STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BROWN COUNTY SHELTER CARE EMPLOYEES, LOCAL 1901-F, AFSCME, AFL-CIO, Complainant,

vs.

BROWN COUNTY (SHELTER CARE), Respondent.

Case 592
No. 53535
MP-3110

Decision No. 29094-B

Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Attorney Bruce F. Ehlke,** P.O. Box 2155, Madison, Wisconsin 53701, appearing on behalf of Brown County Shelter Care Employees, Local 1901-F, AFSCME, AFL-CIO.

Attorney John C. Jacques, Assistant Corporation Counsel, Brown County, 305 East Walnut Street, P.O. Box 23600, Green Bay, Wisconsin 54305-3600, appearing on behalf of Brown County.

ORDER AFFIRMING IN PART AND REVERSING IN PART EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND REVERSING EXAMINER'S ORDER

On December 29, 1998, Examiner Daniel Nielsen issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein he concluded that Respondent Brown County discharged an employe without just cause and thereby violated a collective bargaining agreement in contravention to Sec. 111.70(3)(a)5, Stats. He ordered Respondent to take certain action including reinstatement of the employe without back pay.

Both Complainant and Respondent timely filed petitions with the Commission seeking review of portions of the Examiner's decision pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats. The parties filed written argument, the last of which was received October 11, 1999.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

A. Examiner Findings of Fact 1-24 are affirmed.

B. Examiner Finding of Fact 25 is affirmed in part and reversed in part through the deletion of the stricken through language and the addition of the underlined language:

> 25. In preparation for his testimony at the preliminary hearing, JB was transported from his new home in another state to Brown County and was housed in Secure Detention. While in Secure Detention, he encountered a female juvenile, JM. JM has also been a resident at both the Mental Health Center and Shelter Care from time to time, and knew JB from both places. JM was in Secure Detention for having run away from Shelter Care. JM approached JB in the common room at Secure Detention, just outside the jailers' office. She asked JB what he was doing there, and JB replied that he was there to testify against M for sexually assaulting him. ~~JM asked if he had sexually assaulted him, and JB said that he had not, that he had made the charges to get even with M. JM rebuked him for this.~~ During their conversation, JB did not tell JM that he had made up the charges to get even with M. The following morning, JB was returned to his new home state. Later that day, JM was placed in lock down for being too loud.

C. Examiner Findings of Fact 26-31 are affirmed.

D. Examiner Finding of Fact 32 is reversed and the following Finding is made:

> 32. M had sexual contact with J.B.

E. Examiner Findings of Fact 33 and 34 are set aside.

F. Examiner Conclusions of Law 1-3 are affirmed.

G. Examiner Conclusion of Law 4 is reversed to read:

> 4. Respondent Brown County had just cause to discharge M and thus did not violate the status quo created by the expired collective bargaining agreement. Therefore, Respondent Brown County did not commit prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 1, Stats., by discharging M.

H. Examiner Order is reversed and the following Order is made:

> The complaint is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of November, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

I concur.

James R. Meier /s/
James R. Meier, Chairperson

I concur in part and dissent in part.

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Brown County

MEMORANDUM ACCOMPANYING ORDER AFFIRMING IN PART AND REVERSING IN PART EXAMINER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW AND REVERSING EXAMINER'S ORDER

RESPONDENT BROWN COUNTY'S PETITION FOR REVIEW

Respondent

Respondent asserts that the Examiner made erroneous Findings of Fact and Conclusions of Law which warrant reversal of his decision and dismissal of the complaint.

As to the Examiner's Findings, Respondent contends the record establishes that M did engage in misconduct of sufficient magnitude to create just cause for his discharge. Respondent alleges that the Examiner's contrary Findings reflect his failure to consider relevant evidence having reasonable probative value and to make the appropriate findings based on relevant material evidence.

Respondent argues that the Examiner failed to make findings that M engaged in criminal conduct against two other children. Respondent asserts that it did not become aware of this misconduct until after M was discharged and that this misconduct independently establishes just cause for discharge.

