

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 JEROLD BENTS, *
 *
 Appellant, *
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 v. *
 *
 OFFICE OF THE COMMISSIONER *
 OF BANKING, *
 *
 Respondent. *
 *
 Case No. 86-0193-PC *
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 * * * * *

INTERIM
 DECISION
 AND
 ORDER

This matter is before the Commission as an appeal from a discharge. At the prehearing conference held on December 22, 1986, a schedule was established for the parties to brief the question of whether the letter of discharge was legally deficient. On January 16, 1987, appellant filed a "notice of motion and motion to strike portions of disciplinary letter." The parties completed their briefing schedule on April 1, 1987.

The standard of what constitutes adequate notice of a disciplinary action was discussed by the Commission in Israel v. DHSS, 84-0041-PC (7/11/84), pp. 1-3 as follows:

At the time that an employe with permanent status in class is "removed, suspended without pay, discharged, reduced in base pay or demoted", the appointing authority shall "furnish to the employe in writing the reasons for the action." §230.34(1)(a) and (b), Stats. Neither the statutes nor the administrative code supply any additional specification in terms of what constitutes adequate notice of a disciplinary action. In its decision in Huesmann v. State Historical Society, 81-348-PC (1/8/82), the Commission summarized some state cases that provide a framework for applying the statute:

Several relatively recent decisions by the Wisconsin Supreme Court have addressed the question of whether a particular letter of discipline has met due process requirements. In State ex rel. Messner v. Milwaukee County Civil Service Commission, 56 Wis. 2d 438, 444, 202 N.W. 2d 13 (1972), the

court indicated that "due process is not to be measured by rigid and inflexible standards", and that the "notice requirement cannot be defined by any 'rigid formula.'" The court went on to define the notice requirement in terms of being satisfied by a notice:

"reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Messner, 56 Wis. 2d 438, 444.

In Messner, the court found the notice to have been sufficient even though it did not specify the regulation that served as the basis for the discharge.

In several other recent cases, the notice was also found to be sufficient. In Richey v. Neenah Police & Fire Commission, 48 Wis. 2d 575, 180 N.W. 2d 743 (1970), a notice charging a policeman with conduct "unbecoming a police officer" at a specified time and date was upheld. In State ex rel. DeLuca v. Common Council, 72 Wis. 2d 672, 242 N.W. 2d 689 (1976), the court upheld a notice that set forth sixteen separate charges, where the employe had specifically answered each charge prior to hearing. In the most recent case of Weibel v. Clark, 87 Wis. 2d 696, 275 N.W. 2d 686 (1979), the employe was merely told that he had been discharged for stealing candy from a particular restaurant that was a tenant in the building where he worked. The court ruled that "[d]espite the apparent inadequacy of the notice", the employe was unable to show he had been prejudiced by DILHR's (unemployment compensation) decision:

The department found, based on the written statement signed by appellant when he filed his claim and on the testimony given at hearing, that appellant knew he had been fired for stealing candy from Heinemann's. The department and the circuit court concluded that appellant could not be prejudiced by the department's failure to apprise him of something he already knew. Weibel, 87 Wis. 2d 696, 704-05.

The purpose of the notice is to inform an employe of the nature of the charges so that he can adequately prepare his defense. Reynolds v. US, 454 F. 2d 1368, 197 Ct. Cl. 199 (1972); Holly v. Personnel Advisory Bd, 536 S.W. 2d 830, (Mo. App. 1976); People ex rel. Mutler v. Elmendorf, 42 App. Div. 306, 59 N.Y.S. 115 (NYAD); Benjamin v. State Civil Service Commission, 17 Pa. Cmwlth 427, 332 A2d 585 (Pa. 1975). Therefore, a reasonable standard to apply in disciplinary

notice cases is whether the notice is sufficiently specific to allow the disciplined employe to prepare a defense.¹

In the present case, the respondent issued a three page single-spaced letter notifying the appellant that he was being discharged and the reasons for the action. A copy of the discharge letter is attached to this decision. The paragraphs of the letter have been numbered by the appellant for ease of discussion.

