

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:

MARTHA SULLIVAN

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DOCKET NO. 85-53

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On December 23, 1985, Martha Sullivan ("Grievant") filed a grievance with the Vermont Labor Relations Board appealing her dismissal from employment as a dispatcher for the Department of Public Safety ("Employer") in the State Police barracks in Middlebury. On December 27, 1985, and January 10, 1986, Grievant filed amendments to her grievance. Grievant alleges that her dismissal was in violation of Article 17, Sections A(2) and A(3) of the collective bargaining agreement between the State of Vermont and the Vermont State Employees' Association ("VSEA"), effective for the period July 1, 1984, to June 30, 1986 ("Contract"), in that it was without just cause.

Hearings were held before a Board panel on October 16 and 23, 1986. Present for the Board were Chairman Kimberly Cheney and Members Louis Toepfer and Charles McHugh. Michael Zimmerman, VSEA Staff Attorney, represented Grievant. James Crucitti, Special Assistant Attorney General, represented the Employer.

Grievant filed a Memorandum of Law on November 5, 1986. The Employer filed Proposed Findings of Fact and Conclusions on November 7, 1986. Grievant filed a reply brief on November 14, 1986. The Employer filed no reply brief. On November 24, the parties filed a stipulation for admission of additional documentary exhibits into evidence.

### FINDINGS OF FACT

1. On November 25, 1985, Major Robert Horton, Director of the Vermont State Police, informed Grievant by letter that she was immediately dismissed from her position as dispatcher with the Employer because of gross misconduct. The basis for the dismissal was 13 enumerated charges against Grievant. (Grievant's Exhibits 8, 9). A specific discussion on each charge is contained herein.

2. The relationships among four persons involved in the charge against Grievant - Kenneth Mitchell, Robert Blaise, Deirdre Noyes and Grievant - are important to understand the underlying incidents. Essentially, Grievant is charged with using her position as dispatcher to aid Blaise and Mitchell in the planning and committing of thefts and break-ins and to aid them in dearjacking. Grievant has served as a bookkeeper for Mitchell since approximately 1977. Mitchell and Grievant lived together in a trailer from August 1981 to Fall 1982. Mitchell moved out of the trailer in Fall 1982 and moved in with Noyes. Noyes has known Grievant for seven to eight years and met her through Mitchell. Mitchell's two children still live with Grievant. Mitchell and Blaise have known each other since childhood and, beginning in 1978 or 1979, committed crimes together. Blaise met Grievant through Mitchell approximately 7 to 9 years ago.

3. The Employer relied primarily on statements made by Blaise to support Grievant's dismissal. In the dismissal letter, Major Horton informed Grievant: "This decision has come down to a question of credibility between yourself and Robert Blaise" (Grievant's Exhibit 9, Page 1),

4. Blaise entered into a plea agreement with the State's

Attorney's office to provide information relating to criminal activity of certain people, including Grievant. As part of the agreement, Blaise pleaded guilty to two charges and the State dismissed several pending criminal charges against Blaise. If his statements concerning incidents were found not to be truthful, the agreement was null and void and he could be charged with even those crimes the police were not aware of prior to the statement (Grievant's Exhibit 5).

5. Prior to her dismissal, Grievant was awarded \$5,000 in damages as a result of a lawsuit she brought against Blaise. The basis for the lawsuit was a civil action for alleged breach of contract and false representation and was unrelated to Grievant's dismissal. Blaise is not on friendly terms with Grievant.

6. Noyes reached an agreement with police whereby she would not be charged with possession of stolen property if she gave a statement about incidents involving Grievant and Mitchell. Noyes is not on friendly terms with Grievant.

7. Grievant's duties as dispatcher included operation of radio equipment as part of a law enforcement communications network linking State Police, Fish and Wildlife officials, local police and other law enforcement and Public Safety officials. A dispatcher receives and transmits complaints and information from the public, uses teletype terminals to provide law enforcement information to field units and monitors electronic burglar alarms and other warning systems. Further duties include maintaining typed telephone and radio logs and "dispatching" officers to the scene of complaints as well as typing criminal investigation reports. The Middlebury barracks of the State Police provides dispatching services for local police agencies at night and provides all dispatching services for game wardens.

8. Grievant worked primarily the 4:00 p.m. to midnight shift or the midnight to 8:00 a.m. shift. There are many times when the dispatcher on the midnight to 8:00 a.m. shift is alone; particularly from 2:30 a.m. to 7:00 a.m. when the State Police are off-duty. Fish and Game wardens in the area of the State Police barracks usually "sign on" with dispatchers when they come on duty, but only sometimes "sign off" duty. Wardens do not always tell dispatchers where they are going to be located.