As to the Examiner's Order, Respondent alleges that he lacked the statutory authority to review the legitimacy of the determination of child abuse made pursuant to Sec. 49.981, Stats., and then to direct that the determination of substantiated child abuse be amended. Contrary to the Examiner's characterization of its position, Respondent contends that such determinations are subject to review in circuit court under Sec. 806.04, Stats. Respondent argues that where, as here, the investigation and determination of substantiated child abuse was made in good faith, even a court of competent jurisdiction could not appropriately set aside the child abuse determination.

Respondent also alleges that reinstatement of M would violate Sec. 48.685(2)(ag)4, Stats., and subject the Respondent to daily forfeitures and other sanctions. Unless M were to successfully use the "rehabilitation" process established by Sec. 48.685(5), Stats., Respondent argues that he cannot legally be employed as a child shelter care worker in Wisconsin. If the Commission were to wrongly conclude that Respondent did not have just cause to discharge M, Respondent asserts that the Commission's remedial authority is limited to ordering removal of the discipline from the personnel file and forwarding of the Commission's decision to the Wisconsin Department of Health and Family Services.

Given the foregoing, Respondent asks that the Examiner be reversed and the complaint dismissed.

Complainant

Complainant asserts that the Examiner correctly concluded Respondent lacked just cause to discharge M and urges affirmance of his determination.

Complainant argues that there is no evidence to support the allegations against M other than the hearsay reports of those allegations. Given the absence of reliable evidence to support the allegations, Complainant contends that a fact finder cannot conclude that the allegations are factually correct. Complainant further argues that even if the hearsay evidence is considered, the record as a whole does not support the allegations by even a preponderance of the evidence.

Complainant contends that Respondent's after acquired evidence of alleged wrong doing by M as to A.S. and S.W. does not establish any misconduct by M. Therefore, whether viewed as independent allegations of misconduct or as evidence intended to corroborate the alleged misconduct involving J.B., Complainant argues that the after acquired evidence does not establish just cause for M's discharge.

Complainant urges rejection of Respondent's contention that a substantiated finding of child abuse either establishes that wrong doing did occur or that just cause exists for discharge. Complainant asserts that a substantiated finding does not determine guilt or innocence – only that a child is or is not in need of protective services. Complainant alleges that the substantiated findings and the accompanying investigative memorandum have no dispositive legal significance and do not bind the Commission in a complaint proceeding.

Given the foregoing, Complainant urges affirmance of the Examiner's conclusion that Respondent lacked just cause to terminate M.

COMPLAINANT AFSCME'S PETITION FOR REVIEW

Complainant

Complainant argues that the Examiner erred by accepting uncorroborated hearsay evidence as to M's alleged misconduct and by failing to award M full back pay and benefits to remedy Respondent's violation of the law.

As to the hearsay evidence, Complainant asserts that the Examiner's rationale for acceptance of such evidence into the record is unpersuasive and incorrect. Complainant argues that J.B. had ample opportunity to provide direct testimony as to the issue of M's alleged misconduct toward him and thus that the hearsay evidence regarding J.B. should not have been received.

As to remedy, Complainant contends the Examiner erred by failing to award back pay because even under the Respondent's view of the law, a substantiated finding does not disqualify M from all County employment – only from employment as a shelter care worker. Thus, Respondent could have and should have reassigned M to other County employment pending a final determination of the allegations against him.

Given these circumstances, once M is found not to have engaged in misconduct, M is entitled to a traditional make whole remedy.

Respondent

Respondent argues that the Examiner properly received the hearsay evidence as to M's misconduct vis-à-vis J.B. Respondent contends that the evidence was admissible under recognized exceptions to the hearsay rule.

As to remedy, Respondent argues the Examiner properly concluded that Respondent could not employ M in the face of a substantiated finding of child abuse.

DISCUSSION

Legal Context

Because there was no contract in effect at the time of M's discharge, this case comes to us not as a violation of contract case under Sec. 111.70(3)(a)5, Stats., but as a refusal to bargain case filed under Sec. 111.70(3)(a)4, Stats. The allegation is that Respondent violated its duty to bargain by failing to maintain the status quo as to mandatory subjects of bargaining during a contract hiatus when it discharged an employe without just cause. Thus, although the status quo standard for discipline (i.e. just cause) in this case is established by the expired contract between Complainant and Respondent, it is Sec. 111.70(3)(a)4, Stats., which is the applicable prohibited practice provision – not Sec. 111.70(3)(a)5, Stats., as erroneously stated in Examiner Conclusion of Law 4.