¹ Appellant argued that "all letters of discharge must now contain the five (5) "W's"; when, where, why, what, who" as a consequence of the decision of the Personnel Board in Beauchaine v. Schmidt, 73-38 (10/23) "and its progeny." (Appellant's brief, pp. 1 and 2). However, circuit court decision subsequent to Beauchaine as well as decisions of the Personnel Commission indicate that the "five W's" cannot be mechanically applied. In Weaver v. State Personnel Board (Schroeder), 146-209, Dane County Circuit Court (8/28/75), Judge Currie stated:

It has been held that the requirements of due process cannot be measured through the mechanical application of a formula. The unusual fact situation in the Pfankuch case. [where the report of the employe to the employer provided the facts on which the letter imposing discipline was grounded] provides the perfect illustration of a situation where a letter imposing discipline could comply with due process without complying with the 5 W's rule laid down in the board's Beauchaine case decision.

In the subsequent case of Zehner v. State Personnel Board, 156-399, Dane County Circuit Court (2/20/78), Judge Currie held that the

use of the words "wrongful act" in Beauchaine [which required notice to the employe of the wrongful acts he allegedly committed, when and where they were allegedly committed, etc] . . . is unfortunate when applied to the instant fact situation where the discharge is made for inefficiency and inability to meet the requirements of the job.

In Hess v. DNR, 79-203-PC (12/4/79) and Anand v. DHSS, 82-136-PC (3/17/83), the Commission upheld the sufficiency of disciplinary letters where the "five W" test was not met.

Appellant does not object to paragraphs 1 and 2 which are introductory in nature and summarize the reasons for appellant's discharge. However, the appellant attacks the legal sufficiency of paragraphs 3, 5, 7 and 8 and specifically argues that they are not specific enough to be responded to in a meaningful manner.

The first sentence of the paragraph identified as number 3 primarily informs the appellant which work rules form the basis for discipline. Such information is not objectionable; it is preferable; and in a particular case, depending on the circumstances, it may be required. Pfankuch v. Schmidt, 73-45 (Personnel Board, 12/20/73) The remainder of this sentence is a general introduction to the specific deficiencies in appellant's performance, examples of which appear in the second sentence of paragraph 3. Such general introductory language, together with the notice of the work rules alleged to have been violated, gives the appellant a fair understanding of what he is alleged to have done and is sufficiently specific.

The second sentence in the third paragraph of the November 5, 1986 letter contains examples from a detailed letter dated October 20, 1986 from respondent to appellant raising serious concerns over appellant's work performance and continued employment with the respondent. The appellant does not specifically challenge all of these examples which illustrate the appellant's violation of the work rules cited, but instead addresses some of them as they appear more fully in the October letter. The Commission therefore turns its attention to the October 20th letter.

The appellant asserts that he cannot prepare a defense to the charge in the October letter that the 1984 annual report actually used 1983 data because the report contains a lot of data and he cannot tell which piece is

allegedly inaccurate.² Respondent attached an affidavit of Jennifer McKenzie which contains the annual reports in question. An examination of these reports indicates that these reports are absolutely identical, except for the date. (emphasis supplied) Respondent questions whether the annual report numbers are the same in 1982 as in 1984. Respondent indicates that "this error caused significant problems in trying to create a trend and comparisons of abstract information in the 1985 Annual Report." Based on the above, this charge is sufficiently specific.

The appellant concedes that the allegation identified as (1)(b) in the October 20th letter regarding 1985, 1986 fiscal year end projections is detailed enough to satisfy due process requirements required of a discharge letter.

The appellant challenges the allegation identified as (1)(c) in the aforesaid letter which states that the 1985-87 biennial budget contained technical and substantive errors causing problems within the agency. The sentence regarding base year amounts and salary projections is concrete enough for appellant to form a response and a defense. However, the other allegations in this paragraph are too broad given the technical nature of state budgets. Without more specific information about these charges, the appellant would be unable to prepare a defense.

Appellant asserts that he cannot prepare a defense to the paragraph identified as (1)(d) in the letter regarding 1987-89 state budget revenue projections. Said paragraph states that appellant admitted to having

² According to respondent's brief at page 7, the October letter contains a typographical error. The two reports in question are 1982 and 1984.

"plugged in" figures in the budget. The next sentence includes the charge that appellant did not use actual revenue projections as part of the budget process but instead plugged in whatever figures he needed to make the budget balance. The last sentence states that appellant should perform his budgetary responsibilities using proper accounting and budgeting procedures presumably not just "plugging in" figures to balance the budget. Consequently, this charge is sufficiently specific.

Appellant concedes that the allegations listed under numeral two (2) of the October 20th letter are sufficient to prepare a defense. Appellant also concedes that the first paragraph under numeral three (3) is sufficient. However, appellant asserts that the second paragraph under numeral 3 (except the last sentence which appellant concedes is sufficient) fails to state which employees were improperly supervised. The disputed charge refers to a performance evaluation dated June 1986 describing how appellant's employees "have continued to fail to function at full performance level for Program Assistant 3 positions . . . You have failed to provide direction and assigned appropriate work to that employee." It is impossible to determine from the evaluation form or the October 20th letter which employees are involved in what specific deficiencies as a result of what particular failures on the part of appellant. Without more specific information about the charges, the appellant would be unable to prepare a defense.

Paragraph 4 of the November 5th letter serves merely as a follow-up to the preceding paragraph.

The paragraph identified as number 5 of the November 5th letter is specific in that it refers to certain budgets. But it only alleges that appellant's "performance" was in violation of certain guidelines and standards. Absent more specific information identifying the specific guidelines and standards alleged to have been violated and in what specific instances, the appellant would be unable to prepare a defense to these charges.

Appellant does not object to the paragraph identified as number 6.

Appellant argues that the paragraphs numbered seven and eight "are inadequate because they do not specify which female employes were harassed or how or when; they do not state when these incidents supposedly occurred." It is difficult to determine which female employes were allegedly subject to sexual harassment (except Gail Riedasch); the type of sexual harassment involved as well as the dates in question. Again, absent more specific information identifying these matters, the appellant would be unable to prepare a defense to these charges.

Appellant states that the paragraph identified as number 9 is "acceptable from a due process standpoint regarding adequate notice" and does not seek its removal. Appellant also states that the "paragraph identified as number ten (10) presumably refers to the conduct in the paragraph identified as number nine (9); if so, it is sufficient." Likewise, appellant does not challenge the paragraphs numbered 11, 12 and 13 since "these paragraphs contain no new allegations and do not need to be stricken." Appellant also raises no objection to paragraph 14.

Having concluded that some of the allegations found in the letter of discharge as well as the October 20th letter are insufficiently specific to provide the appellant an opportunity to prepare a defense to those charges, the next question is one of the proper remedy. The appellant's motion

seeks an order of reinstatement. Respondent asks leave "to amend the discharge letter to specifically answer the appellant's claims of deficiency" where the Commission believes more specificity in the discharge letter is required.

In Israel, supra. p. 8 the Commission stated:

In the present case, the Commission has concluded that portions of the discharge letter are vague but that the bulk of the letter is legally sufficient. In prior cases testing the sufficiency of the notice, the entire letter has been in dispute. When the Commission has found the entire letter to be insufficient, it has voided the discharge letter and ordered the appellant to be reinstated. See, for example, Huesmann, (supra). Here, the Commission concludes that those portions of the letter found to provide insufficient notice must also be stricken. Therefore, the appellant's motion to strike will be granted as to parts of paragraphs 10, 11, 12, and 21. However, given the particular facts of this case, where just four small portions of the five-page discharge letter have been found to be insufficient, the Commission will provide the respondent a period of 20 days from the date of this order in which to amend the letter with respect to those portions found to be insufficient. By merely offering additional details regarding specific charges in the letter, the respondent's amendments to the letter will fall far short of adding new charges. The addition of new charges via amendment was prohibited by the Commission in Alff v. DOR, 78-227-PC (3/8/79). In Alff, the respondent had sought to amend the discharge letter by adding two charges which were unknown to the respondent prior to the date of discharge and were alleged to demonstrate the appellant's inability to satisfactorily perform the duties of the position. In the present case, the respondents are merely being permitted to supply details in specific areas. There is nothing that would suggest that the appellant will be prejudiced by the additional specificity, which will instead permit him to prepare a defense.

Applying the above standard to the instant case, the Commission concludes that those portions of the October and November letters found to provide insufficient notice must be stricken. Therefore, the appellant's motion to strike will be granted as to parts of paragraph 3 (as it refers to the October 20th letter), 5, 7 and 8. However, given the particular facts of this case, where most of the charges contained in the October and November letters are either sufficient or not challenged, the Commission will provide the respondent a period of 20 days from the date of this order

in which to amend the letters with respect to those portions found to be insufficient. Additional specificity will permit appellant to prepare a defense.

ORDER

Appellant's "motion to strike certain portions of letter of discharge" is granted in part and denied in part. The following portions of the letter of discharge dated November 5, 1986, are found to be void and are ordered stricken:

1. Paragraph 5.
2. Paragraph 7, except as it refers to Gail Riedasch.
3. Paragraph 8, except as it refers to Gail Riedasch.

The following portions of the October 20, 1986, letter are found to be void and are ordered to be stricken:

1. Allegation identified as (1)(c).
2. Allegation identified as 3, second paragraph (except last sentence).

The respondent is granted 20 days from the date of this order in which to amend the discharge letter and the October 20 letter with respect to those portions ordered stricken, above.

Dated: May 28, 1987 STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner

DPM:rjk
RK2/2

Attachments


LAURIE R. MCCALLUM, Commissioner

State of Wisconsin

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Anthony S. Earl
Governor

Richard E. Galecki
Commissioner

October 20, 1986

Mr. Jerold Bents
4914 Tocora Lane
Madison, WI 53711

RE: Employment with the Office of Commissioner of Banking

Dear Mr. Bents:

During the course of the last several months, there have been several discussions with you regarding your employment with this agency. On or about the first week of June, we reached a verbal agreement that you would seek immediate employment with another entity in lieu of disciplinary action against you. Four and one half months have now passed, during which time you have not maintained your part of the agreement. Additionally, you have not informed principals of this agency of your intent to do so despite requests for information. Further, your performance evaluation dated June 26, 1986, details great concern on our part regarding your performance of responsibilities as Administrative Officer for this agency. Since there has been no progress in your performance, we believe it is in the best interests of the department to move forward at this time.

The following charges have been brought against you by your supervisor, Jennifer McKenzie, Deputy Commissioner. These charges represent an extremely serious breach of trust and responsibility and question your ability to perform as Administrative Officer 1 for this agency. Since June, you have been relieved of major responsibilities which have caused this agency to function in a weakened capacity. Prior to that time, responsibilities listed under your position description and included in the Administrative Officer 1 civil service specifications have been assigned to other personnel in the agency.

1. Chief Fiscal Officer Responsibilities: Charged with incompetence and negligence. The specifications for the AO 1 position cite responsibilities for budgeting, fiscal management, and personnel management. The following incidents reflect the charges regarding your performance in this area.
 - a. 1984 Annual Report data -- Data used in the 1984 report was actually 1983 data. This error caused significant problems in trying to create a trend and comparisons of abstract information in the 1985 Annual Report. Responsibilities have been reassigned to other personnel as a result.
 - b. 1985, 1986 fiscal year end projections -- In both years cited,

you were unable to accurately forecast year end balances. In FY 85, you projected a \$97M deficit for the agency, the agency ended in a \$90M surplus. For FY 1986, you projected a (\$137M) surplus, the agency accrued a \$585M surplus. Since all fiscal operations, both revenue and expenditures, are the responsibility of the Administrative Officer, a person with such responsibility can and should be able to track and project with some degree of certainty the fiscal operation of the agency. All responsibilities in this area are now deemed to be totally unreliable. As a result of this performance, you have been required to report all expenditures and revenue on a monthly basis to the Deputy who can make judgements on year end projections then without the Administrative Officer's assistance.

- c. 1985-87 state budget -- as a result of technical and substantive errors on the last biennial budget, this agency's budget analyst has requested tighter controls by the Deputy in the formulation of the 87-89 state budget request. The Deputy did take a great deal of time from other responsibilities to be directly involved in the budget request submission. However, even simple matters like determining the base year amounts and salary projections used were inaccurate. Results of the 87-89 budget errors are that again this agency is in an embarrassing position with DOA regarding budget accuracy. When Administrative Officer was requested by the Deputy for assistance in correcting errors in calculations and year end projections, the AO said he could only guess at the numbers. Therefore, the responsibility for all budget adjustments and recalculations has been assumed entirely by the Deputy.
 - d. 87-89 state budget revenue projections -- You were requested to supply figures which would include the revenue expected over the next biennium. When asked how these numbers were arrived at, that is what fees and assessments you used to project these numbers, you responded that the numbers were "plugged in." This demonstrates that you have never considered actual revenue projections a part of the budget process but rather simply plug in the amounts that make the budget balance. An administrative officer should be able to fulfill such responsibilities in a way that includes thorough use of principles and practices of accounting and budgeting procedures.
2. Payroll and fringe benefits officer responsibilities: charged with incompetence and negligence. The following incidents describe your inability to perform this function of your position which is also considered typical work responsibilities for an Administrative Officer 1 under the civil service specifications.
 - a. Payroll errors -- In the transfer of employe Markhardt from Supervisor 2 to Bank Examiner 6, you failed to correctly handle

