

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DORIS WHOLF, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0065

Case Type: PA

DECISION NO. 36317

Appearances:

Mike Stahl, Field Representative, AFSCME Wisconsin Council 32, 8033 Excelsior Drive, Suite A, Madison, Wisconsin, appearing on behalf of Doris Wholf.

Mark Herman, Attorney, Department of Administration, 101 East 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 June 18, 2015, Doris Wholf filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that the State of Wisconsin, Department of Corrections had discharged her without just cause. Hearing on the appeal was held in Milwaukee, Wisconsin, on October 6, 2015, before Examiner Peter G. Davis. A transcript of the hearing was prepared and the parties filed written argument, the last of which was received January 26, 2016.

On March 25, 2016, Examiner Davis issued a proposed decision rejecting the discharge. The State filed objections to the proposed decision and the matter was ripe for Commission action on May 6, 2016.

Being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. Doris Wholf was employed by the State of Wisconsin, Department of Corrections (DOC), at the Milwaukee Secure Detention Facility at the time of her discharge and had permanent status in class.

2. On February 14, 2015, a coworker instigated a verbal confrontation with Wholf.

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 did not have just cause within the meaning of § 230.34(1)(a), Stats., to discharge Doris Wholf, but did have just cause to impose a ten-day suspension.

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

ORDER

The discharge of Doris Wholf by the State of Wisconsin, Department of Corrections is rejected and reduced to a ten-day suspension. The State shall immediately reinstate Doris Wholf and make her whole as to wages and benefits.

Signed at the City of Madison, Wisconsin, this 23rd day of May 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, 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.

Doris Wholf had permanent status in class at the time of her discharge and her appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that Wholf was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

The testimony of Wholf and Dorene Leighton (the only evidence provided by anyone physically present for the conduct that precipitated the discharge) establishes that there was a loud verbal confrontation between Wholf and a probationary coworker on February 14, 2015. The evidence establishes that the coworker initiated, escalated, and prolonged the confrontation. Wholf verbally defended herself. The coworker was discharged as was Wholf.

DOC correctly argues that where there is a confrontation between coworkers in the presence or earshot of inmates, there is the potential for inmates to utilize knowledge of the confrontation and thereby create a potential security risk. In light of location and volume of confrontation, we conclude that it was heard by at least one inmate. While there is no evidence of any security risk actually being created, DOC nevertheless has a legitimate and substantial interest in having employees avoid such confrontations. We note that even if Wholf had had the patience of Job (which she clearly does not), any security risk had already been created by the coworker's commencement of a loud verbal tirade against Wholf. However, while it holds Wholf to a high standard of conduct, we conclude that to avoid any finding of misconduct, she would have had to remain silent in the face of her coworker's abuse. She did not and thus

aggravated the matter. In such circumstances, we conclude there was just cause for a ten-day suspension.¹

Signed at the City of Madison, Wisconsin, this 23rd day of May 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

¹ In another decision issued today, we rejected a ten-day suspension issued to Wholf shortly before her discharge. Even with that rejection, Wholf nonetheless still had a five day suspension on her record as of the discharge incident. When we apply our statutorily-based just cause analysis to the facts before us, we are not bound to follow any disciplinary progression established by the employing agency. Pursuant to our authority under § 230.44(4)(c), Stats., when we reject or modify the discipline imposed, we are free to exercise discretion when determining what alternative discipline is appropriate. Here, we exercise that discretion by concluding that a ten-day suspension is the appropriate discipline. In the context of her disciplinary record, Wholf's active participation in the verbal confrontation warrants such a suspension.