
ALAN L. ASCHE,

Petitioner,

vs.

Case No. 93 CV 1365

STATE PERSONNEL COMMISSION,

Respondent.

DECISION AND ORDER

The Petitioner filed this Petition for Review on April 6, 1993. The Petitioner raises two issues. First, did the Division of Corrections provide sufficient notice to the Petitioner as to the reasons for Petitioner's discipline and transfer/reassignment? Second, is there substantial evidence in the record supporting the Respondent's findings of fact? The court concludes Petitioner did not receive sufficient notice except for the "picture" issue. Therefore, the court remands this matter to the Respondent to revise its decision related to the picture incident or to take whatever other action it deems appropriate.

Section 230.34(1)(b) of the Wisconsin Statutes requires, in part, that the appointing authority must furnish the employee its reasons for discipline in writing. The Petitioner received his notice in an April 6, 1990 letter from Warden Catherine Farrey. This notice is sufficient as to the "...photograph of a naked boy with a large penis overlaid..." claim (the court notes that the Petitioner erroneously refers to a "large pension" in its brief on page 10). The notice is woefully inadequate as to "inappropriate DOC staff actions and behavior including harassment (and)...use of profane language..." Without more clues as to when, by whom, who was present, when the alleged violations occurred and in what context, it is

virtually impossible for Petitioner to prepare and defend himself. An employee is not entitled to know every single incident and possible violation but sufficient specifics must be provided to insure fairness in the process. While the pre-disciplinary process may have provided some assistance to the Petitioner, the record does not support a conclusion that the process as a whole provided sufficient notice. State ex rel. Messner v. Milwaukee County, 56 Wis. 2d 438, Wis. Stats.

Respondent is correct that deference by the courts must be accorded to an agency's interpretation of a statute if such interpretation requires a knowledge or area of expertise not commonly found. However, whether notice is adequate and sufficient is not such an area. There is no serious factual dispute on the notice issue. Esparza v. DILHR, 132 Wis. 2d 402.

Furthermore, Petitioner has not waived the notice issue by not more specifically stating that claim in his Petition for Review. Petitioner's brief clearly makes this claim apparent before Respondent had to respond.

In conclusion, the court finds that the fairness of the proceedings have been impaired by inadequate notice to the Petitioner and the matter is remanded. The court does not reach the other issues raised by the parties.

Dated: December 8, 1993.

BY THE COURT:



Daniel R. Moeser
Circuit Judge

cc: Atty. Richard Graylow
AAG Stephen Sobota