

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DANIEL WILLIAMS, Complainant,

vs.

STATE OF WISCONSIN DEPARTMENT OF SAFETY AND
PROFESSIONAL SERVICES, Respondent.

Case ID: 55.0016
Case Type: COMP_PPS

DECISION NO. 37790-B

Appearances:

Aaron N. Halstead, Attorney, Hawks Quindel, S.C., 409 East Main Street, P.O. Box 2155, Madison, Wisconsin, appearing on behalf of Daniel Williams.

William H. Ramsey, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Safety and Professional Services.

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

On September 25, 2018, Daniel Williams filed a complaint with the Wisconsin Employment Relations Commission alleging the State of Wisconsin Department of Safety and Professional Services had committed unfair labor practices within the meaning of §§ 111.84(1)(a) and (e), Stats., by allegedly violating a settlement agreement. On November 28, 2018, the Commission appointed Peter G. Davis to serve as Examiner in the matter. On November 30, 2018, I issued an Order Denying Motion to Dismiss.

A hearing was held on February 11, 2019, in Madison, Wisconsin. A hearing transcript was received February 15, 2019, and the parties thereafter filed written argument by April 12, 2019.

Having considered the matter, I make and issue the following:

FINDINGS OF FACT

1. In December, 2004, while Daniel Williams was employed in a classified employee position by the State of Wisconsin Department of Regulation and Licensing (DRL), he was suspended for ten days by DRL for allegedly viewing inappropriate material on his work computer.

2. In March, 2005, Williams, DRL, and the Wisconsin State Employees Union (WSEU) entered into the following agreement to settle two grievances arising out of the ten-day suspension.

SETTLEMENT AGREEMENT

Whereas the Grievant (Daniel Williams) and the Wisconsin State Employees Union (WSEU), have filed two grievances alleging violation of Article 3, Section 1 and Article 4, Section 9, of the Agreement between the parties and have processed this grievance through the second step of the contractual grievance procedure on February 10, 2005, the parties hereby agree that the above-referenced matter has been settled in all respects on the following basis:

1. The Employer will reduce the suspension from 10 to 5 days and the Grievant will receive pay for five days, calculated at his January, 2005 rate of pay and subject to all normal and customary deductions.
2. Neither the Employer nor the Grievant and the Union or their agents will issue any statement for circulation in any media, or post or distribute, or otherwise publicize or discuss this settlement or its terms, beyond a statement that the parties have amicably settled the dispute on terms satisfactory to all the parties.
3. The agreement by the parties to this settlement shall not be construed or represented by any of the parties as an admission of liability or wrongdoing on any of their parts. The parties agree that this settlement is expressly and solely intended to avoid the expense, delay and distraction that the preparation and litigation of this matter would entail.
4. The Grievant and the Union agree to withdraw or cause to be dismissed with prejudice all grievances identified above

and any other appeals, charges, and/or complaints which have been filed against the State of Wisconsin, or its agents, officers, or employees arising out of any events related to the above-identified grievances before any federal, state, or local court, commission, board, agency, committee, arbitrator, or any other forum. The Grievant and the Union agree not to commence any further action in any forum against the State of Wisconsin, its agents, officers, or employees arising out of the above-identified grievances.

5. The parties recognize and agree that the facts, conditions, and circumstances of this case are unique and, as such, this settlement shall not singly, or in any combination, constitute a precedent for any other cases.

3. In 2011, Williams sought and received an appointment to an unclassified position in DRL where he served at the pleasure of the DRL Secretary. Prior to the appointment, Williams was asked if he had any “skeletons” that DRL management should know about. Williams advised management of the suspension, settlement agreement, and underlying allegation.

4. DRL subsequently became the Department of Safety and Professional Development (DSPD) with new management employees.

5. In July, 2018, DSPD management became aware of Williams’ 2004 alleged misconduct and, on July 25, 2018, dismissed Williams from his unclassified position based on that knowledge. On July 26, 2018, Williams was restored to the classified position he held prior to his 2011 appointment to the unclassified position.

Based on the above and foregoing Findings of Fact, I make and issue the following:

CONCLUSION OF LAW

By dismissing Daniel Williams from his unclassified position in July 2018, the State of Wisconsin did not violate the March 2005 settlement agreement and thus did not commit unfair labor practices within the meaning of §§ 111.84(1)(e) or (a), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, I make and issue the following:

ORDER

The complaint is dismissed.

Dated at Madison, Wisconsin, this 2nd day of May, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW, AND ORDER**

It is correctly undisputed by the parties that an agreement between a union and employer settling an employee grievance is a collective bargaining agreement. The parties also agree that § 111.84(1)(e) of the State Employment Labor Relations Act (SELRA) makes it an unfair labor practice for the State of Wisconsin to violate a collective bargaining agreement and that the Wisconsin Employment Relations Commission is statutorily identified as an available forum for litigating an alleged violation of a collective bargaining agreement. Because Williams was a signatory to the 2005 agreement, he has standing to raise the issue of whether his 2018 dismissal from an unclassified position violated the agreement.

There is no explicit language in the 2005 agreement precluding the State from taking subsequent action against Williams for the same alleged conduct that formed the basis for the five-day suspension. However, avoidance of “double jeopardy” is inherently part of the agreement and thus the State generally concedes it cannot do so. Acknowledging this inevitable concession, Williams argues it is apparent that his dismissal based on the alleged 2004 misconduct violated the agreement. He notes the agreement does not contain any limit as to its duration or to the type of State employment covered thereby.

However, the specific question posed here is whether the parties to the agreement intended that it would apply to unclassified State positions where employees serve at the pleasure of the appointing authority. Doubtless, the parties never actually considered how they would answer that question when they reached the 2005 agreement. Had they considered the question, it seems highly unlikely the State would have agreed to coverage of unclassified positions. Indeed, there might well be a real question as to whether State officials entering into the agreement in 2005 would have the authority to bind future State political appointees. Ultimately, the best indication of the parties’ intent comes from Williams himself when he willingly advised DLR management of the suspension, settlement agreement, and underlying allegation when seeking the unclassified position in 2011. Had Williams believed the topic of “skeletons” was off limits, he presumably would not have provided that information. Having done so on the front end of acquiring the position, he is hard pressed to now claim that “skeletons” are off limits when it comes to job retention and that the unclassified position is his at least for the duration of the Walker administration. Therefore, it is concluded Williams’ dismissal from his unclassified position did not violate the 2005 settlement agreement, and the State did not commit the alleged unfair labor practices.

Dated at Madison, Wisconsin, this 2nd day of May, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter G. Davis, Examiner