

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DONALD STRAHOTA, Appellant

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent

Case ID: 1.0243

Case Type: PA

DECISION NO. 37440-A

Appearances:

Donald Strahota, 118 Pleasant Street, Beaver Dam, Wisconsin, 53916, appearing on his own behalf.

Anfin Jaw, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, 53707-7864, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On April 2, 2018, Donald Strahota filed an appeal with the Wisconsin Employment Relations Commission asserting that he had been improperly reassigned from a warden position to a deputy warden position. His appeal also challenged a corresponding reduction in pay. On April 17, 2018, the State of Wisconsin Department of Corrections filed a motion to dismiss. On May 11, 2018 the Commission issued a decision where it granted the motion to dismiss in part and denied it in part. Therein, the Commission granted the motion to dismiss as it related to the challenge to the reduction in pay. It denied the motion to dismiss on the reassignment and found that Strahota was entitled to a hearing to determine if his reassignment was reasonable and proper. On May 15, 2018, Commission Examiner Raleigh Jones held a hearing in Madison, Wisconsin. The parties made oral argument at the hearing's conclusion.

On June 5, 2018, Examiner Raleigh Jones issued a Proposed Decision and Order affirming the reassignment of Donald Strahota by the State of Wisconsin Department of Corrections. Objections were filed by Strahota on June 11, 2018. The State did not file a response and the matter became ripe for Commission consideration on June 19, 2018.

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

FINDINGS OF FACT

1. Donald Strahota is a career executive with the State of Wisconsin Department of Corrections. In July 2016, Strahota became warden at the New Lisbon Correctional Institution. Prior to that, he was a deputy warden at two other institutions.

2. On January 30, 2018, Strahota was notified in writing that he was being permanently reassigned to a deputy warden position at a different institution.

3. This reassignment back to a deputy warden position resulted from a disciplinary investigation and Strahota's superiors' perception of the overall climate at NLCI.

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

CONCLUSIONS OF LAW

1. Donald Strahota's reassignment from a position of warden to a position of deputy warden by the State of Wisconsin Department of Corrections was reasonable and proper within the meaning of Wis. Admin. Code § ER-MRS 30.10.

2. Donald Strahota's reassignment from a position of warden to a position of deputy warden by the State of Wisconsin Department of Corrections did not violate § 230.18, Stats.

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

ORDER

Donald Strahota's reassignment by the State of Wisconsin Department of Corrections is affirmed.

Signed at the City of Madison, Wisconsin, this 3rd day of July, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

On January 30, 2018, Donald Strahota was notified in writing that he was being reassigned from his career executive position as warden at the New Lisbon Correctional Institution (NLCI) to a career executive position as deputy warden at the Prairie du Chien Correctional Institution. The January 30 letter indicated that this reassignment was a permanent civil service movement under the authority of Wis. Admin. Code § ER-MRS 30.07.

We begin our review of this reassignment by first looking at § 230.24(4), Stats., which provides as follows:

An appointing authority may reassign an employee in a career executive position to a career executive position in any agency if the appointing authority in the agency to which the employee is to be reassigned approves of the reassignment.

The first part of this provision clearly gives a state agency the right to reassign an individual – such as Strahota – who is part of the career executive program. The only caveat which is specified therein is that the “appointing authority” in the agency must approve of the reassignment. Here, there is no question that the “appointing authority” in the Department of Corrections (DOC) (i.e. Secretary Litscher) approved of Strahota’s reassignment because Litscher signed the reassignment letter.

The next question is what legal standard the Commission is to use in reviewing a career executive reassignment. While the statute just referenced does not specify what legal standard applies, a legal standard is specified in Wis. Admin. Code § ER-MRS 30.07. It provides as follows:

Career executive reassignment.

* * *

(2) When an appointing authority determines that the agency’s program goals can best be accomplished by reassigning an employee in a career executive position within the agency to another career executive position in the same or lower classification level for which the employee is qualified, the appointing authority may make such reassignment, *provided it is reasonable and proper*. All such reassignments shall be made in writing to the affected employee, with the reasons stated therein.

Emphasis added. Furthermore, Wis. Admin. Code § ER-MRS 30.10 provides:

Career executive employee redress rights.

(1) ... Career executive reassignment and career executive voluntary movement to a position allocated to a classification assigned to a lower or higher pay range shall not be considered a demotion, or a promotion, respectively, and the statutory appeal rights provided therein shall not apply.

(2) Career executive reassignment by the appointing authority, as defined under s. ER-MRS 30.07(1) and referred to in sub. (1), is authorized without limitation. However, an employee with permanent status in the career executive program may appeal the reassignment to the Wisconsin Employment Relations Commission if it is *alleged that such reassignment either constitutes an unreasonable and improper exercise of an appointing authority's discretion or is prohibited by s. 230.18, Stats.*

* * *

Emphasis added.

A reasonable and proper standard (i.e. the legal standard identified in the language just quoted) sets a low bar for the employer to clear. For comparison purposes, the just cause standard – which applies to certain state employee discipline cases such as suspensions and discharges per § 230.34(1)(a), Stats., – sets a higher bar for the employer to clear.

This means that while the Commission can review the permanent reassignment of individuals who are part of the career executive program, our review authority is quite limited. Specifically, the Commission can review such action but only to determine whether it was “unreasonable and improper” or otherwise violates § 230.18, Stats.

Here, DOC asserts that its reassignment of Strahota was reasonable and proper. To support that contention, it cites the following:

In the year and a half that Strahota was warden at NLCI, his subordinates filed several complaints against him. One complaint came from a former NLCI supervisor who wrote a group of state legislators about Strahota. In his letter, the former supervisor alleged that Strahota had bullied, berated, and intimidated staff, and had yelled and cursed at them. Another complaint came from a doctor on the clinical staff who alleged that Strahota had bullied him. Another complaint came from the education director who alleged that Strahota had repeatedly demeaned, bullied, and berated her. Another complaint came from a captain who alleged that Strahota had retaliated against him. The captain in question had received a letter of expectation for an incident, and Strahota was upset over that action because he believed the captain should have gotten much greater discipline.