the payroll changes. As a result, deferred compensation, salary checks and the Internal Revenue Service reports were in error.

b. Income Continuation -- two employes of this department have requested assistance in applying for income continuation insurance. In both cases, i.e. Deputy Commissioner McKenzie and employe Ken Markhardt, you did not act in a timely basis to assure coverage for this insurance. In the case of McKenzie, the window of opportunity for insurability has now passed for some time to come in the future. Further, according to a letter directed to Employee Trust Funds, you neglected to forward policy information on employe Gary Orth for a period of six years. During that time the employe paid for insurance coverage while the policy information was filed in his personnel file. Had a claim occurred, this agency would have been liable for Mr. Orth's income because of your failure to accurately transmit such information. This error constitutes negligence of your responsibilities and has contributed to the opinion that you are unable to fulfill the functions of your position as necessitated by your position description and the standards for Administrative Officer 1.

c. Payroll and benefits responsibilities continue to be assigned to you because there is no one in this agency to reassign these responsibilities to at the present time. However, because of the incidents mentioned above, and the fact that we have no internal checks and balances on your functions in this area we have no way of knowing if there are any other problems occurring. Since you did not bring the matter of the Markhardt payroll and the Orth income continuation to the attention of your supervisor, we have reason to believe other situations may exist which you have also not reported.

3. Personnel Related Functions: Charged with incompetence. You, as part of your position description have responsibility for personnel functions. Yet, you have not performed in that capacity for some time. This agency recently initiated the process of raised minimum rates through the Department of Employment Relations. However, you were unable to provide any staff assistance in this process because of your admitted lack of knowledge in this area. Therefore, the information and structure of this important issue had to be handled by other department personnel. Despite the fact that Administrative Officer specifications indicate personnel and management areas of expertise, you are unable to perform those functions. Despite the fact that you have handled day to day personnel functions in relation with the DER, you were unfamiliar with raised minimum rates and the process for this request.

Further, as your position relates to two other employes who are directly supervised by you, you have performed below expectations for an administrative officer 1. As cited in your performance evaluation dated June 1986, your employes have continued to fail to function at

full performance level for Program Assistant 3 positions. Since that time, one employe has resigned the other employe fails to work an eight hour day. You have failed to provide direction and assigned appropriate work to that employe. You have also neglected to complete performance evaluations on your employes, despite the fact that all employes of this agency are to be evaluated in June of each year.

4. **Affirmative Action Officer responsibilities:** charged with gross misconduct and negligence. An employe at the level of Administrative Officer 1 is expected to conduct him or herself with professional demeanor at all times. The following incidents describe your conduct with regard to this responsibility which is included on your position description.
 - a. **Budget Analyst incident** -- in a conversation regarding the Department of Employment Relations with this agency's DOA budget analyst, you commented that "there is a nigger in the woodpile over there." This comment was considered outrageous and offensive behavior by the person to whom it was addressed. She demanded and received an apology from this agency and both the Commissioner and Deputy Commissioner agreed to discuss it with you. This incident is considered gross misconduct by a person who has such a high level of responsibility in this agency and further brings into question your dedication to your responsibilities as affirmative action officer.
 - b. **Revised AA plan** -- when you were requested by the DER to file an amended plan for affirmative action, you stated to the deputy that "this whole thing is bullshit". When reprimanded by her for inappropriate remarks considering your position as AA officer, you said "it's still bullshit." Again, this incident demonstrates your lack of dedication to the Affirmative Action Policy and efforts appropriate to all agencies of state government. An Administrative Officer 1 should be above such attitudes and demonstrate conduct appropriate to management of a state government agency.
5. **Other duties as directed by the Commissioner and Deputy Commissioner:** charged in misconduct and incompetence. The incidents described below demonstrate your inability to perform your duties and required by your position description and the standards for the Administrative Officer 1 specifications.
 - a. In June of 1986 one of your subordinates wrote a memo to the deputy regarding violations of stated smoking policies of the agency. In discussions with that employe and as stated in her memo, she had complained to you several times about these violations. You indicated that you had reported it and had done every thing within your power. Yet, you did not report this situation to the deputy or the commissioner. The deputy wrote the smoking policy and had discussed its enforcement with all managers and smokers in the agency. This incident describes