Applicable Rules of Evidence

Section 111.07(3), Stats., (which is applicable to this case by virtue of Sec. 111.70(4)(a), Stats.) states in pertinent part that complaint proceedings are governed by the "rules of evidence prevailing in courts of equity . . . ." The Examiner correctly assumed that this statutory language obligated him to apply Chapter 908 of the Wisconsin Statutes to determine the admissibility of hearsay evidence as to J.B. 1/

1/ The statutory language which preceded the current language provided that the "rules of evidence prevailing in courts of law or equity shall not be controlling . . . ." Even under this standard, the Wisconsin Supreme Court was troubled by hearsay evidence. FOLDING FURNITURE WORKS V. WISCONSIN LABOR RELATIONS BOARD, 232 WIS. 170 (1939). Under the present statutory language, the Court has presumed that hearsay rules of evidence are applicable. See CENTURY BUILDING CO. V. WISCONSIN E. R. BOARD, 235 WIS. 376, 383 (1940), and there seems little doubt that the evidentiary standards applicable to courts of equity are the same as for courts of law. TALLMAN V. TRUESDELL, 3 WIS. 393, 404 (1854).

I have reviewed the Examiner's application of the hearsay rules of evidence and affirm his view that the hearsay testimony regarding J.B. is admissible.

Applicable Evidentiary Standard of Proof

Section 111.07(3), Stats., (which is applicable to this case by virtue of Sec. 111.70(4)(a), Stats.), provides in pertinent part:

> . . . the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence.

The Examiner concluded that where, as here, the alleged misconduct involves moral turpitude and criminal conduct, a higher evidentiary standard of "clear and convincing evidence" was appropriate. However, in SCHOOL DISTRICT OF SHELL LAKE, DEC. NO. 20024-B (WERC, 6/84), relying on the Wisconsin Supreme Court's decision in LAYTON SCHOOL OF ART AND DESIGN V. WERC, 82 WIS.2D 324 (1978), the Commission held that the "clear and satisfactory" standard was applicable to all complaint proceedings – including those involving potential criminal conduct. Thus, the Examiner erred by departing from the "clear and satisfactory preponderance" standard created by Sec. 111.07(3), Stats.

Applicable Burden of Proof

As a general matter, the complaining party has the burden of proof. SCHOOL DISTRICT OF SHELL LAKE, SUPRA; MADISON TEACHERS, INC. V. WERC, 218 WIS.2D 75, 86 (1998); LACROSSE COUNTY INST. EMPLOYEES V. WERC, 62 WIS.2D 295, 302 (1971).

However, in complaint cases where it is alleged that the employer violated a contract and thus Sec. 111.70(3)(a)5, Stats., by disciplining an employe without just cause, the Commission has held that the employer has the burden of establishing by a clear and satisfactory preponderance of the evidence that there was just cause for the discipline, provided the complaining party first establishes a prima facie violation of the contract. SCHOOL DISTRICT OF SHELL LAKE, SUPRA.

The Commission has not determined whether this Sec. 111.70(3)(a)5 discipline case exception to the general allocation of the burden of proof should carry over to Sec. 111.70(3)(a)4, Stats., cases such as the one presently before us in which it is alleged that the status quo has been violated because an employe has been disciplined without just cause. RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 29203-B (WERC, 6/98).

However, as was true in the RACINE case, I need not resolve this burden of proof question here either. This is so because even if I apply the "clear and satisfactory preponderance" burden to Respondent, I am satisfied that there was just cause for M's discharge.

The Misconduct

Did M Sexually Abuse J.B?

As reflected by his thoughtful decision, the Examiner carefully considered the evidence and concluded that M did not sexually abuse J.B. After my own careful review of the evidence and Commission consultation with the Examiner as to the demeanor of M, J.M., A.S. and Schroeder, I conclude that M did sexually abuse J.B.

I reach a different result than the Examiner as to M's conduct vis-à-vis J.B. for several reasons.

