

The making of such statements has been investigated and substantiated by David Pedro, Division Administrator. The said statements are as follows:

1. Linda Pratch, Co-Care Director stated that on May 16, 1977, you made the following statements to her in the presence of her secretary:
 - a. That you did not work for the Governor's Manpower Office but that you were a criminal investigator for the IRS.
 - b. That you were the one who made the decisions on recommending criminal intent to the Federal Government regarding the use of Federal funds.
 - c. That Linda should secure receipts for past administrative overhead expenditures and have someone sign them, which she felt was a marginal forgery situation.
2. On May 14, 1977, you made the following statements to and in the presence of Matt Kemp and Mary Dripde, Northeast Wisconsin Community Action Agency employees:
 - a. That you had a badge and gun and were really an agent for the Internal Revenue.
 - b. That they need not worry about Ed Hull in Shawano . . . that you shut Shawano County down . . . and that if they didn't get things shaped up in their place, you would do the same thing to them.
 - c. That Co-Care was absconding with funds and you started a full investigation which was stopped by Sharon Metz who went to the Governor.

* * *

Our investigation of this matter has satisfied us that you did make the statements described above in paragraphs numbered "1" and "2". We are further satisfied that their making is just cause for your discharge.

3. The appellant did make the statements, or substantially the statements, as alleged above.

4. These statements by appellant were, as indicated in the discharge letter, Board's Exhibit 1, the sole reasons for his discharge.

5. The respondent did not consider a lesser form of discipline for appellant because he was appalled by what he considered to be the outrageous nature of appellant's conduct.

6. The appellant's duties and responsibilities as a community services technician involved considerable interaction with grantees, including non-profit corporations and local units of government.

7. The work of the Governor's Manpower Office and that of the appellant's position involved the elicitation of voluntary cooperation and involvement by local units of government, non-profit corporations, and other grantees.

8. A harmonious relationship between the respondent's employees and the grantees' representatives was essential to the agency's accomplishment of its goal as set forth in the preceding finding.

CONCLUSIONS OF LAW

1. This case is properly before the Board pursuant to s. 16.05(1)(e), Stats.

2. The respondent agency has the burden of proof to demonstrate just cause for the discharge.

3. The respondent has discharged that burden and demonstrated just cause for the discharge.

OPINION

In an appeal of discharge pursuant to s. 16.05(1)(e), Stats., the burden of proving just cause for the discharge is on the state or appointing authority. See Reinke v. Personnel Board, 53 Wis. 2d 123, 132, 191 N.W. 2d 833 (1971). The legal standard is "to a reasonable certainty, by the greater weight of the credible evidence." 53 Wis. 2d at 137. In Safronsky v. Personnel Board, 62 Wis. 2d 464, 474, 215 N.W. 2d 379 (1974), the supreme court discussed

Tetting v. Gov. Manpower Off.
Case No. 77-190
Page Four

the test for determining whether "just cause" exists for termination or discharge:

". . . One appropriate question is whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair his performance of the duties of his position or the efficiency of the group with which he works. The record here provides no basis for finding that the irregularities in appellant's conduct have any such tendency. It must, however, also be true that conduct of a municipal employee, with tenure, in violation of important standards of good order can be so substantial, oft repeated, flagrant, or serious that his retention in service will undermine public confidence in the municipal service." State ex rel. Gudlin v. Civil Service Comm. (1965), 27 Wis. 2d 77, 87, 133 N.W. 2d 799.

Courts of other jurisdictions have required a showing of a sufficient rational connection or nexus between the conduct complained of and the performance of the duties of employment.

In the instant case the nature of the appellant's work and the agency's function, as set forth in the findings, was such that the activities he engaged in could "reasonably be said to have a tendency* to impair his performance of the duties of his position or the efficiency of the group with which he works." Given the absence on this record of other reasons for the discipline imposed there is a question of whether the nature of the discipline (discharge as opposed to a lesser sanction) was excessive.

In Zabel v. Rice, Wis. Pers. Bd. No. 75-66 (8/23/76), the Board discussed the nature of its role in considering this kind of question:

. . . In making this determination, it is important to recall that the role of the Personnel Board in reviewing this transaction is not the same as that of a reviewing court, a mistaken approach that the Supreme Court found erroneous in Reinke v. Personnel Board, 53 Wis. 2d 123, 134 (1971). Therefore, we conclude we are not restricted to a determination whether the discipline imposed is supported by substantial evidence or constitutes an abuse of discretion or is inherently disproportionate to the offense. C.f., Ricci v. United States, 507 F. 2d 1390, 1393, n. 3 (U.S. Court of Claims 1974). McTiernan v. Gronowski, 337 F. 2d 31, 35, 37-38 (2d Cir. 1964), Jallings and McKay v. Smith, Wisconsin Personnel Board Nos. 75-44, 45 (8/23/76).

* It is not necessary that the respondent prove actual impairment.

Tetting v. Gov. Manpower Off.
Case No. 77-190
Page Five

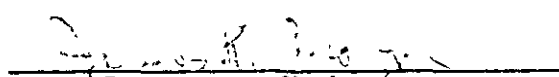
At the same time, this board may not substitute its judgment for that of the agency; rather, it must conclude whether the conduct proven, in the context of all the circumstances, constitutes just cause for the suspension.

In the instant case the nature of the proven misconduct and its relationship to the agency function was such to justify the degree of discipline imposed.

ORDER

The action of the appointing authority is sustained and this appeal is dismissed.

Dated, June 16, 1978. STATE PERSONNEL BOARD



James R. Morgan, Chairperson