9. Charge #1 against Grievant is as follows:

Robert Blaise has reported that Martha Sullivan has worked with himself and Kenneth Mitchell in planning and committing thefts in the Addison County area. Thefts were planned by Kenneth Mitchell, Robert Blaise and Martha Sullivan so that the thefts would occur by Mitchell and Blaise while Sullivan was working as a dispatcher at the Middlebury barracks of the Vermont State Police. After breaking into a building a call would be placed to Sullivan by Mitchell. Sullivan would put Mitchell on hold for a minute or two to determine if the burglary was being reported. After this short period of time had elapsed, she would indicate whether it was safe to proceed with the theft.

(Grievant's Exhibit 8 Page 1)

10. Blaise testified that Grievant was aware most of the time when he and Mitchell were committing thefts, despite his contradictory testimony that most of the break-ins they engaged in were done on the "spur of the moment". Blaise testified he was present on several occasions when Mitchell, while in the act of breaking into a building and committing a theft, called Grievant at work to see if the burglary was being reported. Blaise testified he knew Grievant was aware of the thefts because, in some instances, he was there when Mitchell told Grievant of the thefts or Mitchell would tell him that Grievant had said there were no suspects in the theft. Grievant testified she never assisted Mitchell and Blaise in any thefts. We find the

testimony of Blaise was not sufficiently credible and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Grievant participated with Blaise and Mitchell in planning and committing thefts.

11. Charge #2 against Grievant is as follows:

Blaise reports that in one instance, Mitchell and Blaise broke into a building at Breadloaf College. After breaking into the building, Mitchell called Sullivan, who was working at that time as a dispatcher at the Middlebury barracks. The call was placed in order to determine if the building contained a burglar alarm and if the alarm was ringing into the State Police barracks. Sullivan answered the phone and indicated that the police had not yet received notification of the burglary.

(Grievant's Exhibit 8, Page 1)

12. Blaise testified that at some point between 1980 and 1982, he and Mitchell went to Breadloaf College on the "spur of the moment" to commit a theft. While there, Blaise testified that he picked up a telephone and overheard Mitchell asking Grievant if there was an alarm at the College or whether anything had been reported, to which Grievant responded "not yet" or something to that effect. Blaise testified he and Mitchell stole nothing from the College. Grievant testified she never received a call from Mitchell from Breadloaf College or anywhere else asking her if an alarm had gone off. We find the testimony of Blaise was not sufficiently credible and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Mitchell and Grievant had the phone conversation as charged.

13. Charge #3 against Grievant is as follows:

Blaise reports that on another occasion, Blaise and Mitchell had decided to break into the Field Sports Gun shop

in Middlebury, Vermont. Mitchell threw a rock through the window and then left the area and placed a call to Sullivan who was working as a dispatcher at the Middlebury barracks. Sullivan reported over the phone to Mitchell that the broken window had set off an alarm and so Blaise and Mitchell did not return to the shop. Richard Phillips, owner of the store, has indicated that a rock had been thrown through a window of the store and an alarm had been set off but that no entry had been made into the store.

(Grievant's Exhibit 8, Page 2)

14. Blaise testified that the break-in at the Field Sports Gun Shop occurred in 1982 or 1983 as stated in the charge, except that he or someone else, not Mitchell, threw a rock through the window. Blaise testified that, after the break-in, he and Mitchell went to Mitchell's and Grievant's trailer. From there, Blaise testified Mitchell called Grievant at work and asked her if the gun shop had an alarm system, and Grievant responded that it did. Blaise testified he did not remember if he actually heard the conversation between Grievant and Mitchell. Grievant testified she never talked to Mitchell concerning this incident. We find the testimony of Blaise was not sufficiently credible and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Mitchell and Grievant had the phone conversation as charged.

15. Charge #4 against Grievant is as follows:

Blaise reports that Sullivan told Blaise and Mitchell that a camp owned by Bernard Quesnel in Lincoln, Vermont, bordered a road that was closed during the winter season, but could be reached by four-wheel drive vehicle. During October of 1980, Blaise and Mitchell broke into the Quesnel camp and immediately after breaking into the building called Sullivan, who was working at the Middlebury barracks, in order to determine if the building was alarmed. Sullivan spoke with Mitchell at that time and indicated that the burglary had not yet been reported to the barracks.

