

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AMY PFLUEGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0575

Case Type: PA

DECISION NO. 39919

Appearances:

Gary Hall, 337 N. Whiteside, Mount Hope, Wisconsin, appearing on behalf of Amy Pflueger.

Nicole Porter, 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 March 2, 2023, Amy Pflueger filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for three days without just cause by the State of Wisconsin Department of Corrections (DOC).

A telephone hearing was held on May 11, 2023, by Commission Examiner Katherine Scott. The parties submitted written closing arguments on May 19, 2023. On June 9, 2023, Examiner Scott issued a Proposed Decision affirming the three-day suspension of Amy Pflueger by DOC. No objections were filed by the parties by the deadline given of June 14, 2023.

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

FINDINGS OF FACT

1. Amy Pflueger (Pflueger) is employed by the State of Wisconsin Department of Corrections (DOC), as a correctional officer (CO) at Prairie du Chien Correctional Institution (PDCI). She had permanent status in class when she was suspended.

2. During the October 23–24, 2022 overnight shift, Pflueger drew a picture on the whiteboard in the officer station depicting two stick figures hanging from a tree, captioned “Resting in Paradise.”
3. The drawing was seen by both staff and inmates, causing inmates to become upset and express concern about the drawing.
4. DOC suspended Pflueger for three days for violating an executive directive prohibiting harassment; specifically, for displaying offensive or graphic material.

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 over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).
2. The State of Wisconsin Department of Corrections had just cause within the meaning of Wis. Stat. § 230.34(1)(a), to suspend Amy Pflueger for three days.

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

ORDER

The three-day suspension of Amy Pflueger by the State of Wisconsin Department of Corrections is affirmed.

Issued at Madison, Wisconsin, this 26th day of June 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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.

Amy Pflueger 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 Pflueger was guilty of the alleged misconduct and that the misconduct constituted just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

Pflueger was employed as a correctional officer at Prairie du Chien Correctional Institution (PDCI). It is uncontested that during the overnight shift from October 23–24, 2022, Pflueger drew a picture on the whiteboard in the officer station depicting two stick figures hanging from a tree by nooses. *See* Exhibit R-8, pg. 17. She captioned the drawing “Resting in Paradise.” *Id.* Pflueger claims that the stick figures were meant to represent her and her coworker. She says the drawing was meant to show how PDCI was “sucking the life out of them.”

The whiteboard – and therefore, Pflueger’s drawing – were seen by both staff and inmates. Several inmates who saw the photo expressed concern that it was racist. *See* Exhibit R-8, pg. 41. Program Supervisor Janet Fischer, who was working that night, testified that she overheard inmates expressing concern over Pflueger’s drawing. As a result, she had an officer do extra rounds upstairs to deal with inmates’ reactions. Captain Shawn Torgerson testified that he was approached by an inmate who likewise expressed concerns about the drawing’s racist overtones. Officer Amber Friederick also testified that the drawing created “unnecessary drama” in the unit.

Following an investigation, the DOC suspended Pflueger for violating Executive Directive 5, the harassment and discrimination policy which forbids the display of offensive or graphic material. *See* Exhibit R-6, pg. 5.

Pflueger argues that the drawing did not create any actual problems, because no inmate filed a formal complaint. However, a formal complaint is not necessary for a finding of just cause for discipline. In *Federlin v. DOC*, the Commission held that the test for determining whether certain conduct constitutes just cause for discipline is “whether some deficiency has been demonstrated which can reasonably be said to have a tendency to impair the performance of the duties of the position or the efficiency of the group with which the employee works.” *Federlin v.*

DOC, Dec. No. 31094-A (WERC, 11/04), referencing *Safransky v. Personnel Board*, 62 WIS. 2D 464, 474, 215 N.W.2D 379 (1974). Here, Pflueger's behavior impaired the efficiency of the group in which she works by undermining the DOC's rehabilitative mission and jeopardizing the safety of PDCI employees and inmates. Captain Torgerson testified that the majority of PDCI inmates are Black. He further testified that Pflueger's drawing would likely be interpreted as a depiction of a lynching, or extrajudicial, racist violence against Black Americans. Torgerson was concerned that Pflueger's drawing could become a "climate issue" in the prison, thereby jeopardizing the safety of employees and inmates. Pflueger claims that her drawing was a depiction of her and her coworker committing suicide, but this is still graphic material which undermines DOC's rehabilitative mission and jeopardizes the safety of PDCI inmates. Pflueger's actions undermined DOC's rehabilitative mission and jeopardized the safety of PDCI employees and inmates and constitute just cause for discipline. Further, this offensive and graphic image constitutes a serious act of misconduct and warrants a skip in progressive discipline.

Pflueger argues that the investigation was conducted improperly because investigators failed to interview an officer, a sergeant, and a captain who were also on duty when she made her drawing. However, Pflueger did not explain what exculpatory testimony these employees could have provided. The key issues – that Pflueger made the drawing, that it was seen by inmates, and that it undermined the DOC's mission and PDCI safety – are all well attested.

Pflueger argues that she should not be disciplined because her supervisor, Captain Ayers, observed the drawing but never told her to erase it. However, Captain Torgerson explained that the drawing wasn't erased immediately because it had to be photographed for the investigation.

Pflueger violated an executive directive prohibiting harassment by displaying offensive or graphic material. Her drawing of two people being hanged was seen by both staff and inmates, and undermined DOC's rehabilitative mission and the safety of PDCI employees and inmates. Pflueger's actions constituted serious misconduct and warranted a skip in progressive discipline. There was just cause for the three-day suspension, and the suspension is therefore affirmed.

Issued at Madison, Wisconsin, this 26^h day of June 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman