

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

JOHN WAGNER

Under the Grievance Procedure of

UNIVERSITY OF WISCONSIN–PARKSIDE

Case ID: 700.0000

Case Type: IHO

DECISION NO. 41514

Appearances:

Austin M. Felber, Attorney, MacGillis Law Group, LLC, 12700 West Bluemound Road, Suite 200, Elm Grove, Wisconsin, appearing on behalf of John Wagner.

Noah Brisbin, Senior System Legal Counsel, University of Wisconsin System, Office of General Counsel, 1220 Linden Drive, 1806 Van Hise Hall, Madison, Wisconsin, appearing on behalf of the University of Wisconsin–Parkside.

DECISION OF THE IMPARTIAL HEARING OFFICER

On July 1, 2025, John Wagner and the University of Wisconsin–Parkside (UW-Parkside) requested that the Commission assign an impartial hearing officer in a proceeding concerning the discharge of John Wagner. An in-person hearing was held on October 2, 2025, in Kenosha, Wisconsin. The hearing was not transcribed. The parties submitted written closing arguments on October 10, 2025. On January 7, 2026, I requested that the parties file supplemental argument specifically addressing the elements of just cause specified in the University’s grievance procedures. On January 30, 2026, UW-Parkside filed its supplemental brief. On February 19, 2026, I was notified that Attorney Thomas Sucevic withdrew from the case due to his departure from MacGillis Law Group and Attorney Felber was taking over the case. On March 20, 2026, Wagner submitted his response to UW-Parkside’s supplemental argument. On April 15, 2026, UW-Parkside submitted its reply brief, whereupon the record was closed. Having considered the evidence, the arguments of the parties, and the record as a whole, I issue the following decision.

ISSUE

Did the University of Wisconsin–Parkside have just cause to discharge John Wagner? If not, what is the appropriate remedy?

FACTS

John Wagner was a police officer at the University of Wisconsin–Parkside (UW-Parkside or “the University”) in Kenosha, Wisconsin. On April 30, 2024, Wagner was on routine patrol on University campus when he heard over the radio that the Kenosha County Sheriff’s Department (KSD) was responding to an active fight call at a residence nearby but outside UW-Parkside Police Department (“the Department”) jurisdiction. (Ex. U-7 at 1.) Wagner called in to University dispatch that he was going to see if KSD needed assistance. *Id.* Wagner left his assigned patrol area to assist KSD despite knowing he was the only officer on campus. (Ex. U-9 at 2.)

Once Wagner arrived at the scene, a KSD deputy invited Wagner inside and asked him to check inside the residence. (Ex U-7 at 1.) Wagner entered the residence where another KSD deputy was with the victim. (Ex. U-3 at 3.) Seeing that the deputy was okay, Wagner went back outside where KSD officers were attempting to lift the suspect off the ground. *Id.* Wagner assisted KSD in lifting the suspect as they took her into custody. (Ex. U-3 at 3; Ex. U-7 at 2.) He did not file an incident report. (Ex. U-9 at 2.)

Four months later, in August 2024, the Kenosha County District Attorney’s Office requested Wagner’s report and bodycam footage from the April 30, 2024, incident. (Ex. U-7 at 1.) The Department discovered that Wagner had not submitted a report. KSD and the DA’s office were not pleased that a University officer had interjected himself on their call without a request for assistance and then failed to submit documentation of why he was there. *Id.* Sergeant McCullough, Wagner’s supervisor, instructed Wagner to draft a report. Wagner then did so on August 23, 2024. *Id.* Sergeant McCullough and UW-Parkside Police Chief Heller agreed that the report was missing details and that they would proceed with an internal investigation after hearing back from the DA. (Ex. U-7 at 2.) On August 29, 2024, the DA’s office informed the Department that the victim had passed away and asked Wagner to complete a more thorough narrative. *Id.*

After conducting an internal investigation, Sergeant McCullough found that Wagner violated the Department’s Mutual Aid policy by responding to a call without a request and failing to file a report documenting the action he took on the call. *Id.* Sergeant McCullough determined that a written reprimand was the appropriate level of discipline *Id.*, though Chief Heller believed a suspension was more appropriate. (Resp. Reply Br. at 3.) The Department then turned the investigation over to the University HR Director, Dr. Glass. (Ex. U-7 at 2-3.) Dr. Glass concluded that termination was warranted. (App. Closing Arg. at 2.) On October 22, 2024, Wagner received a letter from the Sergeant McCullough terminating his employment for violating the Department’s Mutual Aid policy, Wisconsin Statute Wis. Stat. § 66.0313, and University Workplace Expectations policies 1, 6, and 9. (Ex. U-11.)

