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STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

#164-096

MICHAEL FINNEGAN,
Petitioner,

-vs-

MEMORANDUM

STATE OF WISCONSIN
(Personnel Board),

DECISION

Respondent,

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and

JUL 23 1979

STATE OF WISCONSIN
(Personnel Commission),

**Personnel
Commission**

Co-Respondent.

This is an action for judicial review pursuant to ch. 227 of a decision of the State Personnel Board (the Board) affirming the discharge of the petitioner from his position in the Department of Local Affairs and Development (the Department). The petitioner has raised three issues: the sufficiency of the notice of discharge; whether there was "just cause" for discharge; and whether Wis. Stats. sec. 16.32(2) was applicable and complied with.

Notice of Discharge

The petitioner contends that the notice of discharge failed to meet the Board's own requirement that it specify the grounds of dismissal (Beauchaine v. Schmidt, No. 73-38 (Personnel Bd., October, 1973)), and that it failed to meet constitutional due process notice requirements.

The Court finds no need to determine the adequacy of the notice of discharge on its face. It incorporates by reference a detailed analysis of the petitioner's performance in an employee evaluation form. This form amply meets the requirements stated in Beauchaine, supra. The employee was well aware of the specific details of the grounds for his discharge. He read and signed the evaluation form. His written comments were included in it. The form itself specifies that the employee is to receive a copy of it. His supervisor testified that he received a copy. (T. 22). Ms. Thorpe testified that on the same date the petitioner received the notice of discharge he also received her memo recommending his discharge. (T. 170). This memo reiterated the facts stated in the evaluation form. Therefore, the Court finds that the notice of discharge met the requirements of both Beauchaine and due process. The Department complied with the petitioner's right to seasonably know the grounds for his discharge. See State ex rel. Richey v. Neenah Police & Fire Comm., 48 Wis. 2d 575, 180 N.W. 2d 743 (1970).

Just Cause

Wis. Stats. sec. 16.28(1)(a) (1975) provides that "An employee with permanent status in class may be . . . discharged . . . only for just cause." The existence of just cause depends on the facts of each case. However, there must be a rational nexus between the conduct complained of and its deleterious effects on job performance. Safransky v. Personnel Bd., 62 Wis. 2d 464, 215 N.W. 2d 379 (1974).

The Board found, inter alia, that the petitioner's failure to complete assigned tasks in a timely manner and his failure to perform at all a substantial portion of his duties during a two-month period was sufficient cause for discharge. The facts upon which this finding was based are not in dispute. The Board's finding is amply supported by substantial evidence and the Court will not disturb it. Sauerwein v. D.I.L.H.R., 82 Wis. 2d 294, 262 N.W. 2d 126 (1978). The Court agrees with the Board that such dereliction is "just cause" for discharge, making it unnecessary to examine the sufficiency of the other grounds mentioned by the Board.

The petitioner has argued that "just cause" requires that an employee be put on notice that he or she is in immediate danger of discharge. However, the authorities he cites only stand for the proposition that the employee be given some notice that his performance is substandard and that it would be grounds for discharge. The latter may be express or implied. In re Brooks, 135 Vt. 563, 382 A. 2d 204 (1977). The record contains ample evidence that these so-called "requirements" were met. The petitioner had conferences with his supervisors in which the need to complete assigned projects in a timely manner was discussed. That his conduct could be grounds for discharge could be fairly implied. An employee who completes projects months late and fails to perform a substantial portion of his duties could reasonably expect to be discharged.

Section 16.32(2)

Wis. Stats. sec. 16.32(2) (1975) provides that:

"When an employe becomes physically or mentally incapable or unfit for the efficient and effective performance

of the duties of his position by reason of infirmities due to age, disabilities, or otherwise . . . (he shall be dismissed only as a last resort)."

The petitioner contends that he was entitled to the solicitude afforded by this provision due to his psychologically depressed state. Although no medical testimony was given on this point, the petitioner's own testimony would tend to support such a view. However, there is substantial evidence and reasonable inferences to be drawn therefrom which support the opposite view taken by the Board. Sauerwein, supra.

The Board's decision is affirmed. Counsel for the Board may prepare an order for my signature.

Dated: July 19, 1979.

BY THE COURT:



P. CHARLES JONES, CIRCUIT JUDGE
DANE COUNTY CIRCUIT COURT III

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JUL 23 1979
**Personnel
Commission**