First and most importantly, I find that M's prior conduct with other boys in the Shelter substantially increases the probability that the alleged sexual abuse occurred. As the Examiner found:

1. While A.S. was unclothed and about to enter a shower, M had A.S. grab his ankles.

2. M allowed other boys to spank A.S. on A.S.'s 16th birthday and then had A.S. remove his shirt so he could draw a smiley face on A.S.'s stomach and then told A.S. to "make it whistle."

3. M had a flirtatious exchange with a male Shelter resident in which M commented on the boy's necklace. When the boy responded by indicating that he was not "that way," M replied "I keep hoping" and then asked about the boy's sexual preference and performance.

4. M told other staff that he knew why a particular boy was popular with girls because he had seen the boy in the shower room and observed that he was "hung like a horse."

The Examiner found incident 3 above "a matter of great concern" and incident 1 above "troubling" and "a clear violation of rules concerning privacy during intake." Despite his concerns, the Examiner ultimately concluded that he could not "agree with the County that (M's) conduct shows the type of utter disregard for appropriate behavior that would permit an inference that he has no boundaries when it comes to the children in his care" and that incident 1 "does not suffice to show a pattern of conduct towards residents that would paint (M) as a predator."

I think the Examiner set the bar too high and then too low in his analysis of the impact of M's prior conduct. The question is not whether M had "no boundaries" but whether the incidents increase the probability that M touched J.B.'s penis on several occasions. The question is not whether a single incident suffices to paint M a predator, but whether the incidents as a whole increase the probability that M touched J.B.'s penis on several occasions. Unlike the Examiner, I conclude that the incidents as a whole constitute a substantial piece of evidence that the alleged touchings occurred.

Second, I find M's lack of recollection of incidents 1 and 3 (which lack was discredited by the Examiner) damage his overall credibility to a greater extent than was apparently true for the Examiner.

Third, I find J.M.'s testimony regarding J.B.'s alleged recantation to be less credible and persuasive than the Examiner's analysis reflects. I conclude that J.B. did not recant and thus Examiner Finding of Fact 25 has been reversed to that extent.

Fourth, given all of the foregoing, I find the hearsay evidence presented as to M's conduct vis-à-vis J.B. to be credible and persuasive.

Therefore, I find that M did touch J.B.'s penis on several occasions. In light of that finding, I have no difficulty also concluding that Respondent therefore had just cause to discharge M. Because Respondent had just cause to discharge M, Respondent did not violate the status quo as to discipline during the contract hiatus and thus did not violate Secs. 111.70(3)(a)4 or 1, Stats., by such conduct.

Given my conclusion in this regard, I need not address Respondent's contention that after acquired evidence of M's misconduct toward other residents provides a valid independent basis for discharge.

In closing, I think it important to comment on that portion of the Examiner's Order which directed the Respondent County to amend the finding of substantiated abuse. I believe such an order exceeds the scope of our remedial authority and further the presence of a substantiated finding of abuse disqualifies an employe from a Shelter Care position.

Dated at Madison, Wisconsin this 23rd day of November, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

Brown County (Shelter Care)

CONCURRING OPINION OF CHAIRPERSON JAMES R. MEIER

I concur with all of Commissioner Hahn's decision including that portion which indicates his belief that the Commission's remedial authority does not extend to requiring the Respondent County to amend the finding of substantiated abuse. However, I think it important to indicate that if I had concluded that M had not sexually molested J.B., I would find that the presence of a substantiated finding of abuse would only disqualify M from holding a Shelter Care position. In such a circumstance, consistent with the Commission's broad remedial authority, see WERC V. EVANSVILLE, 69 WIS.2D 140 (1975), I would order M reinstated to any other County employment for which he has qualified. See BARLAND V. EAU CLAIRE COUNTY, 216 WIS.2D 560, 587, FN 19 (1998); WINNEBAGO COUNTY VS. COURTHOUSE EMPLOYEES ASS'N, 196 WIS.2D 733 (CT. APP. 1995).

Dated at Madison, Wisconsin this 23rd day of November, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/
James R. Meier, Chairperson

Brown County (Shelter Care)

**CONCURRING AND DISSENTING OPINION
OF COMMISSIONER A. HENRY HEMPE**

The issue of this case is *not* whether M committed the acts of which the majority finds him guilty. The issue of this case is whether Brown County had just cause to terminate the employment of M at its Youth Shelter.