- your inability to follow through at a level expected and demanded by your employes as well as upper management of this agency. You did not take action with the appropriate officials which led to further complications of a relatively simple complaint.
- b. As a result of the incident described above, discussion arose regarding your comments and attitude toward female employes who are subordinate to you in the agency. It has been reported by several females that you have engaged in remarks and suggestions that have been deemed to be sexual harassment. This situation again demonstrates the level of your conduct and your propensity toward conduct beneath the expected level for an Administrative Officer 1.


In summary, you are expected to perform at a level which meets the attached position description and specifications for an Administrative Officer 1. Your performance, however, has brought forward substantial documentation which fails to meet any reasonable expectation for a position of substantial trust and responsibility. Your conduct as described in this document, as well as others, not limited to but including your June 1986 performance evaluation raises issues which must be addressed.

Therefore, you are requested to meet with Deputy Commissioner McKenzie on Wednesday, October 22 at 10:00 a.m. in her office to respond to the issues and charges raised in this letter. You are entitled to be represented at that meeting by any party of your choosing. Please be prepared to respond to the issues and charges cited above. Subsequent to that meeting, we will deliberate the responses and determine if and what further action should be taken.

Please be aware that these are very serious issues. Should your response not adequately address this letter, further action, up to and including termination of your employment with the Office of Commissioner of Banking may be taken.

Sincerely,


Jennifer McKenzie
Deputy Commissioner


Richard Galecki
Commissioner

attachments

State of Wisconsin

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Anthony S. Earl
Governor

Richard E. Galecki
Commissioner

November 5, 1986

Mr. Jerold Bents
4914 Tocora Lane
Madison, WI 53711

Dear Mr. Bents:

1 This letter is to inform you that you are discharged from your employment with the Office of Commissioner of Banking as of the close of business on November 5, 1986.

2 The reasons for this discharge are your continued violation of Office of Commissioner of Banking Work Rules pertaining to work performance including failure to provide a level of performance that can reasonably be expected of an Administrative Officer I, failure to follow direction of the supervisory authority, conduct unacceptable for employees of this department including one in an upper management position, and neglecting or failing to perform job duties and responsibilities.

3 Specifically, you have violated the Work Rules pertaining to work performance defined as "disobedience, failure or refusal to carry out work assignments" and "neglecting job duties" by failing to follow directions regarding your responsibilities to provide accurate payroll and benefits information and data, accurate and timely fiscal management information, personnel management and direction to employees subordinate to you, and you have neglected to provide assistance to upper level management in relation to Department of Employment Relations activities. Inaccuracies on annual report data, 1985 and 1986 fiscal year end projections, 1985-87 state budget requests, 1987-89 state budget revenue projections, 1987-89 base year and salary amounts, Markhardt's employment transfer, Orth's income continuation, McKenzie's income continuation information, employee evaluations, failure of your subordinates to work up to capacity, and other examples cited in the October 20, 1986, letter from Commissioner Galecki and Deputy Commissioner McKenzie exemplify the violation of this Work Rule.

4 You knew or should have known this was unacceptable performance because you have knowledge of this work rule, this performance has been discussed in many meetings between yourself and your supervisor, these issues were discussed in your performance evaluation dated June 26, 1986, and were cited as reasons for your unsatisfactory performance and lack of merit or performance salary awards in July 1986. Further, these issues were discussed in meetings with you on April 15, June 6, July 8, and October 22, 1986.

5 Your performance with respect to the 85-87 state budget, the 87-89 state budget and the 16.515 request submitted in August 1986 is in violation of

the budget instructions provided by the Department of Administration and does not meet the standards accepted by that department or any other accounting standards expected of an Administrative Officer in state government.

