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RAYMOND H. DREWIECK,

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM (Madison),

Respondent.

Case No. 92-0810-PC

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DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal of a 3-day suspension without pay. A hearing was held on February 8, 1993, before Laurie R. McCallum, Chairperson. A briefing schedule was established. Respondent filed its initial brief on March 10, 1993, in accordance with this schedule; appellant failed to file a brief with the Commission. The briefing was scheduled to be completed on April 22, 1993.

FINDINGS OF FACT

1. The University of Wisconsin Center-Rock County (UWC-Rock) was scheduled to host the Wisconsin Education Fair (Fair) during the evening of October 7, 1992. It was anticipated that 100 representatives from colleges and the armed services would be present at this event to provide information on options available to students upon their graduation from high school. The Fair, the largest outreach function conducted by UWC-Rock, was scheduled to be held in the gymnasium located in the lower level of the Wells Cultural Center (Center).

2. UWC-Rock's participation in the Fair was coordinated by Karen Greenler, a member of the staff of the UWC-Rock Student Services Office. On the morning of October 7, 1992, Ms. Greenler informed her supervisor Terry Borg, Director of Student Services, that she had suffered a miscarriage and would not be able to be present at the campus that day. As a result, Mr. Borg assumed Ms. Greenler's responsibilities for coordinating the Fair that day.

3. In preparing for the Fair, Ms. Greenler had prepared a planning document which set forth the furniture and equipment needs for the Fair and the schedule for setting up this furniture and equipment, among other things. This planning document indicated that 100 tables and one chair for each table would be needed in the gymnasium to accommodate the college and armed services representatives.

4. Upon learning that Ms. Greenler would be absent, Mr. Borg convened a staff meeting to review plans for the Fair. Mr. Borg learned during this meeting that some of the participating colleges/armed services organizations had called to indicate that they would be sending more than one representative to the Fair. Mr. Borg decided based on this information that more chairs would be needed in the gymnasium.

5. At all times relevant to this matter, appellant has served as the maintenance supervisor of UWC-Rock.

6. At approximately 11:00 a.m. on October 7, Mr. Borg went to appellant's office to request that additional chairs be brought to the gymnasium prior to the scheduled start of the Fair that evening. Appellant was not in his office so Mr. Borg explained his request to Dan Bollweg, a maintenance mechanic supervised by appellant. Mr. Bollweg told Mr. Borg that delivering additional chairs to the gymnasium shouldn't be a problem but that he would relay the request to appellant.

7. At approximately 3.00 p.m. on October 7, Mr. Borg went to the Center to check to see that everything was in place for the Fair. Upon entering the Center, Mr. Borg observed Mr. Bollweg setting up the registration tables. Mr. Bollweg advised Mr. Borg that appellant did not intend to have more chairs delivered to the gymnasium.

8. Mr. Borg then went to appellant's office. Appellant was not there so Mr. Borg started to leave him a note. Before Mr. Borg could finish writing the note, appellant returned to his office. Mr. Borg requested that appellant have an additional stack of chairs delivered to the gymnasium because additional representatives were expected. Appellant began yelling at Mr. Borg, stomping his feet, and turning red in the face; he told Mr. Borg that the request was "stupid" and "unnecessary," that more chairs had never been needed in previous years, and that the plan for this year's Fair provided for only one chair and one table per participating organization. Mr. Borg told appellant that Mr. Bollweg had told him earlier that having additional chairs

delivered to the gymnasium shouldn't be a problem. Upon hearing this, appellant told Mr. Borg that he was lying. Mr. Borg told appellant that he intended to discuss this situation with appellant's supervisor.

9. Appellant's supervisor was not available so Mr. Borg contacted Dean Jane Crisler, the head of the UWC-Rock campus. Dean Crisler agreed with Mr. Borg that the request for additional chairs was a reasonable one and accompanied Mr. Borg to the Center at approximately 4:30 p.m.

