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STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH 42

VERA HUTSON,

Petitioner,

v.

STATE OF WISCONSIN PERSONNEL COMMISSION,

Respondent.

00-CV-008299

DECISION

Vera Hutson, ("petitioner"), seeks review pursuant to sec. 227.52, Stats., of the State of Wisconsin Personnel Commission's, ("respondent's"), August 28, 2000 Decision and Order. The Department of Corrections, ("DOC"), had issued a written reprimand to petitioner on August 19, 1996, listing a total of seven violations of three different Work Rules. Petitioner appealed this discipline to respondent, claiming she had engaged in activities protected under the Wisconsin Employee Protection Law, ("Whistleblower law"), and the Wisconsin Fair Employment Act, ("WFEA"), and that the written reprimand constituted illegal retaliation under these laws. A hearing was held, and respondent issued a 48 page Decision and Order which is the subject of this appeal. Respondent found petitioner had not engaged in activity protected under the Whistleblower law, and that while she engaged in activity protected under the WFEA, the Department submitted sufficient evidence to overcome petitioner's *prima facie* case for

retaliation by demonstrating a "reasonable basis" for the discipline. Petitioner argues respondent's Decision and Order contains findings of fact which are unsupported by substantial evidence and conclusions of law which are erroneous.

FACTUAL BACKGROUND[1]

Petitioner is employed by the Department as a Probation and Parole Agent - Senior. She began working in Unit 033 on October 2, 1995. Unit 033 is the office for the then newly formed statewide "administrative minimum" program, whereby low-risk offenders were supervised via a telephone call-in system. Petitioner and other agents in the Unit were of the opinion that there were management problems and an excessive caseload in the Unit. Ultimately, petitioner sent a memo to her immediate supervisor, James Wake[2], on February 5, 1996. This memo provided, in part:

> I am writing this correspondence to request workload relief and/or authorized overtime of one hour per every 5.5 points over the 260 point caseload cap per our union contractual agreement for the 1995-97 contract year. I am currently supervising a total of 559 cases 475 under my agent number and 84 for a co-worker who will be out on sick leave for the next four to seven weeks. I am 319 points above the 260 maximum caseload cap. According to the Department of Corrections manual CC/SD standards cases classified as minimum are weighed as one point per case. I am aware of the fact that some specialized units are excluded from the 260 point caseload cap minimum. However, the exclusion only takes effect after a mutual agreement is reached between the Secretary of the Department of Corrections, the Regional Chief(s), Doc Employment Relations, AFSCME Council 24 and the local union. To my knowledge that has not occurred. Therefore, I am fully covered under the 1995-1997 contract and the agreement of a 260 workload cap minimum.

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[1] The factual background of this case is extensive, and will not be recounted in totality here. Additional facts will be referred to throughout this decision where relevant.

[2] Petitioner also sent copies of this memo to two union officials and to Kathleen Ware, (Assistant Regional Chief for Milwaukee and Wake's immediate supervisor).

> Due to the excessive workload and a caseload that continues to grow without foreseeable end, coupled with the lack of clarity under a supervisory style that is extremely arbitrary and capricious. [sic] I have found the work environment to be highly stressful and terribly distracting to try to manage my caseload adequately and professionally. I am at this time requesting that reasonable guidelines be established that would enable me to perform my job to meet the needs of the protection of the community, the Department of Corrections and myself as agent [sic] in the Minimum/Administrative unit.

After petitioner's work relief memo, a meeting was held between petitioner, Wake, and Ware on February 29, 1996. At this meeting, petitioner described the problems she perceived in Unit 033, (including a lack of consistent guidelines for handling cases and Wake's incompetence). A Unit meeting was subsequently held on March 13, 1996. At this meeting, petitioner told Wake that he was treating them "like slaves."

On March 15, 1996, petitioner wrote a memo to Allan Kasprzak[3], (Regional Chief for Milwaukee and Ware's immediate supervisor). This memo provided:

> Allan I am sending this correspondence to you out of fear and frustration. It seems no one is willig [sic] to listen to our concerns regarding Jim Wake. I gave a memo to you, Kathy Ware and Jim regarding workload relief. Every [sic] since I give [sic] that memo Jim [sic] behavior towards me has escalated in very intimidating, harassing and vindictive actions. The memo of 2-6-96 was addressed in a meeting with Kathy Ware and Jim and myself on 2-29-96. However, as I stated to Kathy and in the meeting with Jim present the issues were not just work load relief. The issues were also Jim's behavior as a Supervisor. I have gotten to the point that I fear for my personal safety. Especially since 3-13-1996 when Jim angrily and abruptly stopped our unit meeting. He became visibly upset and began to tremble, his face was very red and his lips were white. He has pretty much maintained that persona to date 3-15-1996. He has not spoken one word to me since the unit meeting but I have observed him glaring at me. I feel a strong since [sic] of fear that he might explode. Jim's demeanor has and is causing the environment in the unit to be very tense. Other agents have voiced their concerns of fear for their personal safety. Something is very, very wrong down here. We should not have to work in such an environment. I am asking for your help in trying to resolve the concerns we have in this unit. As well as the

[3] Petitioner also sent copies of this memo to Wake and Ware.

above issues there are definite issues of favoritism and probably nepotism. There is a difinite [sic] divide in the unit created by Jim. Due to my fearing for my personal safety. [sic] I feel the need to inform others about the concerns in this unit. I have gotten to the point that I can"t [sic] focus on my work, I am very stressed when I leave work and I am starting to lose sleep because the conditions in this unit are very unsafe, unstable, and Jim Wake does not allow ANY of us to discuss the issues.

On that date, petitioner also wrote a memo to Wake which provided:

> Jim I am leaving to go home. I will use personal time. I am afraid for my personal safety in regards to your behavior towards me. I feel very uncomfortable to the point it is affecting my job.

Three meetings were held on March 19, 1996. The first meeting was attended by petitioner, fellow agents Vicki Turner and Michelle McKinstry, Wake, Ware, Kasprzak, John Barian, (Assistant Regional Chief for Milwaukee), and Kathy Kosminski, (a union representative). The agents' caseloads and other Unit issues were discussed. Kasprzak "declared" that those present had agreed to get along. The second meeting was attended by petitioner, Wake, Ware, Kasprzak, and Kosminski. The topic of this meeting was petitioner's allegation that Wake made her workplace unsafe. Kasprzak believed petitioner's allegation in this regard was unfounded. The third meeting was attended by Wake, Ware, and Kasprzak. Wake's contemporaneous notes of comments made by Kasprzak at the meeting provided, in part:

> - I am a wimp for saying that I was extremely upset and hurt by remarks Vera has made. He said he would not move me, even temporarily, this would [undecipherable] look like caving in to them.
> - If I asked to have someone else manage the problem with Vera that my reputation would suffer.
> - It was like a pack of dogs seeing someone in fear if I was to show hurt or weakness - the "dogs" would attack me if they saw weakness.
> - I am to put on a facade of being in charge
> - The strategy is to separate them (the trouble makers) and grind them down one by one
> - The way to beat a bully is to beat him senseless.

I reiterated that I feel harassed by the accusations made against me.

I just ignore harassment complaints against me. The Dept will ride it out and the complainant will be bought off and the reward to them (complainant is piddly). They gave [an agent] $7000. After attorney fees she got nothing.

This is all part of being a manager.

Ware reported Kasprzak's comments to Euriel Jordan, (Division Administrator for Community Corrections, Probation/Parole, and Kasprzak's supervisor). Jordan later told Kasprzak the latter's comments were inappropriate.

On March 29, 1996, petitioner spoke with Michael Sullivan, (Secretary of the Department of Corrections and Jordan's supervisor), regarding Unit 033. In an April 22, 1996 memo to Sullivan regarding "Racial discrimination from Kathy Ware Assist. Chief, James Wake Unit Supervisor," petitioner wrote:

Mr. Sullivan in our conversation on 3-29-96 I informed you of problems in the Min/Admin. phone in supervision unit regarding Supervisor Jim Wake. You stated that you had directed Mr. Jordan to deal with the situation. I'm not sure if that happened. Kathy Ware & James Wake have continued to harass and intimidate me. It is very obvious that they do not want me in this program. However, James Wake's behavior has not been addressed. I have been accused of violating work rule #1, 4, 13. This is the first I have heard of such violations. (See the attached letter). James Wake made it very clear that he does not want this program. He also made it clear to me that because he does not want this program "perhaps I am taking my anger out on you guys." Mr. Wake has been obnoxious, unavailable to me & several others which interfered with our job functions as well as very intimidating to me to the point I feared for my personal safety & left the work site to protect myself. I have been in a few meetings with Kathy Ware & James Wake. To no avail. Kathy Ware has been just as intimidating as James Wake. It appears she is very biased & not trying to resolve the situation but more finger pointing at me & others in what I believe is her attempt to run several of us out of the unit because we don't fit their plan for the unit. There [sic] blatant unequal treatment. [sic] There are two people who were

hand picked by administration those two people are free to do their job w/o interference the rest of us have had continual road blocks in our attempts at performing our jobs. The intimidation has been a problem from day one and it escalated after we submitted memos requesting workload relief. Kathy Ware & James Wake have blatantly violated work rules. It is obvious around Region 3 that there are and have been problems with James Wake. It appears that management is aware of the problems but continues to blame any one [sic] who attempt [sic] to get the problems address [sic].

Mr. Sullivan as long as Kathy Ware is the person we take our complaints to nothing will ever be resolved.

I am asking your assistance in dealing with these issues. I and others are sitting ducks in this unit. Kathy & James have be [sic] working daily to find something to use against us. I know that Kathy Ware is very angry that I complained & was afraid of James Wake's behavior to the point I left work. In a meeting with Kathy Ware, Allan Kasprzak, James Wake and Kathy Kosminski & myself Kathy stated to me that I could ruin a career & Allan said to me that no one in Region 3 management would ever believe my concerns. I believe Kathy Ware, James Wake and others will do any thing [sic] to get me out of the unit & the Dept. The Allegation [sic] in the attached letter are false I have not engaged in the behavior indicated any more than every agent in the unit including the two hand picked agents. I have approx 500 to 525 clients James or Kathy have not approached me with the issues. This is truly retaliation.

On April 19, 1996, Ware directed petitioner to report for an investigatory interview. The memo stated that petitioner had "violated Work Rules #1, 4, 13 by engaging in behavior which could be a violation of the Harassment policy, and using demeaning and abusive language with offenders."

Sometime during the month of April 1996, petitioner filed an internal complaint of WFEA discrimination based on race and military status with respondent's Affirmative Action office. An investigation was conducted, resulting in a finding of "no probable cause."

On April 30, 1996, Ware conducted an investigatory interview with petitioner and her union representative. Ware subsequently prepared a seven page memorandum to Jordan,

concluding with the recommendation that the "matter be referred for a pre-disciplinary hearing for violation of Work Rules #1, 4, and 13." Petitioner transferred out of the Unit on June 10, 1996. After petitioner objected to having Ware preside over her pre-disciplinary hearing, Barian was assigned to do so. Barian held the pre-disciplinary hearing on July 9, 1996. Petitioner brought a union representative to the hearing. Petitioner testified at the hearing, but did not call any witnesses or offer any documents. Barian issued a pre-disciplinary report to Jordan on August 6, 1996, finding that "[t]he investigation supports just cause and mitigation seems to be more of offering excuses," and recommending that petitioner be disciplined. Petitioner was then issued the written reprimand described above.[4]

STANDARD OF REVIEW

On a petition for judicial review pursuant to ch. 227, a circuit court is not bound by an agency's conclusions of law. Wehr Steel Co. v. DILHR, 106 Wis. 2d 111, 117 (1982). However, a court will ordinarily defer to the agency's construction and application of a statute if it is reasonable. See Jenks v. DILHR, 107 Wis. 2d 714, 720 (Ct. App. 1982). On judicial review, there are three levels of deference which may be given to an administrative agency's conclusions of law and statutory interpretations, depending on the agency's experience, technical competence, and knowledge in regard to the question presented: great weight, due weight, and *de novo* review. See Kelley Co., Inc. v. Marquardt, 172 Wis. 2d 234, 244-45 (1992). The "*de novo*" standard "is only applicable when the issue before the agency is clearly one of first impression," or where the "agency's position on an issue has been so inconsistent [that is

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[4] The specifics of the seven incidents which the DOC determined warranted discipline will be discussed below.

provides] no real guidance." UFE, Inc. v. LIRC, 201 Wis. 2d 274, 285 (1996). The "due weight" standard is appropriate when an "agency has some experience in an area, but has not developed the expertise which necessarily places it in a better position [than the court] to make judgments regarding the interpretation of the statute." Id. at 286. Under the due weight standard, a court will not overturn a reasonable interpretation "that comports with the purpose of the statute unless the court determines that there is a more reasonable interpretation available." Id. at 286-87 In order for an agency interpretation of a statute to be accorded "great weight" deference, four conditions must be met: (1) the agency must have been charged with the duty of administering the statute; (2) the agency's interpretation must be one of long-standing; (3) the agency must have employed its expertise in forming that interpretation; and (4) the agency's interpretation must advance the goals of uniformity and consistency in the application of the statute. Id. at 284. Under the great weight standard, "a court will uphold an agency's reasonable interpretation that is not contrary to the clear meaning of the statute, even if the court feels that an alternative interpretation is more reasonable." Id. at 287

Conversely, a court will defer to an agency's findings of fact if they are supported by "substantial evidence," that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Bucyrus-Erie Co. v. DILHR, 90 Wis. 2d 408, 418 (1979). The Supreme Court has further explained:

> Substantial evidence is not equated with preponderance of the evidence. There may be cases where two conflicting views may each be sustained by substantial evidence. In such a case it is for the agency to determine which view of the evidence it wishes to accept.
>
> The term "substantial evidence" should be construed to confer finality upon an administrative decision on the facts when, upon an examination of the entire

> record, the evidence, including the inferences therefrom, is found to be such that a reasonable man, acting reasonably *might* have reached the decision; but, on the other hand, if a reasonable man, acting reasonably, *could not* have reached the decision from the evidence and its inferences then the decision is not supported by substantial evidence and it should be set aside.

Id. (Citations omitted.)

Respondent's factual determinations here will be reviewed under the "substantial evidence" test. Petitioner argues respondent's legal conclusions are entitled only to "due weight," arguing respondent relied on little of its own precedent. This court, however, concludes respondent's legal conclusions are entitled to "great weight" deference. See Board of Regents v. Wisconsin Personnel Comm., 147 Wis. 2d 406, 410 (Ct. App. 1988). Respondent relied on several of its prior decisions in reaching its conclusions here. Furthermore, respondent is the agency charged with administering these laws, (and has done so for some time). Finally, deferring to the agency here will foster uniformity in their interpretation. Therefore, respondent's interpretation of the statute will be affirmed by this court unless it is unreasonable.

ANALYSIS[5]

Whistleblower Law

The Whistleblower law protects employees who have engaged in certain protected activities. Specifically here, sec. 230.83(1), Stats., provides that:

> No appointing authority, agent of an appointing authority or supervisor may

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[5] As an initial matter, it should be noted that petitioner's claims in this case arose under two distinct laws: the Whistleblower law and the WFEA. At times, in petitioner's briefs, it is difficult to determine if her arguments are directed to that portion of respondent's decision dealing with the Whistleblower law or to that portion dealing with the WFEA. (In fact, it is not entirely clear to this court whether petitioner is challenging respondent's conclusions with respect to the WFEA at all, as no mention of or citation to it is made.) This court has attempted to sort through petitioner's arguments, and apply them where appropriate.

> initiate or administer, or threaten to initiate or administer, any retaliatory action against an employee.

"Retaliatory action" is defined, in part, in sec. 230.80(8), Stats., as "a disciplinary action taken because. .[t]he employee lawfully disclosed information under s. 230.81... " Before an employee can claim the protections of sec. 230.83, Stats., the information must first be disclosed, "in writing to the employees supervisor." Section 230.81(1)(a), Stats. "Information," is defined, in turn by sec. 230.80(5), Stats., as "information gained by the employee which the employee reasonably believes demonstrates. .[m]ismanagement or abuse of authority in state or local government. " Section 230.80(7), Stats., defines "mismanagement" as:

> [A] pattern of incompetent management actions which are wrongful, negligent or arbitrary and capricious and which adversely affect the efficient accomplishment of an agency function. "Mismanagement" does not mean the mere failure to act in accordance with a particular opinion regarding management techniques.

Finally, sec. 230.85(6), Stats., creates a presumption that disciplinary action occurring within two years of the employee's protected activity is retaliatory.

Petitioner first argues that respondent erred in concluding that petitioner did not disclose a "pattern" of incompetent management actions sufficient to trigger the protections of the Whistleblower law. Respondent construed petitioner's work relief memo as containing two major contentions: mismanagement and excessive workload. As for the first, respondent found that while petitioner's comments about "arbitrary and capricious" supervision and a lack of "reasonable guidelines" could "relate" to the concept of "mismanagement" under sec. 230.80(7), Stats., they were so conclusory and general that they could hardly be said to *describe* mismanagement. In other words, according to respondent, unless petitioner adequately describes the "information," she will not be held to have made a disclosure. See Elmer v. DATCP, 94-

0062-PC-ER, 11/14/96 (noting a lack of "substantive content" in the alleged disclosures). As for petitioner's complaints of an excessive workload, respondent concluded that, assuming *arguendo*, that petitioner established hers was a "reasonable belief," and that the workload level was not a function of "management technique," petitioner failed to disclose a "*pattern* of incompetent management actions." See Pfeffer v. UW (Parkside), 96-0109-PC-ER, 3/14/97 (noting disclosure at issue "relates to a disagreement by certain UW-Parkside custodians with a decision by management to transfer all third shift custodians to the day shift").

Petitioner's main argument with respect to her Whistleblower claim appears to rest on the fact that respondent only considered her February 5, 1996 work relief memo in deciding her Whistleblower claim. Petitioner argues respondent erroneously relied on Pfeffer because petitioner made numerous disclosures which respondent did not address, and which clearly establish that petitioner disclosed a "pattern" of mismanagement.

It should be noted that there is apparently a dispute as to exactly what petitioner claimed as her protected activity/activities under the Whistleblower law. The confusion is understandable given petitioner's apparent inconsistencies. At the hearing, petitioner identified the following as protected disclosures: February 5, 1996 work relief memo; February 29, 1996 meeting; March 13, 1996 Unit meeting; March 15, 1996 memo to Kasprzak; April 19, 1996 investigatory interview; and April 22, 1996 memo to Sullivan. In her brief filed in this case, petitioner identified the above as protected disclosures but omitted the April 19, 1996 investigatory interview and added the March 19, 1996 meeting and a meeting with Sullivan. Respondent noted in its decision that while petitioner had discussed other possible protected activities at the hearing, it only considered the February 5, 1996 work relief memo. According to respondent,

petitioner's post-hearing brief, (at page 30), clearly identified the work relief memo as the basis for her Whistleblower claim. Petitioner has not provided this court with a copy of her post-hearing brief in an effort to rebut respondent's contention on this issue. Therefore, this court will assume respondent has correctly represented the contents of the post-hearing brief, and therefore, properly considered only the work relief memo as protected Whistleblower activity. Considering only the February 5, 1996 work relief memo, it cannot be said that respondent erred in concluding that petitioner failed to disclose a "pattern" of mismanagement. The two cases cited by petitioner, (Duran v. DOC, 94-0005-PC-ER, 10/4/94, and Canter (Kihlstrom) v. UW (Madison), 86-0054-PC-ER, 6/8/88), are distinguishable due to their procedural posture. In both those cases, respondent was ruling on a motion to dismiss for failure to state a claim, and in both cases, the respondent there, (DOC and UW), was specifically allowed to assert their claim, at the hearing, that those petitioners failed to disclose information. This case, obviously, reached the hearing stage. In sum, respondent's conclusion that petitioner failed to "disclose" information was reasonable, in this court's view, and will be upheld.[6]

WFEA

Section 111.321, Stats., provides that "no employer. .may engage in any act of

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[6] Petitioner's next argument, (that respondent failed to recognize the presumption that disciplinary action occurring within two years of the date of the employee's protected activity is retaliatory), is mooted by this court's conclusion that respondent did not err in concluding petitioner failed to "disclose" "information," (i.e., "mismanagement"). Without the existence of protected activity, the presumption created by sec. 230.85(6), Stats., does not arise. In fact, without protected activity, the analysis ends. Without protected activity, there can be no "retaliation." For this reason, petitioner's arguments that she faced additional "disciplinary action," (other than the written reprimand), are also mooted. Finally, it is also for this reason that petitioner's argument that respondent ignored direct evidence of retaliation, (to the extent this argument was raised in connection with her Whistleblower claim), is mooted.

employment discrimination as specified in s. 111.322 against any individual on the basis of. .race... " Section 111.322(3), Stats., further provides that "it is an act of employment discrimination. .[t]o discharge or otherwise discriminate against any individual because he or she has opposed any discriminatory practice. "

In analyzing petitioner's WFEA claim, respondent employed the framework established by McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), which, as explained by respondent:

> provides that the burden is first on the petitioner to show a prima facie case; that this burden then shifts to [the DOC] to rebut the prima facie case by articulating a legitimate, non-discriminatory reason for its action; and that the burden then shifts back to petitioner to show that [the DOC's] reason is a pretext for discrimination.