6 You knew or should have known that your performance was unacceptable and would lead to further disciplinary action based on repeated discussions and directives you have received from your supervisor regarding the requirements and expectations of your position with this agency. In the meeting on April 15, you were informed that further performance problems and failure to follow supervisory direction would result in disciplinary action. You were reprimanded again on June 6 and told your conduct and performance were unacceptable. Further, you were informed that additional disciplinary action would be taken. On June 26, in a meeting to discuss your performance evaluation, you were told that your performance had not improved and further disciplinary action may be taken.

7 Your conduct has been unacceptable and found to be in violation of the OCB Sexual Harassment Policy. That policy includes a definition of Sexual Harassment as: "any unwanted, deliberate, or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature." An investigation subsequent to allegations on June 4, 1986, relating to such behavior on your part revealed that a number of female employes subordinate to your position with this agency have been subjected repeatedly to such sexual comments.

8 Your conduct subsequent to a discussion with Deputy Commissioner McKenzie regarding these charges constitutes insubordination. Despite the fact that you were told by your supervisor to have no further contact or discussion on any non-job related issue with the subordinate who reported these harassment incidents, you deliberately defied that directive and told the employe that her reporting of the incident would "drive me to the poor house". Additionally, you made other comments to her regarding this incident which were reported by the employe as an attempt to make her feel guilty and responsible for any disciplinary action which you may be subjected to as a result of the incidents she reported. This action on your part was in direct violation of the directive you were given.

9 Your conduct is further considered unacceptable in relation to comments you have made regarding affirmative action and the Secretary of the Department of Employment Relations. You stated to the OCB Budget Analyst that "there's a nigger in the woodpile over there" interpreted to be in reference to former Secretary Fuller. And, you stated to the Deputy Commissioner that "this whole thing is bullshit" in reference to the agency's affirmative action plan reporting requirements. When told that those comments were inappropriate for the agency's affirmative action officer, you stated to the Deputy, "it's still bullshit."

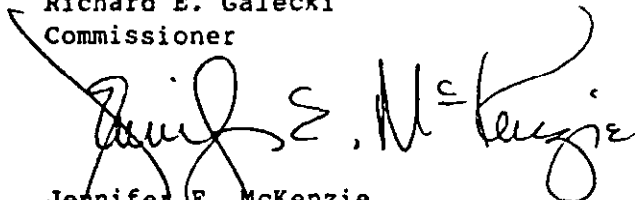
10 You knew or should have known that this conduct was inappropriate for an Administrative Officer I, based both on your position description and the standards and specifications for an Administrative Officer I in the civil service system. Further, based on your tenure as a professional employe, you should have known that this was unacceptable conduct by department or community standards.

- 11 An Administrative Officer I is comparable to a Division Administrator in this agency. The agency organizational chart shows that this position reports directly to the Commissioner and Deputy Commissioner. Your failure to perform your responsibilities and to conduct yourself in a manner which can reasonably be expected of a person in your position has created a situation which requires your work to be conducted by other personnel in the agency, or lacking reassignment opportunities, your work has been deemed to be unreliable.
- 12 Your position with this agency is one of substantial trust and responsibility. Your inability to perform with competency, reliability, and appropriate conduct has severely hampered this agency's ability to perform its responsibilities in the areas cited above. You were provided with many opportunities to discuss the expectations of this agency regarding your position and responsibilities. Your position description clearly outlines those responsibilities and indicates the expectations regarding accuracy, independent decision making, good judgement and reliability expected of your position. Further, the specifications for an Administrative Officer I clearly outline the generally accepted degree of responsibility, performance, and complexity of positions classified at the Administrative Officer I level. You knew or should have known of these standards based on your 19 years of employment with this agency and state government and your work with and knowledge of the civil service system.
- 13 You were provided an opportunity to respond to the concerns stated in this letter and our letter of October 20, 1986. In a meeting on October 22, you provided a written response to these issues. Your response did not adequately account for your performance or conduct. Further, despite opportunities to improve your performance subsequent to meetings on April 15, June 6, and July 8, your conduct and performance have not improved, therefore, this termination notice is necessary.
- 14 You may appeal this action, if you desire, under 230.44, Wisconsin Statutes.

Sincerely,



Richard E. Galecki
Commissioner



Jennifer E. McKenzie
Deputy Commissioner