(Grievant's Exhibit 8, Page 2)

16. Blaise testified that sometime between 1980 and 1982, on the "spur of the moment" he and Mitchell broke into the Quesnel camp and took various items. Blaise testified that he previously thought, but could not remember at the hearing, that Mitchell called Grievant from the camp to find out if the camp was alarmed. He testified that he previously thought, but could not say for sure at the hearing, that Grievant told Mitchell and him prior to their going to the camp that the camp was bordered by a road that was closed for the winter but could be reached by four-wheel drive vehicle. Grievant testified that she never received a call from Mitchell from the Quesnel camp. We find the testimony of Blaise was neither sufficiently credible nor sufficient to support the charge and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Grievant had the phone conversation with Mitchell, or the discussion with Blaise and Mitchell as charged.

17. Charge #5 against Grievant is as follows:

Blaise reports that Sullivan also told Blaise and Mitchell that the Natural Turnpike Road was closed during the winter but was still passable by four-wheel drive truck. She had looked in the window of camps on the road and reported the type of property that could be taken. Mitchell and Blaise did go to this area during November of 1981 and broke into a number of camps. Investigation indicates that a number of camps were broken into during November of 1981 at this area and property was taken similar to that described by Blaise.

(Grievant's Exhibit 8, Page 2)

18. Blaise testified that Grievant told Mitchell and him the Natural Turnpike Road was closed during the winter, but he does not remember Grievant telling them that she had looked into camp windows.

Blaise testified he and Mitchell did break into one camp on the Natural Turnpike Road and took a fishing pole and a few other things. Grievant testified there was no truth to this charge. We find the testimony of Blaise was neither sufficiently credible nor sufficient to sustain the charge and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Grievant had the discussions with Blaise and Mitchell concerning the Natural Turnpike Road as charged.

19. Charge #6 against Grievant is as follows:

Blaise reports that on numerous occasions Blaise and Mitchell would check with Sullivan while she was working as a dispatcher at the Middlebury barracks to determine where game wardens were working during the evening. Mitchell would call Sullivan who would indicate if certain areas were safe for deerjacking on that evening. At times calls would be made from a phone booth, Mitchell would describe where they were located and Sullivan would tell them if wardens were in the area. On a few occasions Sullivan did not at that time know where the game wardens were to be located that evening so she would inform Mitchell to call back in about an hour.

(Grievant's Exhibit 8, Page 3)

20. Blaise testified that between 1978 and 1983, Mitchell would call Grievant at work whenever he and Mitchell went out deerjacking and would ask the location of the game wardens. Mitchell would call Grievant either by phone or reach her by CB. Blaise testified there were times when he heard the actual conversation between Grievant and Mitchell and other times when Mitchell would just tell him not to go deerjacking in a certain location because a warden was there. Grievant testified that she never told Mitchell of the location of game wardens and never discussed deerjacking with him. We find the testimony of Blaise was not sufficiently credible and was not



supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Grievant would discuss the location of game wardens with Mitchell while Mitchell and Blaise were deerjacking.

21. The Employer presented Deirdre Noyes as a witness. She testified that on several occasions during the winter of 1977-78 when she was deerjacking with Mitchell, Mitchell would discuss with Grievant the location of game wardens. To the extent this testimony was elicited to make additional charges against Grievant to those testified to by Blaise, we find the testimony not relevant since such charges were not contained in the dismissal letter. To the extent the testimony was elicited to bolster Blaise's testimony, we find the testimony unconvincing because we conclude the testimony of Noyes was not sufficiently credible.

22. Charge #7 against Grievant is as follows:

Robert Blaise reports that Martha Sullivan arranged with Blaise and Kenneth Mitchell to go to the Raymond Wanke camp on Lake Dunsmore, Route 53, Salisbury to steal a large multiple-pane picture window located at the camp. Sullivan told Mitchell and Blaise where the window was located and that she had observed it when she was listing the property for the Town of Salisbury. (Sullivan was a lister for the Town of Salisbury during 1983). Sullivan indicated that she wanted the window for a house that she was building. In fact, Sullivan was in the process of building a new home adjacent to the trailer that she was living in at the time. On December 5, 1983, Mitchell and Blaise went to the camp while Sullivan was working as a dispatcher at the Middlebury barracks and Blaise and Mitchell attempted to steal the window. The window was too large and could not be placed on the pickup truck that Mitchell and Blaise had brought to the camp. Blaise reports that the two men then broke into the camp and stole property, while breaking into the camp, Blaise cut his hand. Investigation of the break-in indicates that a multiple-pane picture window was located at the camp and was still left at the camp and that there was blood at the scene. Radio logs verify that Sullivan was working as a dispatcher on the evening of December 5, 1983.