10. Mr. Borg and Dean Crisler encountered appellant in the lobby of the Center. Dean Crisler began speaking to appellant about Mr. Borg's request for additional chairs. Appellant became angry and belligerent, waving his arms, using emphatic and intimidating gestures, yelling, and turning red in the face. Appellant told Dean Crisler that the request was stupid and unnecessary, that extra chairs had not been needed before, that each participant was only entitled to a single table and chair, and that he wasn't going to carry out the request. Dean Crisler then ordered appellant to carry out the request to deliver a stack of chairs to the gymnasium. Another campus staff member and a student witnessed this exchange.

11. Appellant obtained a stack of chairs from another building. It took appellant approximately 15-20 minutes to obtain and transport the chairs.

12. Mr. Borg returned to the Center at approximately 5:30 p.m. Upon entering the gymnasium, he observed that additional chairs had not been placed there. Mr. Borg went to appellant's office and, although appellant was not present, he noticed a stack of chairs in the maintenance area. Appellant had left for the day. The Fair was scheduled to begin at 6:00 p.m. Mr. Borg moved the stack of chairs to the gymnasium himself. All of the additional chairs were used during the Fair.

13. Steven Eichman, appellant's first-line supervisor and the campus's business manager, received an electronic mail message from Mr. Borg relating to the incident of October 7 and reviewed it upon his arrival at work on October 8, 1992. Mr. Eichman, after discussing the incident with Mr. Borg and Dean Crisler, prepared a memo to appellant advising him that a predisciplinary interview would be conducted to "determine what, if any, disciplinary action is warranted."

14. The predisciplinary interview was conducted on the afternoon of October 8, 1992. At this interview, appellant was given an opportunity to review the written version of the incident prepared by Mr. Borg.

15. Appellant decided not to carry out Mr. Borg's request because he didn't feel that Mr. Borg had given him sufficient justification for needing additional chairs.

16. Appellant had been suspended for one day without pay in October of 1991 for "threatening, intimidating, interfering with, or using abusive language toward others" and for "failure to exercise good judgment, or being discourteous, in dealing with fellow employees, students or the general public." This discipline resulted from an incident on October 2, 1992, during which appellant, when asked to assist in unloading a heavy board, became verbally abusive to support staff who had communicated the request to him. This incident required Dean Crisler to interrupt a meeting she was conducting in her office in order for her to review the situation and to instruct her support staff to advise appellant that he was being directed by the dean to provide the requested assistance.

17. Appellant had received a warning on December 23, 1991, for failing to remove ice and snow from walkways contrary to a directive which had been issued by Mr. Eichman on November 8, 1991, establishing such removal as a priority of the maintenance staff.

18. Appellant had received a written warning on July 28, 1992, for refusing to arrange for the delivery of chairs for a UWC-Rock event to be held at the Wisconsin School for the Visually Handicapped despite a directive from his supervisor that such delivery be arranged. Appellant noted on this directive, "Steve, are you going to carry chairs. No (sic) me." As a result, Mr. Eichman had to make other delivery arrangements by requesting a pickup truck from the Wisconsin School for the Visually Handicapped and assigning a different member of the maintenance staff to assist in loading and unloading the chairs.

19. Mr. Eichman had verbally counseled appellant on several occasions regarding his inability to adjust to changing circumstances in performing his duties. Mr. Eichman has also noted this in appellant's performance evaluations.

20. Mr. Eichman recommended that appellant be suspended without pay for 3 days and this recommendation was accepted by the appointing authority for the Center System, Assistant Chancellor Antone Kucera.

21. In a letter to appellant dated October 9, 1992, Mr. Kucera stated that appellant was being suspended without pay for a period of three work

days for violation of Section IV. J. of the UW System Classified Employee Work Rule, and cited the language of the work rule as follows:

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J. Failure to exercise good judgment, or being discourteous, in dealing with fellow employees, students or the general public.

Mr. Kucera's letter also stated that:

We, as an employer, will not tolerate your discourtesy in dealing with staff and your inaction regarding work orders. With this incident, and your past history, we are giving you notice that another similar violation of UW System work rules will result in more severe discipline up to and including dismissal from state service.

22. Appellant filed a timely appeal of this suspension with the Commission on October 27, 1992

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §230.44(1)(c), Stats.
2. The respondent has the burden to prove that there was just cause for the imposition of the subject discipline.
3. The respondent has sustained this burden.