Section II of the UW-Parkside Police Department’s Mutual Aid policy states that “the policy of UW-Parkside’s Police Department is to provide assistance to other law enforcement agencies when requested to do so.” (Ex. U-6 at 1.) This is in accordance with Wis. Stat. § 66.0313(2), which states: “upon the request of any law enforcement agency...law enforcement personnel of any other law enforcement agency may assist the requesting agency”. Section IV of

the Mutual Aid policy requires that officers who respond to a mutual aid request must complete an incident report on their involvement in the situation. (Ex. U-6 at 2.)

The University's Workplace Expectations apply to all staff including UW-Parkside Police Department officers. Workplace Expectation 1 states, "Employees are expected to conduct themselves in a manner that will maintain and strengthen the public's trust and confidence in the integrity of UW-Parkside and take no actions incompatible with their obligations to the University." Workplace Expectation 6 states, "Employees are expected to be truthful, accurate and complete when providing information to anyone responsible for gathering information on behalf of UW-Parkside or another State agency." Workplace Expectation 9 states in relevant part, "Employees are expected to...be available according to the expectations of their positions." (Ex. U-10.)

DISCUSSION

UW System Administrative Policy 1233 outlines the grievance procedure provided to university staff. The grievance procedure provides employees with the opportunity to address concerns regarding dismissals, discipline, or working conditions, and to ultimately have those matters reviewed by an Impartial Hearing Officer (IHO). When an employee has filed a grievance alleging that a discipline decision was not based on just cause, UW-Parkside's grievance procedure provides that the issue before the IHO will be whether just cause for the discipline or discharge exists. The University has the burden of proving by a preponderance of the evidence that there was just cause for terminating Wagner's employment. According to the University's grievance procedure, the elements determining whether just cause exists are: (1) The employee had notice of workplace expectations and potential consequences if those expectations were not met; (2) The workplace expectations were reasonably related to business efficiency and performance the employer might reasonably expect from the employee; (3) An internal investigation was undertaken by the employer before discipline or discharge to determine whether the employee violated expectations; (4) The investigation was conducted fairly and objectively; (5) The employer obtained substantial evidence of the employee's infraction; (6) Workplace expectations were applied fairly and without discrimination; and (7) The degree of discipline imposed was reasonably related to the seriousness of the employee's offense and the employee's past record.

Here, Wagner committed workplace misconduct that violated Department and University policies, thus warranting disciplinary action. First, Wagner assisted KSD without a mutual aid request, which violated Section II of the Department's Mutual Aid policy and Wis. Stat. § 66.0313(2), both which state that officers should provide assistance on request. By leaving his assigned patrol area, Wagner was not available on campus as expected of him, violating University Workplace Expectation 9.

Second, Wagner failed to report the actions he took at the scene until he was specifically instructed to by his supervisor, which violated Section IV of the Mutual Aid policy. By failing to make a report for four months, he was not complete in providing information to the Department, an actor on behalf of the University, thus violating University Workplace Expectation 6.

Additionally, Wagner's decision to assist without a request and his failure to report diminished the Kenosha DA's trust in the UW-Parkside Police Department, and his decision to leave campus unattended without approval diminished campus safety and public trust.

In his defense, Wagner argues that the first charge (assisting without a request) fails because there *was* a mutual aid request: when the KSD Deputy asked him to check inside the residence. However, this request for assistance was made only after Wagner had already shown up to offer it. Wagner then argues that absent a mutual aid request, then the Mutual Aid policy does not control. He claims that the mutual aid policy only states that officers who respond to a mutual aid request must report the actions they took, and so if Wagner did not have a mutual aid request, the policy does not apply here. But the Mutual Aid policy covers more than that. Section II requires that officers should respond when there is a mutual aid request, pursuant to Wis Stat. § 66.0313(2). By responding without a mutual aid request, Wagner violated Section II and Wis Stat. § 66.0313(2).

Turning now to the elements of just cause. Wagner had notice of the Department's Mutual Aid policy and the University's Workplace Expectations. He was made aware of the Department and University's policies during his training and orientation. He also received a written reprimand in 2021 reminding him to comply with all Department and University policies and that failing to do so would result in discipline. Wagner signed a written acknowledgement of the Mutual Aid policy in 2022. Sergeant McCullough had spoken to Wagner in the past about the policies governing mutual aid requests and leaving campus. In his August 23, 2024, email to Sergeant McCullough and his investigatory interview with Dr. Glass, Wagner admitted that he knew he violated policy by not filing a report. Finally, based on the several years of service with the Department, Wagner should have been well aware of the policies and expectations surrounding mutual aid reporting and the consequences of not doing so.

The Department and University rules are reasonably related to the efficiency of the Department and University and to the expectations of University police officers. The Mutual Aid policy ensures that officers respond to other departments' calls only when they need backup. Officers who arrive on the scene unannounced and unrequested risk overly complicating the situation. They may not have the context or training necessary to respond most appropriately. There may also be calls where having fewer officers is preferred, and unsolicited aid from other departments could jeopardize the operation. For example, if someone is having a mental health crisis, having too many officers on scene may raise tensions and escalate the situation into something more dangerous for everyone involved. Further, when an officer leaves their assigned patrol area, they cannot respond to calls in their assigned area as quickly.

It is also crucial that officers report actions they take to provide transparency and documentation to the public and other agencies, per Mutual Aid policy Section IV and Workplace Expectation 6. Without documentation, the cases officers generate likely cannot be prosecuted, and the Department itself could be held liable for anything that happened on the scene. It is important that officers timely file reports, even absent an explicit deadline. Otherwise, the officer may forget details and the report may lose its usefulness.

The Department and the University conducted an internal investigation during which they gathered substantial evidence. However, the investigation was not conducted fairly and objectively because external pressure from the Kenosha DA influenced the ultimate decision to terminate. Sergeant McCullough had determined that a written reprimand was the appropriate level of discipline. Then the Kenosha DA disclosed that the victim had died, that they were proceeding with prosecuting the suspect, and that they wanted a narrative from Wagner. Only then did University HR get involved. During her investigation, Dr. Glass found no new material facts. Despite this, Dr. Glass determined that Wagner should be terminated.

In fact, it is unlikely that University HR would have even taken over the investigation without external pressure. The University claims that Dr. Glass assumes responsibility for investigations involving severe misconduct, consistent with past practice. (Resp. Reply Br. at 3.) But here, Wagner did not commit severe misconduct. The Department does not view violations of the Mutual Aid policy and failing to report as not severe acts of misconduct, as evidenced in Wagner's disciplinary history where he received only a written reprimand or a verbal warning. (Ex. U-1 at 1; U-2.) When Dr. Glass assumed responsibility for this investigation, the University strayed from its usual procedure.

Wagner received much lesser discipline for similar misconduct in the past. Sergeant McCullough testified that he had given Wagner a verbal warning regarding the Mutual Aid policy. That warning arose from another situation when Wagner left his patrol to give assistance without receiving supervisor approval. Wagner had also previously received a written reprimand in part for failing to make reports. Thus, the record fails to establish why Wagner received much harsher discipline in this instance.

Termination is not reasonably related to the seriousness of Wagner's misconduct and his disciplinary record. While he did make a poor judgement call, he did not have malicious intent and no one was hurt as a result of his actions. In fact, Wagner acted how many police departments encourage their officers to act: when he believed a fellow officer may be in danger, he went out of his way to help them.

A one-day suspension is more proportional to the seriousness of Wagner's conduct, follows Chief Heller's recommendation, and follows progressive discipline. Chief Heller recommended that Wagner be given a suspension. Given the two extremes of Sergeant McCullough's initial determination of a written reprimand and Dr. Glass's ultimate decision to terminate, a suspension is a fair middle ground. Additionally, Wagner previously received a written reprimand in 2021 for failure to properly patrol and make necessary reports. Following progressive discipline, Wagner should receive a one-day suspension.

Given the facts and circumstances, the preponderance of the evidence establishes that while Wagner did commit misconduct for which discipline was warranted, terminating his employment is not consistent with the seriousness of his misconduct. Accordingly, I issue the following:

DECISION

For the reasons set forth above, I find that the University of Wisconsin–Parkside did not have just cause to discharge John Wagner. The termination shall be reduced to a one-day suspension. Wagner shall be made whole consistent with the outcome of this decision.

Issued at Madison, Wisconsin, this 14th day of July 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by: Anfin J. Wise

Anfin J. Wise, Examiner