(Grievant's Exhibit 8, Page 3)

23. The evidence indicates the picture window was actually located at a camp owned by a Mr. Conway, not the Raymond Wanke camp as charged. Blaise testified that during the fall or early winter of 1980 to 1982, Grievant mentioned to Mitchell and him that she wanted the picture window located at the Conway camp. Blaise testified that he and Mitchell went to the camp that night to steal the window, but it was too large to take, so they instead stole an oak table, Tiffany lamp and stereo system. Grievant testified that she did not ask Mitchell and Blaise to steal the window for her. Instead, she testified to the following sequence of events: A week or so after doing a reappraisal of the Conway camp in her capacity of Town of Salisbury lister, she wrote to Conway, asking him if he was interested in selling her a large picture window she had noticed there so she could put it in her new home to be built the following year. She never received a response from Conway. Conway testified at an earlier criminal trial that Grievant had sent him a letter asking him if he wished to "dispose" of the window and he had not responded. If the record had established Grievant was not working at times it was alleged she was, the conclusion would be obvious that the charge would fail; however, the opposite fact that she was working does not have sufficient probative value to be supportive of the charge. We find the testimony of Blaise was not sufficiently credible and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Grievant arranged with Blaise and Mitchell to have them steal the picture window.

24. Charge #8 against Grievant is as follows:

Blaise reports that at the same time that Blaise and Mitchell broke into the Wanke camp, they broke into an adjacent camp owned by Thomas Conway, camp Number 91. A Tiffany-type lamp and round oak dining room table were taken from this camp. Blaise reports that these items were delivered to Sullivan by Mitchell at the trailer that she was living in at the time, and that she used these items to furnish the trailer.

(Grievant's Exhibit 8, Page 3)

25. Blaise testified that when he and Mitchell could not take the window Grievant wanted from the Conway camp, they instead stole a Tiffany lamp and an oak table and brought the lamp and oak table to the trailer of Grievant and Mitchell. Blaise testified Grievant knew the items were stolen because he and Mitchell told her they could not get the window so they stole these items instead. Blaise testified that Noyes ultimately got the Tiffany lamp, not Grievant. Grievant testified Blaise gave her the oak table in an attempt to appease her for faulty repairs he had done to her vehicle and that she did not know the table was stolen. We find the testimony of Blaise was not sufficiently credible, and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Grievant knew the oak table and Tiffany lamp were stolen items and used them to furnish her trailer.

26. Charge #9 against Grievant is as follows:

Blaise also indicates that Sullivan picked out property taken by Blaise and Mitchell from the Paula Scott camp located on Route 125 in Ripton. Sullivan picked out an antique mahogany writing desk from other property that was taken. At the time that she selected this property, she knew that it was stolen. Investigation of the break-in verifies the type of property taken from this camp and indicates that the break-in occurred between 9/8/82 and

9/10/82. Blaise reports that Sullivan often selected property that she knew was stolen and would point out property with serial numbers to get rid of.

(Grievant's Exhibit 8, Page 3)

27. The evidence indicates a writing desk was taken from the Schenkman camp, not the Scott camp as charged. Blaise testified that he and Mitchell stole the desk from the Schenkman camp, not the Scott camp, and after they stole the desk, Mitchell took it to his residence. Blaise testified he did not tell Grievant the desk was stolen and he does not know if Mitchell told Grievant the desk was stolen. Blaise testified he did not recall if Grievant picked out the desk from a truckload of stolen property stored behind Grievant's and Mitchell's trailer. Blaise testified that he and Mitchell left a truckload of stolen material behind Mitchell's and Grievant's trailer on several occasions, and that he, Mitchell and Grievant would take items from the truckload. Grievant testified the desk was brought to her residence by Mitchell in October of November, 1981, upon his return from a long-distance trucking trip to Florida and said he had purchased it from Grievant's brother-in-law in Florida. The testimony of Pamela Marsh, Grievant's attorney in another case, although suffering from the same hearsay deficiencies as testimony presented at the hearing by the Employer, supported Grievant's version of the facts. We find the testimony of Blaise was not sufficiently credible, was insufficient to sustain any misconduct against Grievant in this regard, and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that the antique mahogany writing desk was stolen property and that Grievant knew it was stolen when she was using it.