OPINION

In Mitchell v. DNR, 83-228-PC (8/30/84), the Commission determined that the underlying questions in an appeal of a disciplinary action are:

1. Whether the greater weight of the credible evidence shows that appellant committed the conduct alleged by the respondent in its letter of suspension;
2. Whether the greater weight of the credible evidence shows that such chargeable conduct, if true, constitutes just cause for the imposition of discipline, and;
3. Whether the imposed discipline was excessive.

The evidence in the record shows that appellant was discourteous in dealing with both Mr. Borg and Dean Crisler and failed to take appropriate

action in regard to work orders as alleged in the letter of discipline. Their testimony that appellant refused to carry out the request that additional chairs be delivered to the gymnasium and was verbally abusive in his refusal was corroborated by a witness to appellant's conversation with Mr. Borg and the Dean in the Center late in the afternoon on October 7. In addition, appellant's abusive behavior in this incident mirrors his behavior in regard to the October of 1991 delivery incident (See Finding of Fact 15, above); and his failure to carry out work orders mirrors his behavior in relation to the October of 1991 delivery incident as well as the December of 1991 snow removal incident (See Finding of Fact 16, above) and the July of 1992 chair delivery incident (See Finding of Fact 17, above). Appellant argues that the maintenance staff was reduced on October 7 as the result of an absence by one member and that it was an unusually busy day due to the arrangements required for the Fair. The record supports appellant's representations in this regard. However, neither of these factors justify, excuse, or negate the fact that appellant exhibited inappropriately discourteous and abusive behavior toward Mr. Borg and Dean Crisler. In addition, the fact that obtaining and delivering the chairs took only 15-20 minutes of appellant's time tends to show that appellant's refusal to carry out the request was not the result of significant workload concerns on his part. Appellant also alleges that he interpreted Mr. Borg's request as a suggestion, not a directive. However, appellant's testimony in this regard was not credible, i.e., why would an employee become agitated and verbally abusive if he interpreted a request as a suggestion only? Appellant further argues that he did not carry out Mr. Borg's request because it was only "required" that one table and one chair be placed in the gymnasium. However, there were no "requirements" governing such matters, only a planning document clearly intended to be a guideline only and subject to change if circumstances so warranted. More importantly, however, even if Mr. Borg's request could be interpreted as a suggestion, and, even if there had been a "requirement" that only one table and one chair be placed in the gymnasium, this still does not excuse or justify appellant's abusive behavior.

In determining whether just cause exists to meet the second requirement of Mitchell, " . . . 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 . . . " Safransky v. Personnel Board, 62 Wis. 2d 464, 474, 215 N.W. 2d 379 (1974). Obviously, failing to carry out work orders impairs the performance of the duties of the position to which this work is assigned. Equally obviously, failure to carry out work orders impairs the efficiency of a unit because work assigned to the unit isn't getting done. In addition, in this instance, appellant's refusal to carry out Mr. Borg's request required a time commitment by both Mr. Borg and Dean Crisler which exceeded the time it actually took appellant to complete the requested task. This, too, obviously impaired the efficiency of the campus as a whole since this diverted both Mr. Borg and Dean Crisler from carrying out their other responsibilities. Finally, engaging in discourteous and abusive behavior tends to impair the performance of appellant's duties since courtesy and cooperation are required elements of any position; and tends to impair the efficiency of appellant's work unit or any work unit since it engenders poor work relationships among employees, affects unit morale, and impairs the image the unit projects to the public.

The final question then is whether the discipline imposed was excessive. In view of appellant's previous one-day suspension and documented history of similar acts of insubordination and discourteous and abusive behavior, the Commission concludes that the subject three-day suspension was not excessive.

ORDER

The action of respondent is affirmed and this appeal is dismissed.

Dated: June 25, 1993 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:rcr

  
JUDY M. ROGERS, Commissioner

Parties:

Raymond Drewieck  
1324 Sylvester Street  
Janesville, WI 53546

Katharine Lyall  
President, UW  
1700 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served per-



sonally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.