I find that it did. Thus, I concur both with the majority's reversal of Conclusion of Law 4 as set forth in the Order, and its dismissal of the case. 1/ Unlike the majority, however, I reach this conclusion without de novo consideration of whether or not M is guilty of the offense alleged against him. 2/

1/ The substituted Order finds the County had just cause to discharge M and did not commit a prohibited practice by doing so. The substituted Order further dismisses the complaint (Paragraph F).

2/ Indeed, unless we are prepared to follow the dicta suggested by Chairperson Meier in his concurrence, de novo consideration of guilt or innocence is not only unnecessary, but an exercise in futility.

Thus, although the ultimate result I reach is identical to that of the majority, we travel different routes to reach it. The majority weighs the merits of the accusation against M, finds them persuasive, and thus concludes the County had just cause to dismiss him. In contrast, I believe that once a substantiated determination of M's guilt was made by an investigator pursuant to the provisions of Sec. 48.981(3)(c)4, Stats., the Commission's view of M's guilt or innocence is immaterial to the outcome of the "just cause" issue presented by this case. In this light, I perceive the Commission's role in this matter as limited to determining whether "just cause" is created by the good faith operation of the applicable statutory procedures and the consequence flowing therefrom. I find it is.

This case reaches us as an alleged violation of the status quo created by a labor contract hiatus between the parties. Normally, the determination of employe guilt or innocence is a threshold issue in employe discharge cases where bargaining unit members are contractually protected by a "just cause" provision. 3/ In those cases a determination of whether the employe committed the misconduct alleged is a prerequisite to the arbitrator's decision as to whether the employer had "just cause" to discharge the employe.

3/ As noted by the majority, however, the burden of proof in prohibited practice cases involving employe discipline may vary from that customarily used by arbitrators in deciding employe

discipline

grievances. In its de novo consideration of M's guilt or innocence, the majority avoids determining whether the County must prove the underlying allegations against M by a clear and satisfactory preponderance of the evidence or the higher standard of a clear and convincing preponderance by finding credible evidence of the case meets either standard. Yet each standard is higher than the mere "preponderance of the evidence produced by the investigation" statutorily required for a substantiated abuse determination.

This confusion or conflict of standards is eliminated, of course, if the Commission refrains from conducting an independent inquiry of guilt or innocence, and merely determines whether the substantiated abuse determination constitutes just cause. Under this circumstance the standard of proof (clear and satisfactory) mandated for prohibited practice cases by Sec. 111.07(3), Stats., can be safely utilized.

The instant matter, as well, requires a threshold determination of whether or not the employe committed the acts alleged against him. Under the law, however, that determination must be made by an independent investigator pursuant to the provisions of Sec. 48.981.(3)(c)4, Stats., not a grievance arbitrator or the Commission.

In demonstrating its overriding concern that children be protected against sexual predation or abuse, the Legislature has established separate rules that apply to employes of youth shelter care facilities such as the one operated by Brown County. For instance, Sec. 48.685(2)(ag)4, Stats., specifically prohibits such a facility from hiring, inter alia, any person against whom a child abuse or neglect determination has been made under Sec. 48.981(3)(c)4, Stats. Further evidence of the Legislature's specific concerns in this area may be inferred from its specific suspension of the provisions of Sec. 111.335, Stats., (that prohibits employment discrimination due to arrest record) where a substantiated abuse determination has been made under Sec. 48.981(3)(c)4., Stats.

Given this understandable Legislative concern, it is not surprising that the Legislature has also established a separate, complete mechanism to deal with those instances where a youth shelter employe such as M is accused of child abuse. Once J.B. made his allegations or report of sexual fondling by M, the County was required by the provisions of Sec. 48.981(3)(c), Stats., to relay the report to a local law enforcement agency. In addition, subsection (c) further required the County to launch a "diligent investigation" into the allegations within 24 hours of receiving them.

However, because "an agent or employee (M) of an agency required to make the investigation (was) the subject of the report," pursuant to the provisions of Sec. 48.981(3)(cm)2., Stats., the Wisconsin Department of Health and Family Services (DHFS) designated the Manitowoc County Department of Social Services to make the required independent investigation.

