STATE OF WISCONSIN PERSONNEL COMMISSION

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WINTER HESS,

Appellant,

v.

Secretary, DEPARTMENT OF NATURAL RESOURCES,

Respondent.

Case No. 79-203-PC

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INTERIM DECISION AND ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(c), Stats., of a suspension without pay. The appellant has objected to the adequacy of the notice contained in the letter imposing the suspension and the parties have submitted written arguments.

OPINION

The letter imposing the suspension is from the deputy secretary to the appellant and is dated July 16, 1979. The letter refers to two incidents, one occurring on November 18, 1977, the other on April 5, 1979. The appellant has not objected to the adequacy of notice as to the latter matter and therefore it will not be discussed further.

The operative part of the letter is as follows:

> "M.C. 9121.06-item #4(m) provides that Department employes are to refrain from acts that show a 'lack of good judgment, such as discourtesy, in dealing with ... the general public.' On two specific occasions your actions have reflected such discredit and lack of judgment. The first was the confrontation between yourself and Peshtigo City Building on or about November 18, 1977."

In respondent's brief dated October 10, 1979, it is argued:

> "A review of the record in this case, specifically appellant's July 30, 1979 letter of appeal, clearly indicates that the appellant has precise knowledge of the conduct complainant of in the disciplinary letter. On pages two and three the appellant details in great length and accuracy the events involved in the two incidents described in the July 16, 1979, letter of suspension. The letter of appeal itself convincingly belies appellant's own challenge based on lack of notice."

In the appeal letter referred to, the appellant does recite in substantial detail certain events that occurred on November 16, 1977, including his conversation with Justice Guay. The appellant then stated:

> "At no time was I discourteous or did I show lack of good judgement. If I had not gone to the court room, that would have been discourteous and lacking of good judgement.
>
> If walking up to a person and posing a question to him and repeating the question when no answer is received is being discourteous and brings discredit upon me and the department, then I fail to see how I can converse with any member of the public without violating a work rule.
>
> It is possible my question offended Justice Guay; however, the offense was not due to any discourtesy or action by me. A simple yes or no answer would have answered my question. It is possible Justice Guay read something into the question because of some other fact situation and thus reacted as he did. If so, I don't believe that I should be held accountable for his reaction."

The appellant also stated at an earlier point in the appeal letter:

> "Paragraph Three of that letter states that I violated Manual Code 9121.06 Item 4. The paragraph merely states a violation occurred during a conversation between myself and Municipal Judge Guay and a second violation 17 months later on April 5, 1979, in Marinette County Circuit Court. I find no mention of what specific acts I committed or what Mr. Damon's findings are based upon. I find it very difficult to comply with Mr. Damon's admonishment that 'any further activities of this nature will require more severe disciplinary

> action' if I don't understand exactly what the activities are. I also find it difficult to analyze this issue with regard to 'just cause' without knowing specifically what offended the code of ethics and work rules."

The Wisconsin Supreme Court, in reviewing the adequacy of notice in civil service disciplinary proceedings, has considered the fact that the employe was able to file an answer. See State ex rel De Luca v. Common Council, 72 Wis. 2d 672, 679-680, 242 N.W. 2d 689 (1976).

In this case, the detailed nature of the appeal combined with the questions raised therein indicates that the appellant had actual notice of what was alleged to have occurred but was not certain of exactly what part of that conduct was deemed by the respondent to have been improper. See the appellant's brief dated October 17, 1979: "The appellant knows what occurred November 16, 1977, but not what action violated the work rules; and there simply is nothing in the disciplinary letter to suggest what that violation is other than the vague word, 'confrontation.'"

Given all of the circumstances, including the answer filed by the appellant, the Commission cannot conclude that the notice provided here is inadequate. It is only reasonable to interpret the letter to the effect that the respondent deemed the entire "confrontation," and every aspect of it to be in violation of the work rules and code of ethics.

While the Commission overrules the appellant's objection, it does feel constrained to comment that the notice provided was by no means a model with respect to specificity. It is entirely possible that the Commission would have concluded that it was inadequate if it had not been for the detailed nature of the appeal letter.

ORDER

The appellant's objection to the adequacy of the letter providing notice of suspension dated July 16, 1979, is overruled.

Dated: Dec. 4, 1979. STATE PERSONNEL COMMISSION

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

CMH:jmg

11/8/79