

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RONALD KOHLMAN, Appellant

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 266  
No. 73200  
PA(adv)-415

DECISION NO. 35036-A

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**Appearances:**

Mr. Troy Bauch, Field Representative, Wisconsin State Employees Union, 1109 Rufledt Road, Cornell, Wisconsin, appearing on behalf of Appellant Ronald Kohlman.

Ms. Laura Amundson, Office of State Employment Relations, 101 East Wilson Street, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

**DECISION AND ORDER**

Ronald Kohlman filed a timely appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting his ten day suspension was not for just cause. Hearing on the matter was held on November 20, 2014, in Irma, Wisconsin. The hearing examiner was Lauri A. Millot. The parties filed written briefs and retained the option to file reply briefs by February 2, 2015.

On April 17, 2015, Examiner Millot issued a Proposed Decision and Order concluding that Kohlman had been suspended for just cause. On May 7, 2015, Kohlman filed an objection to the Proposed Decision and Order and the matter became ripe for Commission action on June 8, 2015.

Based on a review of evidence and arguments, the Commission makes and files the following:

### **FINDINGS OF FACT**

1. Appellant Ronald Kohlman (hereinafter “Kohlman”) was hired on June 6, 2011, to the position of Youth Counselor. He was assigned to work at the Copper Lake/Lincoln Hills Schools. Kohlman had no prior discipline.

2. Respondent Department of Corrections (hereinafter “DOC”) is an agency of the State of Wisconsin and operates Copper Lake/Lincoln Hills Schools. Copper Lake/Lincoln Hills Schools is responsible for the supervision and education of youth offenders. At all times relevant herein, Paul Westerhaus was the Superintendent.

3. Kohlman was disciplined on October 25, 2013, for violating DOC Work Rules #2 – failure to comply with written policies or procedures and #4 – negligence or failure to exercise good judgement. DOC imposed a ten day suspension.

4. On August 6, 2013, Kohlman stated twice to a youth under his supervision, who he knew to be at risk of suicide, that he should “go ahead and kill himself.”

5. There were no similarly-situated DOC employees that engaged in the same misconduct as Kohlman.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction to review this matter pursuant to § 230.44(1)(c), Stats.

2. The State of Wisconsin Department of Corrections had just cause within the meaning of § 230.34(1)(a), Stats., to suspend Kohlman for ten days for goading a youth to commit suicide.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

### **ORDER**

The suspension of Ronald Kohlman is affirmed.

Signed at the City of Madison, Wisconsin, this 13th day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

... may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Kohlman had permanent status in class at the time of his suspension and his appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that the employee was guilty of the misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v Personnel Board*, 53 Wis.2d 123 (1971); *Safransky v Personnel Board*, 62 Wis.2d 464 (1974). The Commission's role is to make findings of fact which it concludes are "proven to a reasonable certainty, by the greater weight of credible evidence."

Here, the State has met its burden of proof as to Kohlman's suspension.

The parties stipulated that:

On August 6, 2013, you [Appellant] was (sic) working his scheduled shift in the Krueger Living Unit. This Unit holds some of the most challenging youth who often engage in self harm behavior and have suicidal ideation coupled with significant mental health needs. A youth was escorted to see the psychologist. The youth stated that he was thinking of killing himself. You told the youth to go ahead and kill himself, not once, but twice. You then said to the psychologist, with the youth present, words to the effect of "Do you really think I care, you know how much I care about these kids." During the investigation you stated that you were kidding.

Kohlman does not challenge the facts giving rise to the discipline, but rather argues that that the level of discipline imposed was excessive. Kohlman offered instances of discipline issued to other DOC employees pursuant to the same work rule violations, but who received a

lesser degree of discipline. Kohlman further points out that the 10-day suspension was issued outside of the disciplinary progression and that in and of itself is evidence of excessiveness.

Kohlman's discipline stands. None of the proffered disciplinary records submitted at hearing were sufficiently similar to warrant reducing Kohlman's suspension. None of the alleged comparables engaged in conduct which placed another in mortal danger. Kohlman knew that youth, housed at the Krueger Living Unit, had suicidal ideation since they were checked every 15 minutes.<sup>1</sup> Kohlman's crude comment, which he attempted to characterize as a "joke," was neither funny nor appropriate. Kohlman's taunts had the potential to result in the youth committing suicide.

DOC's discipline policy, Executive Directive #2, specifically states that when determining the level of discipline, progressive discipline shall be followed "unless the facts of the specific situation warrant a different level of discipline." The seriousness of the misbehavior in this case at a minimum warrants a ten-day suspension. Kohlman needs to understand that his behavior could have caused grave harm to the youth and the DOC.

Kohlman appears to argue that he was not fully trained in how to respond to suicide situations. Even if Kohlman, due to his short tenure at the facility, was not specifically trained in all aspects of suicide prevention, he certainly knew or should have known that daring a youth who has verbalized that he intends to kill himself with a "go ahead" comment was wrong.

Finally, the consensus of the testimony established that it was not Kohlman's intent to harm the youth. Ultimately, DOC has afforded Kohlman the opportunity to learn from the situation should he desire to maintain continued employment.

Signed at the City of Madison, Wisconsin, this 13th day of July 2015.

#### WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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James J. Daley, Commissioner

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<sup>1</sup> Contrary to Kohlman, we conclude the record as a whole supports this determination.