ziemer drafted a scathing complaint about Ms. Zabrycki, a complaint which apparently was never acted upon but was submitted into evidence as part of this hearing.

When Mr. Wefers interrogated Ms. Abbott in detail, there was again no evidence that Ms. Zabrycki had provided any contraband to an inmate. Nevertheless, the Department suspended Ms. Zabrycki on March 15, 2000, based on "Allegations made regarding your giving cigarettes to inmates in violation of the policies of the Department . . ." While Per 1001.06 (a) (1) permits the suspension with pay of an employee on the basis of allegations made that relate to the employee's duties and that require an internal investigation, at the time of this letter of suspension, the Department knew the allegations had no credible evidence to support them.

Accordingly, the Board orders that the letter of suspension dated March 15, 2000, be removed from Ms. Zabrycki's personnel file at the Department of Corrections and the New Hampshire Division of Personnel.

Per 1001.08 (a) provides that:

"Dismissal shall be considered the most severe form of discipline. An appointing authority shall be authorized to take the most severe form of discipline by immediately dismissing an employee without warning for offenses such as, but not necessarily limited to, the following:

- (1) Theft of valuable goods or services from the state or from any other employee of the agency; ...
- (3) Violation of a posted or published agency policy, the text of which clearly states that violation of same will result in immediate dismissal."

The Board finds that the State did not show that Ms. Zabrycki stole the book written by Ms. Scheindlin from Ms. Ducharme or that Ms. Zabrycki violated PPD V. A. 9. The Board believes that Ms. Zabrycki did not show good judgment in sending the book to Ms. Abbott, but does not find that she "willfully or through negligence cause[d] or permit[ted] the loss, damage, destruction, theft or wrongful disposition of property belonging to" Ms. Ducharme. (PPD V. A. 9.) In fact, it is the understanding of the Board that the book in question has been returned to Ms. Ducharme. Such bad judgment certainly warrants a letter of counseling, or even perhaps a letter of warning, but it does not warrant immediate dismissal.

The Board finds that the State did not show that Ms. Zabrycki interfered with the investigation being conducted by Mr. Wefers. It is clear from the evidence and the testimony that Ms. Abbott knew she was going to be interviewed by the investigators before Ms. Zabrycki talked to her. The State's assertion that Ms. Zabrycki committed a crime by calling Ms. Abbott is not supported by the evidence. Moreover, the manner in which the State conducted its investigation appears contrary to both the intent and the specific provisions of section 22.27 of the Collective Bargaining Agreement.

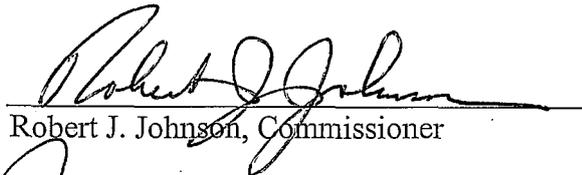
The Board finds that Ms. Zabrycki violated PPD V. A. 30. By failing to pay full attention to her post while she was assigned to guard an inmate who was hospitalized. Such violation, however, does not warrant immediate dismissal. At most, it may warrant a letter of counseling.

Based on these findings, the Board GRANTS THE APPEAL of Ms. Zabrycki and orders the State to reinstate Ms. Zabrycki to her former position as a Corrections Officer with back pay for the period from her dismissal until her reinstatement, and the Board further orders that the letter of suspension dated March 15, 2000, be removed from Ms. Zabrycki's personnel file at the Department of Corrections and at the New Hampshire Division of Personnel.

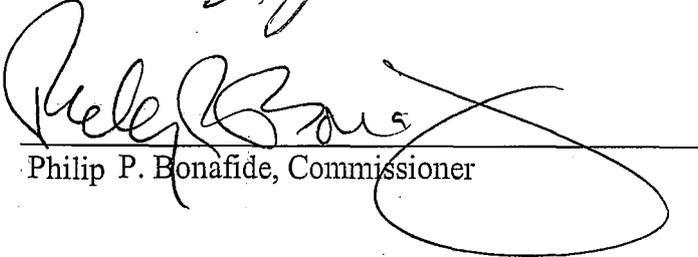
PERSONNEL APPEALS BOARD



Patrick H. Wood, Chairperson



Robert J. Johnson, Commissioner



Philip P. Bonafide, Commissioner

cc: Thomas F. Manning, Director of Personnel, 25 Capitol St., Concord, NH 03301
John Vinson, Staff Counsel, Department of Corrections, 105 Pleasant St., Concord, NH
03301
Michael Reynolds, SEA General Counsel, PO Box 3303, Concord, NH 03302-3303