Strahota's supervisor – Stephanie Hove – discussed some of the complaints referenced above with Strahota. In doing so, Hove told Strahota that his abrasive communication and leadership style was causing problems with staff. In response to the complaints against him, Strahota told Hove there was a conspiracy by NLCI staff to get him.

In October 2017, Strahota had an interaction with a correctional officer where Strahota verbally berated the employee about the condition of the wood shop that the employee oversaw. This interaction was witnessed by numerous staff and inmates. The correctional officer in that matter later complained that he felt humiliated and disrespected by Strahota's words and actions toward him. After Hove learned of that incident, she directed that a disciplinary investigation be commenced into Strahota's conduct in that incident. At the end of that investigation, the investigators issued a report which found, among other things, that Strahota "was visibly upset," and "raised his voice and stated 'look at me'" to the correctional officer and then tossed a piece of metal at the officer which hit the officer's hand but did not injure him. After the investigation was completed, Strahota submitted a short-written statement about the incident which provided in pertinent part:

It is apparent that my perception of the events varies from what the investigation concluded. I am aware that my approach and how it is received can be viewed negatively at times. Even though I did not intend any negative interaction that day, my emotion and passion for safety obviously clouded my judgment in how I dealt with the situation.

After the formal investigation just referenced was finished, Strahota's superiors concluded that Strahota's conduct in that instance was inappropriate and was part of a pattern of inappropriate behavior towards his subordinates that needed to be remedied.

After DOC conducts a disciplinary investigation and concludes that misconduct occurred, it can impose discipline on the employee in the form of a suspension and /or discharge. Here, DOC management officials decided not to impose that type of discipline on Strahota. Instead, since he was part of the career executive program, DOC officials decided to reassign Strahota from a warden position to a deputy warden position at a different institution.

The letter to Strahota which notified him of this action did not go into any detail regarding the complaints referenced above. Instead, the letter simply subsumed all the matters referenced above into the following sentence: "This reassignment back to Deputy Warden is the result of the disciplinary investigation initiated in November 2017, and the overall climate at New Lisbon Correctional Institution".

At the hearing, Strahota did not show that the statement just quoted was factually inaccurate or lacked a basis in the record. Strahota did not testify, nor did he call any witnesses on his behalf.

The Commission finds that DOC's decision to reassign Strahota was neither unreasonable nor improper. It is apparent from a review of the record that Strahota's abrasive conduct and

temperament toward his subordinates caused problems in the workplace. When problems arise in the workplace, employers typically try to address them. Failure to do so leads to more workplace issues. Here, Strahota's superiors decided that one way to lessen the problems that were occurring with staff at NLCI was to get the person involved in all those workplace conflicts out of that institution. Strahota contends that rather than reassigning him, the Employer should have instead taken other (unspecified) disciplinary action against him. While DOC could have gone that route and taken formal disciplinary action of some sort against Strahota, DOC instead availed itself of a different option available to it (namely, a reassignment). As noted at the outset of our discussion, it could do that. In this case, DOC's reassignment of Strahota had a legitimate factual basis. Consequently, it passes muster under a reasonable and proper standard.

The final question is whether Strahota's reassignment was prohibited by § 230.18, Stats. That section prohibits discrimination in the recruitment, application, or hiring process. Nothing in that section prohibited the reassignment at issue here nor was any violation of that section shown.

Strahota responded to the proposed decision issued by Examiner Jones with various objections on June 11, 2018.

Strahota asserts that DOC failed to provide discovery as required and this objection also was raised during the course of the hearing. In the preliminary order issued by the Commission at the beginning of the appeal process, the respondent is directed to turn over "mandatory disclosures" to the appellant within ten days of the order. The order explicitly states that any material not thus disclosed will not be admitted into the record absent a good cause showing by the respondent. Here, Strahota asserts that DOC's Exhibit 7 was not supplied to him as part of the "mandatory disclosures." That exhibit contains written summaries of the complaints filed against Strahota by his subordinates. For the purpose of discussion, we accept Strahota's assertion that he did not receive that exhibit as part of the "mandatory disclosures," and DOC's Exhibit 7 is therefore not considered part of the record. However, even when the exhibit is discarded, the information referenced therein still made its way into the record via witness testimony and that testimony cannot be discarded in the same fashion. Strahota's former supervisor, Hove, testified about the very same matters that were referenced in DOC's Exhibit 7, and Strahota had the opportunity to cross-examine Hove regarding same. So, while it may have been the case that DOC was negligent in not following the terms of the preliminary order, fortunately (for them), witness testimony was able to provide the necessary basis to sustain the action by DOC.

Strahota also contends that DOC improperly relied on some alleged conduct that was never investigated and/or as to which he had no knowledge. If this were a just cause disciplinary appeal, Strahota's contentions would be relevant. However, in a reassignment appeal, the DOC action rises or falls based on the factors it considered when making its decision and whether it presents evidence in support of those factors at hearing. DOC did so here. Strahota had the opportunity to cross-examine DOC witnesses if he wished to dispute that the alleged conduct did not occur. He also had the opportunity to testify on his own behalf as to all of the conduct relied upon by DOC – much of which was in fact investigated and discussed with him by DOC prior to the reassignment decision. Therefore, Strahota's contention is not persuasive.

Given all of the foregoing, the reassignment is affirmed.

Signed at the City of Madison, Wisconsin, this 3rd day of July, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman