

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID TESKE, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION, Respondent.

Case ID: 315.0002

Case Type: PA

DECISION NO. 36360

Appearances:

Richard F. Rice, Fox & Fox, S.C., 124 W. Broadway, Monona, Wisconsin, appeared on behalf of Appellant David Teske.

Amesia N. Xiong, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, appeared on behalf of Respondent State of Wisconsin, Department of Administration.

DECISION AND ORDER

On February 3, 2016, David Teske filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that he had been suspended for five days without just cause by the State of Wisconsin, Department of Administration. The Commission assigned the appeal to Examiner Karl R. Hanson who conducted a hearing on May 4 and 9, 2016, in Madison, Wisconsin. The parties made oral arguments at the conclusion of the hearing.

On June 20, 2016, Examiner Hanson issued a Proposed Decision and Order affirming the suspension. Teske filed objections to the Commission and written argument was submitted by both sides by August 2, 2016. After consultation with the Examiner and review of the record, the Commission makes and issues the following:

FINDINGS OF FACT

1. David Teske is employed as a procurement specialist by the State of Wisconsin, Department of Administration and had permanent status in class at the time he was disciplined.

2. The Department of Administration is an agency of the State of Wisconsin.

3. On August 11, 2015, Teske placed on the wall of his cubicle a large shooting target poster depicting a man holding a gun to the head of a woman exhibiting fear and being held against her will.

4. Teske was given a five-day suspension on September 3, 2015, without pay, for failing to comply with the Department of Administration's work rules related to the respectful treatment of coworkers.

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 Administration did not have just cause within the meaning of § 230.34(1)(a), Stats., to discipline David Teske with a five-day suspension.

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

ORDER

1. The five-day suspension issued to David Teske is rejected.

2. The State of Wisconsin, Department of Administration shall remove all reference of this discipline from David Teske's personnel file and reimburse any lost wages and benefits.

Signed at the City of Madison, Wisconsin, this 29th day of August 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

David Teske, a procurement specialist at the Wisconsin Department of Administration, was assigned to purchase ammunition for state law enforcement purposes. In the course of familiarizing himself with the “product” he visited a local gun shop. While there he purchased a police target. The target, far from the customary concentric rings, had a drawing of an obvious “bad guy” holding a woman at gun point with his arm around her neck. The idea presumably is to have the police officer shoot the offender and not the female hostage.¹

Teske bought the target to the workplace and posted it in his cubicle. His explanation for doing so was that it served as a reminder of the importance of his work and the need for timeliness. The Examiner rejected that explanation and we agree. With the array of technology available to state employees, it hardly seems logical that one needs to post a “hostage” target as a reminder to perform assigned tasks.

Shortly after his arrival at work on August 11, 2015, Teske hung the poster in his cubicle. Later in the morning, coworker Nadine Malm saw the poster and photographed it. That same morning, Malm informed Teske that the target offended her. Teske then took the target down and apologized. Apparently unsatisfied with that result, Malm proceeded to show the photo to female coworkers, some of whom were offended. Malm then complained to a supervisor. She continued to show it to other non-state employees at an evening social event.

As a consequence of this “offense,” Teske received a five-day disciplinary layoff. He had been previously disciplined so the next step in progression was five days.

DOA asserted that Teske violated three separate work rules related to (1) treating coworkers disrespectfully, (2) threatening, intimidating, or harassing another; and (3) harassing or demeaning a coworker. The Examiner concluded and we agree that the conduct in question did not violate rules numbered two and three.

The Examiner found that Teske’s action in placing the poster in his cubicle “was disrespectful to Teske’s coworkers.” We disagree and therefore reject the discipline. Barring conduct which is “disrespectful” is a vague standard to apply in judging employee behavior. It lacks any objectivity and depends in great part upon the fragility of the party being “disrespected.” Suppose that Teske had posted a picture of a barnyard scene featuring a dairy cow. Would that be an act of disrespect to a lactose intolerant coworker? Would DOA bar the photographic display of a prize Chevrolet pickup truck for fear of offending an ardent fan of Ford products? Who judges what is “disrespectful”?

More importantly, even if posting of the target was “disrespectful” or “offensive,” Teske removed it minutes after it was displayed, accompanying the removal with an apology. That should have resolved the matter. Malm however was apparently driven to turn this into the incident “de jour” at the workplace. One could certainly argue that her campaign was far

¹ An internet search of commercial targets reveals all manner of creative pictorial targets including zombies, space aliens, and others holding hostages.

more disruptive of the workplace than Teske's. In our view, the state as an employer is obligated to provide a work environment free of hostile treatment. It is not obligated to provide a politically correct workplace where every sensibility no matter how obscure is protected from offense. One obvious element of just cause is that the work rule and its application be reasonable. That standard was not met in this case and, accordingly, we reject the discipline in this matter.

Signed at the City of Madison, Wisconsin, this 29th day of August 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner