

# Judge orders Willowbrook employee reinstated

Finding that an arbitrator in a disciplinary proceeding exceeded his authority, a judge had ordered the reinstatement of an employee at the Staten Island Developmental Center, Willowbrook.

The judgment in favor of Doris Allen of Brooklyn also directs that she receive back pay and other benefits retroactive to last June 29 when her employment was terminated.

Supreme Court Justice Theodore Theodore G. Barlow in his decision set aside Arbitrator Arthur Talmadge's opinion and award of last June 8. The opinion sustained the center's claim that she was guilty of misconduct in striking a resident and of failing to properly report the incident.

In addition, the arbitrator found that the proposed penalty of termination of service was "appropriate." This was the key issue in the case before Barlow.

Barlow said the arbitrator violated his powers under a labor agreement, between the state Mental Hygiene Department and the Civil Service Employers Association in regard to disciplinary procedures.

Following this procedure, the state served notice in July 1977 on the woman, a mental hygiene therapy aide, of three acts of misconduct. The state also advised her, again pursuant to the labor agreement, that it intended to suspend her for three months.

When the disciplinary grievance was not settled, again part of the disciplinary procedure, she appealed the notice of discipline to arbitration, as was her right.

Prior to an arbitration hearing in October 1977, however, the state withdrew one of the three charges and moved to change the penalty from a three-month

suspension to termination of employment. Talmadge granted the motion.

The woman claimed that the state switched from suspension to termination to punish her for exercising her contractual rights.

Barlow said that this contention was "irrelevant" and that he regarded the sole unresolved question before him the power of the arbitrator to grant such an amendment to the notice of discipline and to rule on the appropriateness of a penalty which had been escalated on the day of the hearing.

The judge said he found in reviewing the collective bargaining agreement that the arbitrator had no right under it to change the penalty. The judge said the arbitrator only had the right to consider the "appropriateness of suspension" as a penalty, and did not have authority to increase the penalty to termination.

The petitioner, who joined the Willowbrook staff in 1972, was accused of striking a resident with a building key on June 17, 1977, causing a lip injury.