

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NILLA HARNISCH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0217

Case Type: PA

DECISION NO. 37275

Appearances:

Jim Parrett, Field Representative, AFSCME Wisconsin Council 32, N14436 – 17th Avenue, Necedah, Wisconsin, appearing on behalf of Nilla Harnisch.

Anfin Jaw, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, Post Office Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin Department of Corrections.

DECISION AND ORDER

On August 7, 2017 Nilla Harnisch filed a timely appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(c), Stats., asserting she had been suspended without just cause by the State of Wisconsin Department of Corrections. The Commission assigned Danielle L. Carne to serve as Hearing Examiner. Hearing was held on October 17, 2017, in New Richmond, Wisconsin, the parties submitted oral arguments at the close of the hearing, and the record in this matter was then closed.

On October 27, 2017, Examiner Carne issued a Proposed Decision and Order affirming the suspension. No objections were filed, and the matter became ripe for Commission consideration on November 2, 2017.

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

FINDINGS OF FACT

1. The Department of Corrections (DOC) is an agency of the State of Wisconsin that, among other things, operates correctional facilities.

2. At the time of the incidents that led to her discipline, Nilla Harnisch was employed as a teacher at the St. Croix Correctional Center.

3. Harnisch made physical contact with an inmate and did not follow-up on the incident; and she made derogatory comments about a supervisor during a DOC training session.

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 Nilla Harnisch for one day.

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

ORDER

The one-day suspension is affirmed.

Signed at the City of Madison, Wisconsin, this 7th day of November, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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.

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

The State has the burden of proof to establish that Harnisch 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).

As part of the basis for Harnisch's discipline, DOC concluded that, in December of 2016, Harnisch made physical contact with an inmate. In Harnisch's work setting, it is well-established that physical contact with inmates is permitted only under limited, strictly controlled circumstances, and no such circumstance was present during the incident in question. Although Harnisch indicated she felt shocked and apologized to the inmate, she did not report the incident to a supervisor or follow-up on it in any other manner.

Subsequently, in January of 2017, Harnisch made derogatory comments to the trainer about a DOC supervisor who also was present at the training. Although Harnisch thought she was speaking privately, she was overheard by the supervisor who was the subject of the comments. Harnisch apologized to the supervisor and later admitted that the comments were "absolutely not" appropriate.

Harnisch argues that the disciplinary action taken against her was prompted by a complaint she recently made about a perceived procedural irregularity at her workplace. The Commission has considered this argument but concludes that the suspension was based on the two instances of misconduct Harnisch admits occurred. The Commission further concludes that the misconduct provided just cause for a one-day suspension.¹

¹ While an employee's conduct/or demeanor at hearing can appropriately be considered when determining whether the employee did or did not engage in the misconduct upon which the discipline was premised, it can never provide an additional basis for upholding or overturning discipline.

Signed at the City of Madison, Wisconsin, this 7th day of November, 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner