

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VALENCIA GUILLONTA, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0043

Case Type: PA

DECISION NO. 36112

Appearances:

Valencia Guillonta, 3346 North 1st Street, Milwaukee, Wisconsin, appearing on her own behalf.

Mark A. Herman, Assistant Legal Counsel, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

DECISION AND ORDER

On March 18, 2015, Valencia Guillonta filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that she had been suspended for ten days without just cause by the State of Wisconsin, Department of Corrections. The Commission assigned the appeal to Examiner William C. Houlihan who conducted a hearing on September 21, 2015, in Milwaukee, Wisconsin. At the conclusion of the hearing the parties made closing arguments.

On October 26, 2015, Examiner Houlihan issued a proposed decision affirming the suspension. No objections to the proposed decision were filed and the matter became ripe for Commission action on November 27, 2015.

Based on a review of the evidence and argument, the Commission makes and issues the following:

FINDINGS OF FACT

1. Appellant Valencia Guillonta is employed as a captain by the State of Wisconsin, Department of Corrections, in the Milwaukee Secure Detention Facility and has permanent status in class.

2. Respondent Department of Corrections is an agency of the State of Wisconsin which operates the Milwaukee Secure Detention Facility.

3. On July 27, 2014, Guillonta deployed a stun gun on an inmate of the Milwaukee Secure Detention Facility, who had made no threat of violence or any attempt to harm any person.

4. Such use of force violates the Department of Corrections' use of force policy.

5. On September 30, 2014, Guillonta was given a ten-day suspension without pay for her actions on July 27, 2014.

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

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations 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 issue a ten-day suspension without pay to Valencia Guillonta.

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

ORDER

The ten-day suspension of Appellant Valencia Guillonta is affirmed.

Signed at the City of Madison, Wisconsin, this 12th day of January 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

James J. Daley, Commissioner

I Dissent.

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING DECISION 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.

Valencia Guillonta had permanent status in class at the time of her ten-day suspension and her 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 parties entered into the following Stipulation of Facts:

- (1) On July 27, 2014, Inmate [] (I.C.) was being held alone in an observation cell.
- (2) At approximately 1:35 a.m. Officer Trevisan opened the trap door to I.C.'s cell in order to provide her with sheets of toilet paper.
- (3) I.C. seized the trap door with her fingers, and stated that if she was not given an entire roll of toilet paper she would slam her fingers with the trap door.
- (4) At the time of the incident Officer Trevisan had been employed as a prison guard for less than two months.
- (5) Officer Trevisan held down the trap door to prevent I.C. from injuring herself, and called for assistance.

- (6) Officer Trevisan ordered I.C. to release the trap door.
- (7) I.C. refused to comply with Officer Trevisan's order.
- (8) Captain Valencia Guillonta (Guillonta) arrived on scene at approximately 1:39 a.m.
- (9) Guillonta was carrying a stun gun.
- (10) Guillonta warned I.C. to release the trap door. Guillonta then warned I.C. that if she did not release the trap door that she would use a stun gun on her. Guillonta then deployed the stun gun on I.C. The total time of Respondent's interactions with I.C. was ten seconds.
- (11) At the time of the incident I.C. had made no threats of violence against Guillonta or Officer Trevisan.
- (12) At the time of the incident I.C. had made no attempts to harm Guillonta or Officer Trevisan, such as by biting, scratching or spitting at either of you through the trap door.
- (13) At the time of your interview by Office of Special Operations Investigator Ashworth Guillonta was unable to articulate any justification for her reactionary use of force.
- (14) Guillonta failed to follow Department of Corrections (DOC) procedures for a planned use of force, including, but not necessarily limited to: (a) contacting Security Director Johnson for authorization to use force; (b) contacting nursing staff to ensure that there were no medical contra-indications to the use of a stun gun on this inmate; and (c) obtaining a video camera to record the use of force.
- (15) Following the incident Guillonta failed to follow DOC procedures concerning the use of force, including, but not necessarily limited to: (a) rendering first aid to I.C.; (b) filing a Use of Force Report; (c) debriefing staff; and (d) making required notifications of the use of force.

There is no dispute that some discipline is warranted in this proceeding. Guillonta regards ten days as too severe in light of her years of service and discipline free background.

In 2012 a captain was given a written warning for use of excessive force at the Milwaukee Secure Detention Facility. In 2014 three DOC employees were terminated for use of excessive force in different DOC facilities throughout the state. Two employees were terminated in 2015 for use of excessive force. Each of the above cases involved behavior that was more egregious than that displayed by Guillonta. Additional testimony indicated that there were two ten-day suspensions for use of excessive force that have occurred since the Guillonta incident.

In 2012, following the enactment of Act 10, the DOC initiated an agency-wide disciplinary review system. Certain significant discipline is examined by a Disciplinary Review Team. The 2012 matter took place before the review team was operational or as the review team was being implemented. Since the advent of the Disciplinary Review Team, discipline for excessive use of force has consisted of ten-day suspensions or termination.

The DOC argues that it has a mission to protect the inmates of the various facilities. It contends that the inmates are vulnerable, with limited communication and access to help from the outside. The stun gun can result in serious injury and there was no medical follow up. There is a protocol in effect which provides checks and balances to the use of a stun gun. That protocol was not followed. The DOC expressed concerns over the possible loss of public trust and the significant liability that accompanies the use of force.

Guillonta did talk with a nurse the next morning and suggested the nurse visit the inmate. She believes her discipline should have been more individualized and suited to her work history.

We agree with DOC. The conduct involved is disciplinable. The use of force was unnecessary and has all the potential consequences the DOC fears. On this record, it appears that the discipline has been consistently applied. Guillonta regards her discipline as harsh compared to that received by her coworker in 2012. The 2012 event occurred before the disciplinary review process. The DOC has tightened up its disciplinary protocol over the last three years. The 2012 incident cannot serve as a perpetual bar to the DOC imposing more serious sanctions on those who use excessive force.

Guillonta was given ten days off without pay. The discipline is harsh considering it was a first offence. The conduct is serious. Others have been terminated. It appears that the conduct in question and Guillonta's otherwise strong work record were taken into consideration.

We do not believe it appropriate to second guess the DOC's conclusions in this regard.

Signed at the City of Madison, Wisconsin, this 12th day of January 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

James J. Daley, Commissioner

DISSENTING OPINION OF COMMISSIONER RODNEY G. PASCH

Respondent State of Wisconsin, Department of Corrections failed to adequately take in to consideration the events that led up to the discipline. Specifically, the actions by Officer Trevisan and Guillonta protected the inmate from injuring herself by shutting the door with her hands still in the door closure frame. In addition, DOC did not recognize fully the 16-year disciplinary-free performance of Guillonta. Based upon these two points, I believe the 10-day suspension to be excessive. A one-day suspension would have been more appropriate.

Signed at the City of Madison, Wisconsin, this 12th day of January 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Rodney G. Pasch, Commissioner