A social worker from the Manitowoc Department was so designated and conducted the

investigation. Her investigative work appears to have been thorough, covered all of the bases specified by statute, 3/ and included interviews with M, the alleged victim, co-workers of M, and police investigators. At hearing, attorneys for both parties stipulated that the investigation had been conducted in good faith. Based on her investigation, the Manitowoc social worker filed a substantiated determination in which she concluded that M had committed the acts of which J.B had accused him. 4/

3/ The Legislature gives specific directions as to certain interviews and observations it wants included in the investigation. Sec. 48.981(3)(c), Stats.

4/ Pursuant to the provisions of Sec. 48.981(3)(c)4, Stats., the determination was based on ". . . a preponderance of the evidence produced by the investigation."

To operate its shelter care facility, Brown County must be licensed to do so by DHFS. Sec. 48.685(2), Stats., appears to expressly prohibit DHFS from continuing to license the shelter care facility once, pursuant to Sec. 48.981(3)(c), Stats., the Manitowoc Department social worker filed her substantiated determination in which she found M to have abused a child (J.B.). Had the County continued to employ M at the shelter care facility under these circumstances, it seems obvious that its authority to continue to operate the shelter care facility would be in serious jeopardy.

In my view, all of these factors constitute "just cause" for the County's termination of M.

To go further, as the majority apparently feels compelled, and make a second investigation and pronouncement as to whether or not M abused a child is unnecessary and unwarranted. Although in this instance the majority's conclusion echoes the determination of the Manitowoc social worker, in effect it validates the claim of M (or other similarly placed employes) implicit in M's pleadings that he is entitled to a chance at vindication in an additional forum not contemplated by the Legislature. The majority gives M a second bite of the apple not countenanced by law.

Clearly, the Legislature felt an overriding concern that children be protected from abuse at the hands of shelter care facility employes. In manifesting this concern, the Legislature set forth certain procedures to govern the continued or termination of employment of a shelter care facility worker accused of abuse. It is apparent that it was the intention of the Legislature that the procedures it specified be conducted expeditiously, without delay, fairly, and in good faith.

It is also apparent that the Legislature has constructed a complete and exclusive method of procedure in matters of this kind, even as to the possible rehabilitation of a person against

whom a Sec. 48.981(3)(c), Stats., determination has been made. 5/ Statutes of this kind are in derogation of common law and to be strictly construed. See MADISON V. TIEDMAN, 1 WIS.2D 136, 143, 83 N.W.2D 694 (1957). Thus, if the specified statutory procedure is followed (as appears to have been the case in the instant matter), the abuse determination made by the investigating social worker constitutes all the "just cause" the County lawfully needs to dismiss from its employ the employe identified as abusive.

5/ See Sec. 48.685(5)(a), Stats.

Thus, I dissent from the reversal of Finding of Fact 32 by the majority through which it asserts its belief in M's guilt. In my opinion, the Finding should be deleted as not only extraneous, but *ultra vires*. In its place I would insert the Finding that the County had complied with all relevant statutes followed by a Conclusion of Law that the substantiated abuse determination gave the County the "just cause" required to dismiss M.

Having concluded that the statutes limit our investigative role as to abuse allegations against child welfare agency workers who have access to agency clients, it follows that the examiner exceeded his authority in ordering the County to amend the social worker's abuse determination. If M wishes to contest the abuse determination made against him, he must find another forum in which to exercise his challenge.

Finally, contrary to the dicta contained in the concurrence of Chairperson Meier, in the face of a substantiated abuse determination I do not believe the Commission possesses sufficient authority to order the County to reinstate M in some other position for which he is qualified, even if a majority of the Commission were persuaded of M's innocence. While our remedial authority is broad, 6/ it does not permit us to impose a remedial penalty on the County (or any employer) when the only "fault" we find as to the County is that it followed the pertinent statutes from which emerged the requisite "just cause."

6/ None of the cases cited by Chairperson Meier involve redemption for an employe whose discharge and discharge procedures had been specifically mandated by the Wisconsin Statutes.

Dated at Madison, Wisconsin this 23rd day of November, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

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29094-B