

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

RONALD KENDRICK, III

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0085

Case Type: IHO

Grievance No. FY23/151

DECISION NO. 40730

Appearances:

Attorney Nicholas E. Fairweather, 409 East Main Street, P.O. Box 2155, Madison, Wisconsin appearing on behalf of Ronald Kendrick.

Attorney Jamie Bergener, 5225 W. Vliet Street, Milwaukee, Wisconsin appearing on behalf of Milwaukee Public Schools.

DECISION OF THE IMPARTIAL HEARING OFFICER

I was selected by Milwaukee Public Schools (MPS) and assigned by the Wisconsin Employment Relations Commission to serve as an impartial hearing officer (IHO) as to a grievance filed by Ronald Kendrick. In his grievance, Kendrick asserts he had been suspended for five days and ordered to take additional training without just cause by MPS.

A hearing was held on May 3, 2024, at the MPS Administrative building located at 5225 West Vliet Street, Milwaukee, Wisconsin. Midway through the hearing, the parties decided to engage in settlement discussions which were ultimately unsuccessful. The hearing resumed on November 8, 2024. A stenographic transcript of the hearing was prepared and provided to the IHO and parties on November 25, 2024. Kendrick submitted a post-hearing brief on December 6, 2024. MPS did not submit a post-hearing brief.

The parties agree that the issue to be decided is:

Whether there was just cause to issue the Grievant, Ronald Kendrick, a five-day unpaid suspension, place a letter of reprimand in his file, and mandate that he take

CPI, which is non-violent crisis prevention training. And if not, what was the appropriate remedy.

The MPS created grievance procedure provides that it is MPS' burden to establish that just cause exists. While just cause is not defined in the procedure itself, prior IHO proceedings between the parties reflect the application of a conventional two step just cause analysis consisting of (1) did MPS establish that misconduct occurred and, if so (2) does the level of discipline imposed by MPS reflect the seriousness of misconduct. As to the level of discipline imposed, the MPS Employee Handbook provides in part:

[D]iscipline is progressive in nature and requires communication with employees.... Disciplinary action may include: written reprimand, suspension, demotion, or termination of employment. Specific disciplinary actions will depend on the behavior and frequency of occurrences. *Id.*, p.9.

All parties are in general agreement of the following: Kendrick is a trauma support specialist with MPS with no prior disciplinary history. On February 15, 2023, Kendrick became involved in a physical altercation at Andrew Douglas Middle School with another employee, Allante Mayon-Denson (Denson), and that Denson was the initial aggressor. At some point, students witnessed this altercation, which escalated to students and staff physically engaging in an attempt to break up the fight, thus creating disruption in the school setting.

What happens next is a subject of dispute. MPS' position is that prior to the altercation there were heated words exchanged between Kendrick and Denson over their respective job duties. They argue that Kendrick had the opportunity to disengage from the physical altercation after being assaulted by Denson, suggesting Kendrick has the time and space to walk away. Further, MPS puts an emphasis on the job description of Kendrick, that as a trauma support specialist, Kendrick's job duties include workplace violence prevention.

Kendrick argues that the only dispute is whether he should have retreated from the aggressor or been allowed the opportunity to defend himself. Kendrick argues that the video of the incident clearly demonstrates he was the victim of the attack and shows that he did not have the opportunity to retreat. Kendrick also points to testimony from Andrew Douglas Middle School Principal Zerda Palmer that she felt the discipline was excessive.

THE INCIDENT

While video evidence can somewhat lead to an overabundance of second guessing, in this matter we have available a detailed showing of what happened. The video of the incident shows the following:

4:10:16 Denson appears with MPS employee Lequandra Camble on camera. Kendrick is seen on the other end of the corridor/hallway, both are heading towards each other's direction.

- 4:10:19 Denson increases his speed and brushes back Camble. Denson heads directly towards Kendrick. Kendrick tries to avoid Denson, moving to his right. Denson adjusts so that the two run directly into one another.
- 4:10:24 Denson shoves Kendrick into the wall. Kendrick is effectively boxed in on three sides. The wall is behind him, Camble has arrived and is blocking his right, and Denson is across from him. Only the left side has an opening. Denson moves slightly back as a result of the physics of having just pushed Kendrick into the wall, but maintains a threatening posture.
- 4:10:26 Kendrick approaches Denson. Denson has his arm fully cocked and ready to strike Kendrick. Melee ensues.
- 4:10:32 Kendrick never gets a punch in, instead being bear-hugged by Denson and thrown to the floor like a sack of potatoes. Denson proceeds to get on top of Kendrick and continues assaulting him while Kendrick is in a prone and trapped position. At this point students and staff start to become involved and break up the altercation.

DISCUSSION

The video provides definitive proof of what happened. The question that is determinative is whether Kendrick had the ability to retreat. I find that he did not.

The above step by step summation of the video took place, in its entirety, over approximately 16 seconds. Only 2 seconds are being looked at regarding Kendrick's discipline, namely did he have the opportunity to retreat after 4:10:24 before the fight escalates at 4:10:26? I find that he did not have this opportunity as to retreat in this instance would have created the potential and likelihood that Kendrick would have suffered additional harm. The melee had started and Kendrick was in a position of self-defense with flight not being a realistic alternative.

We have already determined that the left of Kendrick's position was the only avenue for him to retreat to. However, this would have required him to start walking backwards while staying defensively aware of Denson's actions, an extremely disadvantageous stance for one being attacked. Of note is that Denson's initial aggression, and subsequent violence, neither showed nor suggested that he was finished with his assault of Kendrick. By walking backwards, Kendrick would have been in an unbalanced position more prone for attack and being less able to defend himself in the process. An exit strategy that could have been more effective is not readily present nor would it be realistic to expect Kendrick to come up with that in the fractions of a second that these events were playing out in real time.

Kendrick first attempted to avoid Denson by diverting in his walking away from him, to which Denson altered course to attack him. Denson then threw Kendrick against the wall. What state of mind could be expected of Kendrick other than to defend himself after Kendrick had previously tried to avoid confrontation and then been assaulted? One of self-preservation, which is what Kendrick arguably attempted to do.

CONCLUSION AND ORDER

As stated earlier, MPS has the burden to establish the misconduct occurred. Kendrick was defending himself and any other course of action is purely speculative as to whether it would have effectively diffused the situation. Indeed, given Denson's overly aggressive nature and his acting in a way void of rationale decision making, Kendrick may have been injured to a greater degree had he not attempted to defend himself.

Given the foregoing, I conclude that MPS did not have just cause to suspend Kendrick for five days. Kendrick shall have the discipline stricken from his record and made whole in all other respects due to his grievance being upheld.

Issued at Madison, Wisconsin, this 21st day of January 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Impartial Hearing Officer