28. Charge #10 against Grievant is as follows:

Blaise reports that he along with Mitchell broke into the Schenkman property on Town Highway #27 in Rochester and took and delivered a rocking chair to Sullivan. Investigation indicates that a similar described rocking chair was taken from the Schenkman property and that the break-in occurred between 9/10/82 and 9/22/82. Blaise indicates that at the time Sullivan took this property she knew that it was stolen.

(Grievant's Exhibit 8, Pages 3-4)

29. Blaise testified that he and Mitchell stole this rocking chair and that Grievant was not involved in the theft in any way. There being no other evidence relating to this subject, we conclude the charge cannot be sustained.

30. Charge #11 against Grievant is as follows:

Blaise reports that he and Mitchell stole two 33 1/2 gallon drums of maple syrup from Camp Kewaydin on Route 53, Salisbury. Blaise reports that Sullivan knew that the syrup was stolen and that she helped transfer the syrup from the drums into one-gallon containers to be sold. Investigation of this larceny indicates that it occurred between 3/31/82 and 4/1/82 and verifies the property taken and flooding conditions at the scene reported by Blaise.

(Grievant's Exhibit 8, Page 4)

31. Blaise testified that he and Mitchell took two barrels of maple syrup and a maple syrup testing kit during the spring of the year, between 1979 and 1982. Blaise testified that he thinks Grievant helped them transfer the syrup into one-gallon containers but he cannot remember for sure. Blaise testified he knows Grievant knew the syrup was stolen because Mitchell asked her if there were any suspects in the theft and she said there were none, although he is not sure he actually heard this conversation. Grievant testified she did not help transfer the syrup from the drums into one-gallon containers. We find the testimony of Blaise was not sufficiently credible and was not supported by sufficient corroborating evidence. Thus, we conclude the

Employer has failed to establish by a preponderance of the evidence that Grievant knew the maple syrup was stolen and assisted Blaise and Mitchell in transferring the syrup.

32. Charge #12 against Grievant is as follows:

Blaise reports that Mitchell told him that on one evening he had thrown a rock through the window of the Salty Seas fish market in Middlebury and then called Sullivan, who was working that evening at the Middlebury barracks, to determine if the building contained an alarm or if a break had been reported. Sullivan told Mitchell that no break had been reported, so Cliff Dragon who was with Mitchell, went in to the market and stole seafood. Investigation indicates that on 8/10/82, during the late evening hours a window was broken at the Salty Seas fish market in Middlebury and seafood was stolen. A vehicle similar in description to that owned by Mitchell was seen in the vicinity at that time; the radio log indicates that Sullivan was working at the time that this burglary occurred.

(Grievant's Exhibit 8, Page 4)

33. Blaise testified he was not involved in this incident and he only knows what he heard from Grievant and Mitchell. Blaise testified Mitchell told him Grievant said something about an alarm system being placed there. Grievant testified that she did not recall getting a call from Mitchell asking her if an alarm had gone off there. We find the testimony of Blaise was not sufficiently credible, was insufficient to sustain any misconduct against Grievant in this regard and was not supported by sufficient corroborating evidence. Thus, we conclude the Employer has failed to establish by a preponderance of the evidence that Grievant assisted Mitchell in any way concerning a break-in at the Salty Seas Fish Market.

34. Charge #13 against Grievant is as follows:

Blaise reports that Martha Sullivan thought that she was suspected of relaying information to Mitchell when telephone calls into the Middlebury barracks were being recorded. Sullivan told Mitchell and Blaise not to call the barracks for awhile. A plan was worked out by Sullivan so

that Mitchell would call the barracks a number of times and hang up. Upon a pre-determined number of calls, Sullivan would converse with Mitchell by CB radio. In fact, recordings of incoming calls to the Middlebury barracks were made during 1979 in response to bomb threats.

(Grievant's Exhibit 8, Page 4)

35. Blaise testified that at one point, probably around 1982, Grievant asked Mitchell not to call her anymore at work while deerjacking or during thefts because she thought the State Police were tapping the phones. Blaise testified that as a result, Mitchell stopped calling Grievant at work for a period, and instead would stop in and see her or would call on the CB. Grievant testified that she recalled phone calls being recorded in 1979 or 1980 because of bomb threats but that she never told Mitchell not to call because of the threats. She further testified that she never told Mitchell to call and let the phone ring a certain number of times and then she would call him back. We find the testimony of Blaise was not sufficiently credible and was not supported by sufficient corroborating evidence. Thus, we conclude the State has failed to establish by a preponderance of the evidence that Grievant made any arrangements with Mitchell due to phone calls being recorded. We need not address whether the charge is substantively sufficient.