Specifically, in this case, petitioner alleged she participated in four different activities which are protected under the WFEA. March 13, 1996 Unit meeting; April 19, 1996 complaint to Kasprzak; formal Affirmative Action complaint; and April 22, 1996 memo to Sullivan. Respondent concluded that the latter two activities were protected under the WFEA. In addition, respondent concluded that the August 19, 1996 written reprimand constituted an adverse employment action. Finally, respondent concluded that the proximity of time between the protected activities and the adverse employment action established petitioner's *prima facie* case.

Respondent then shifted the burden to the DOC to demonstrate a non-discriminatory basis for its actions, (i.e., that the written reprimand reflected actual performance problems). Respondent examined each of the seven incidents separately to determine if there was a reasonable basis for the reprimand, (if not, respondent stated it would infer illegal retaliation). Respondent determined that there was, in fact, a reasonable basis for reprimand with respect to each incident. Moreover, respondent noted that the disciplinary process was underway prior to

the time petitioner engaged in her protected activities[7], and that agents Turner and McKinstry were also disciplined even though they did not engage in protected activities under the WFEA. Therefore, respondent concluded, petitioner's discipline did not constitute retaliation.

Petitioner's main argument with respect to her WFEA claim is that respondent erred in applying the McDonnell-Douglas framework in light of direct evidence of retaliation, (consisting of Kasprzak's comments on March 19, 1996).[8] However, petitioner provides no support for this contention. In fact, direct evidence of retaliation can be easily fitted into the McDonnell-Douglas framework, (either to help petitioner demonstrate her *prima facie* case, or to help petitioner demonstrate that the DOC's proffered reasons for its actions were pretextual).

Petitioner also argues the DOC failed to demonstrate a legitimate, non-discriminatory reason for its action. The question of the DOC's motivation presents a question of ultimate fact. See St. Joseph's Hospital v. WERB, 264 Wis. 396, 401 (1953). As such, it will be upheld by this court if it is supported by substantial evidence. In this case, respondent clearly undertook an extensive analysis of the seven claimed incidents warranting reprimand. Petitioner argues she offered specific evidence in each case that the discipline was retaliatory. At most, however, petitioner has demonstrated that a reasonable person *might* have reached a different conclusion. This is insufficient. Where more than one inference can reasonably be drawn, respondent's factual conclusions will be upheld. Bucyrus-Erie, 90 Wis. 2d at 418. Respondent also relied on

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[7] Respondent noted it could not pinpoint the date she filed her Affirmative Action complaint. As petitioner failed to specify what day in April the complaint was filed, respondent assumed it was filed the last day of April.

[8] It should be noted, however, that elsewhere in her brief, petitioner states that "[i]n retaliation cases, [respondent] applies the same type of analysis set forth in McDonnell Douglas. "

the fact that the disciplinary process was in motion prior to petitioner's protected activities and the fact that McKinstry and Turner were also disciplined, (though neither engaged in protected activities). Moreover, respondent found that petitioner's "attitude" detracted from her credibility as a witness. See Bucyrus-Erie, 90 Wis. 2d at 418 ("[A] reviewing court cannot evaluate the credibility or weight of the evidence"). Petitioner makes much of Kasprzak's comments at the March 19, 1996 meeting. In this court's view, it was reasonable for respondent to give them little weight as Kasprzak was not directly involved in the disciplinary process and those who were involved, and who were aware of the comments, were disapproving of them. Under these circumstances, respondent's findings of fact will be upheld.

Therefore, based on the foregoing, it is hereby ordered that respondent's August 30, 2000 Decision and Order is hereby affirmed.

Dated at Milwaukee, Wisconsin this 26th day of September, 2001.

BY THE COURT:

Hon. David A. Hansher
Circuit Court Judge, Branch 42