

NOV 08 1983

A party may file with the Supreme Court a petition to review an adverse decision of the Court of Appeals pursuant to s. 808 within 30 days hereof, pursuant to R. 809.62 (1).

NOTICE

This opinion is subject to further editing. If published the corrected version will appear in the next volume of The Official Reports.

No. 82-1572

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

WILLIAM C. RUFF,

Petitioner-Appellant,

v.

WISCONSIN STATE PERSONNEL
COMMISSION,

Respondent.

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Personnel
Commission

APPEAL from a judgment of the circuit court for Dane county: WILLIAM L. JACKMAN, Reserve Judge, presiding.
Affirmed.

Before Foley, P.J., Dean and Cane, JJ.

PER CURIAM. William Ruff appeals a judgment affirming a decision of the Wisconsin State Personnel Commission. The commission upheld the reprimands of Ruff and his later discharge for just cause from the position of assistant investment director for public bonds with the Wisconsin Investment Board. Ruff argues that he should have been trained for the job, that he was disciplined for exercising his free speech rights, and that his discharge was excessive discipline. Because the record supports the

commission's findings that Ruff was trained, that the discharge was based on his incompetence and failure to improve, and that discharge was a proper sanction, we affirm the judgment.

Substantial evidence supports the commission's finding that Ruff was given training. Although Ruff was expected to be able to do the job at the time he entered the position, the daily notes and testimony of John Zwadzich, Ruff's supervisor, amply evinced the explanations and assistance given to Ruff on an almost daily basis. This informal training started with his first day on the job. A formal training program was not required.

Substantial evidence also supports the Commission's finding that Ruff was discharged for his incompetence and failure to improve. It is undisputed that Ruff had minimal experience in the area of public bonds. The record is replete with evidence that despite assistance and explanation from his supervisor, over the five-month period of his employment with the board, Ruff consistently failed to adequately complete or perform required tasks. Ruff consistently missed deadlines and failed to complete assignments in a satisfactory manner. The recommendation for discharge

was made not only because of his incompetence, but because, over the four-month period prior to the recommendation, Ruff had failed to show any improvement. In his letter of discharge, the board's executive director stated that Ruff had no basic understanding of bond management nomenclature and techniques, without which he was incapable of performing his job at even a minimally adequate level. That is just cause for Ruff's discharge.

Additionally there is substantial evidence to support the commission's finding that the discharge was not excessive or inappropriate discipline. Ruff argues that he was discharged for exercising his free speech rights. Eight months prior to his discharge, and while he was employed in a different capacity with the Investment Board, he was reprimanded for a speech-related activity. There was, as the Commission found, no direct link between the earlier reprimand and the later discharge. Ruff's discharge was based on his entire employment history, of which the protected speech constituted only a minor factor. The commission could reasonably conclude that the same decision would have been reached in the absence of the protected speech and is therefore not unconstitutional. See Mt. Healthy City

District Board of Education v. Doyle, 429 U.S. 274, 287 (1977).

Lastly, Ruff argues that there was no progressive discipline because the two reprimands he received were improvidently issued. Ruff offered no proof that the reprimands were violations of either a civil service statute or a rule of the administrator of the Division of Personnel. The reprimands were for inadequate work performance, a reason amply supported by the record. The board's executive director considered, as an alternative to discharge, Ruff's demotion to another position which he formerly held with the board. The director rejected this alternative because Ruff's performance evaluations in the prior position had been unsatisfactory, because he had continuing conflict with his supervisors, and because, in his evaluation, Ruff's conduct had "materially impaired the efficiency of the board." The commission's finding that the decision to discharge Ruff was not excessive discipline is amply supported by the record as a whole.

By the Court.--Judgment affirmed.

Publication in the official reports is not recommended.