#### MAJORITY OPINION

Grievant denies each of the specific charges made against her and thus contends there was no just cause for her dismissal.

A discharge may be upheld for just cause only if it meets two criteria of reasonableness: one, that the conduct constitutes a substantial shortcoming detrimental to the State's interests, and the

other, that the employee had fair notice, express or fairly implied, that such conduct would be grounds for dismissal. In re Grievance of Brooks, 135 Vt. 563, 568(1977).

Clearly, if the charges against Grievant were proven by a preponderance of the evidence, just cause would exist. She was charged with using her position as dispatcher to aid in the planning and committing of thefts and break-ins, including using stolen property knowingly, and to aid in the offense of deer jacking. We can think of few offenses more detrimental to the interests of a law enforcement agency such as the Employer, the Department of Public Safety, than to use that agency to aid in breaking the law. Clearly, she had implied notice such conduct would be grounds for dismissal.


However, we have concluded the Employer has failed to establish any of the charges by a preponderance of the evidence. The Employer relied primarily on the statements of Robert Blaise to support Grievant's dismissal. We found Blaise's testimony not to be sufficiently credible. The reasons leading us to this conclusion are our judgment of Blaise's credibility as a witness, Blaise's vague and inconsistent recollection of events which had occurred years earlier, his obvious interest in pleasing law enforcement officials due to his plea agreement, and the substantial motivation Blaise had to harm Grievant since she had prevailed in a lawsuit against him.

Testimony was given by Dierdra Noyes to the effect Grievant aided in deerjacking on occasions other than charged in the dismissal letter. However, we have concluded this was not sufficient to make Blaise's similar testimony sufficiently credible, since we have found



Noyes' testimony to also lack sufficient credibility. We so conclude given our judgment of Noyes' credibility as a witness, the apparent competing relationship with respect to Mitchell between Noyes and Grievant and Noyes' interest in pleasing law enforcement officials due to her agreement with them to make statements concerning Mitchell and Grievant in return for not pursuing charges against her. The testimony of other witnesses and other evidence presented by the Employer was insufficient for us to conclude that any of the charges were proven.

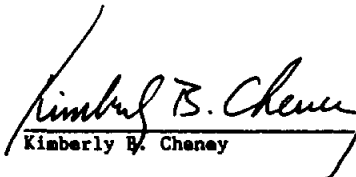
We can understand why the State Police would be concerned with the continued employment of Sullivan as a dispatcher and share some of those concerns. We are obliged, however, to rule within the confines of the laws governing our jurisdiction. Having decided that we do not believe the testimony of their witnesses, we must find that the charges against Grievant have not been proven sufficiently for us to support her dismissal.

  
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Charles M. McHugh

  
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Louis A. Toepfer

DISSENTING OPINION

Although I could not so conclude if the standard of proof was guilt beyond a reasonable doubt, I conclude by a preponderance of the evidence Blaise did tell the truth on the charges concerning Grievant's actions in the attempted theft of the picture window and the theft of maple syrup. Her offense of aiding in the planning and committing of thefts was directly contrary to the law enforcement function of her Employer, and obviously constitutes a substantial shortcoming detrimental to the Employer's interests justifying her dismissal. Clearly, Grievant had implied notice such conduct would be grounds for discharge.

  
Kimberly B. Chaney

ORDER

Now therefore, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED the Grievance of Martha Sullivan is SUSTAINED; and

1. Grievant shall be reinstated to her position as Dispatcher with the Department of Public Safety at the Middlebury State Police Barracks; and

2. Grievant shall be awarded back pay and benefits from the effective date of her discharge until her reinstatement for all hours of her regularly-assigned shift, minus any income (including unemployment compensation received and not paid back) received by Grievant in the interim; and

3. The interest due Grievant on back pay shall be at the rate of 12 percent per annum and shall run from the date each paycheck was due during the period commencing with Grievant's dismissal, and ending on the date of her reinstatement; such interest for each paycheck date shall be computed from the amount of each paycheck minus unemployment compensation received by Grievant during the payroll period; and

4. The parties shall submit to the Board by January 6, 1987, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific facts agreed to by the parties, specific areas of factual disagreement and a statement of issues which need to be decided by the Board.

Dated this 18th day of December, 1986, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Louis A. Toepfer

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Charles H. McHugh