

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES OLSON, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0068

Case Type: PA

DECISION NO. 36751

Appearances:

James Olson, 1075 Cumberland Trail, Oshkosh, Wisconsin, appearing on his own behalf.

Michael Gentry, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin, Department of Corrections.

DECISION AND ORDER

On June 23, 2015, James Olson filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting that he had been suspended for ten days without just cause by the State of Wisconsin Department of Corrections. The Commission assigned the appeal to Examiner Raleigh Jones who conducted a hearing on August 29, 2016, in Waupun, Wisconsin. Following the hearing, the parties filed briefs, whereupon the record was closed on September 23, 2016.

On November 15, 2016, Examiner Jones issued a proposed decision affirming the suspension. No objections were filed and the matter became ripe for Commission action on December 16, 2016.

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

FINDINGS OF FACT

1. James Olson is employed as a Supervising Officer 2 by the Department of Corrections at the Waupun Correctional Institution (WCI) and had permanent status in class at the time he was disciplined.

2. The Department of Corrections is an agency of the State of Wisconsin and operates WCI in Waupun, Wisconsin.

3. On March 8, 2015, Olson activated a taser over the shoulder of a fellow supervisor. He then lowered the taser onto the supervisor's shoulder and stunned him with the taser.

4. On May 26, 2015, the Department of Corrections suspended Olson for ten days for the conduct referenced in Findings of Fact 3.

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 suspend James Olson for ten days.

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 James Olson by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 4th day of January 2017.

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.

James Olson 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 Olson 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).

On March 8, 2015, Olson – a captain – was the ranking officer on duty and was working first shift with Lt. Jason Wenzel. Olson took a call in the security supervisors’ office (where he and Wenzel were then working) and was told that a supervisor needed assistance with placing an inmate in temporary lockup. Olson responded to the caller by saying he would send Wenzel down to deal with the matter. When Olson hung up the phone, Wenzel – anticipating that he was about to be assigned a difficult task – said words to the effect of what hornets’ nest am I walking into now. Wenzel’s statement enraged Olson because he (Olson) thought Wenzel was being insubordinate. Olson responded to Wenzel’s statement by sweeping everything on his desk with his arm onto the floor, saying sarcastically “don’t worry about it; I’ll do it my fucking self.” While Olson could have ordered Wenzel to do the task referenced in the phone call, he did not do that and instead did it himself.

Following that incident, Wenzel decided he wanted to leave work early so that he did not have further contact with Olson. Wenzel then called the captain who was scheduled to replace him at 2:00 p.m. – Robert Rymarkiewicz – and asked him to come into work early to replace him due to the ongoing tension that existed between him and Olson.

About 1:30 p.m., Rymarkiewicz and Lt. Jeremiah Larsen arrived at work and reported to the supervisors’ office where Olson and Wenzel were. Those four were the only people in the office. Knowing what had happened earlier that morning between Olson and Wenzel, and sensing that the tension between them was still palpable, Rymarkiewicz tried to lighten the

mood in the office with some workplace banter. The topic that he raised involved taser training. One of Olson's roles at WCI is to act as an equipment trainer and to train employees on the use of tasers. When Wenzel was trained, he had opted to be tased as part of the training exercise. Because of that experience, he knew what it felt like to be tased and was skittish around tasers. At some point during the banter on this topic, Wenzel said of Olson: "not like he will ever train anybody" (on the taser). This statement upset Olson and he responded as follows.

Olson got up from where he was sitting and picked up a taser, took out the cartridge, turned it on, and conducted a test arc (meaning he pulled the trigger). Then he walked over to Wenzel, raised the taser high in the air, and then lowered it onto Wenzel's shoulder shocking him with the device. Everyone in the room witnessed this. Wenzel, who was startled at being tased, said "what the fuck" and immediately left the room.

In DOC's subsequent investigation, Olson said that he thought he turned the taser off before he lowered it onto Wenzel's shoulder. At the hearing though, Olson testified that he was sure he turned the taser off before lowering it (i.e. the taser) onto Wenzel's shoulder. Notwithstanding Olson's contention to the contrary, we find that the taser was indeed on when Olson lowered it onto Wenzel's shoulder. First, witnesses Larsen and Rymarkiewicz both testified that they saw and heard the electricity arcing as Olson lowered the taser onto Wenzel's shoulder. Second, both witnesses also testified that they saw Wenzel grit his teeth, cringe and lock up when the taser was applied to his shoulder. Those actions comport with their experience of what people look like when they get tased. Third, Wenzel knows what it feels like to be tased and have electricity course through your body because he had been tased before this incident as part of a taser training exercise. Given all of the foregoing, we have no reason to doubt Wenzel's testimony that he was indeed tased by Olson.

Olson characterizes his actions as horseplay and notes that there have been numerous instances where supervisors played with tasers in the supervisors' office. Even if that had happened and it is characterized as horseplay, it is easily distinguishable from what happened here. Previously, no one else had actually been tased (outside of a training exercise).

We have no trouble concluding that Olson committed workplace misconduct when he intentionally tased Wenzel. He violated a number of DOC's work rules, including Work Rule 11, which prohibits an employee from "inflicting bodily harm on another employee," and Work Rule 15, which prohibits an employee from misusing the taser in the way that Olson did.

After Olson learned that he was being investigated for the taser matter, he contacted all three of the supervisors who had witnessed the taser incident and attempted to influence what each would say to DOC investigators (about the matter). His contact with them was an obvious attempt to influence the story of what he did and either minimize it or cover it up. That not only violated DOC's Work Rule 28, which prohibits "interfering with, misleading or obstructing the Employer in the performance of official functions of the department, including investigations," but also provided additional justification for the ten-day suspension DOC imposed on Olson for his misconduct.

We find that the State of Wisconsin Department of Corrections had just cause to impose a ten-day suspension for this misconduct by a supervisor.

Signed at the City of Madison, Wisconsin, this 4th day of January 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner