

STATE OF WISCONSIN
BEFORE THE STATE BOARD OF PERSONNEL

William A. Berkan,)
)
 Appellant,)
)
 vs.)
)
 Lester Newville, Chairman)
 Adams County Department)
 of Social Services,)
)
 Respondent.)

AMENDED FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

*391

The above entitled matter having initially been heard by the State Board of Personnel, at Friendship, Wisconsin, on July 23, 1970, and July 24, 1970, and the appellant having appeared in person and by Robert Dewa and Stephen E. Gavin, his attorneys, and the respondent, Lester Newville, as chairman of the Adams County Department of Social Services, appearing personally and by his attorneys, David Bogue and Ronald J. Kotnik, and a Memorandum Decision having initially been filed by the Board under date of December 4, 1970, and Findings of Fact, Conclusions of Law and Order having thereafter been signed by the State Board of Personnel and that the appellant thereafter having filed his petition for review with the Dane County Circuit Court and the matter being remanded to the State Personnel Board by order of the Dane County Circuit Court, the Honorable Norris Maloney presiding, dated February 26, 1972, remanding such matter to the Board for further action

consistent with such memorandum opinion;

NOW, THEREFORE, from all of the evidence produced at the initial hearing including the transcript of the testimony of the witnesses as appears therein together with all exhibits offered and admitted, the Board makes the following

Findings of Fact

1. That this action was an appeal under the County Merit Civil Service System and heard by the State Board of Personnel under rules promulgated by the State Department of Health and Social Services. That the general nature of this hearing was an appeal by William A. Berkan, the appellant and petitioner herein from his discharge as Director of the Adams County Department of Health and Social Services. That such action was disciplinary in nature and must be for just cause and that the burden in such hearing is upon the employing agency to show that just cause existed for such action and that the burden of such showing rests upon the employing agency who must show that the facts as found to be herein true have been proven to a reasonable certainty by the greater weight of the credible evidence as required by a mandate of the Supreme Court in Reinke Vs. Personnel Board (1971) 191NW2D833, 53Wis2D123.

2. That such findings as hereinafter are entered by the Board are found to have been true in applying the burden

of proof referred to in Finding Number 1 above and upon a reexamination of the complete record herein including the transcript and admitted exhibits. Based on reexamination of such record it is unnecessary to reopen the matter and conduct further hearings herein.

3. That William A. Berkan, the appellant herein, is employed by the Adams County Department of Health and Social Services as a Director II under the County Merit System Commencing March 1, 1969 and that such employment was terminated by action of the respondent Board of Health and Social Services effective May 13, 1970 and notified thereof by letter dated May 11, 1970 containing 13 reasons for such dismissal and that such letter of termination advised him of his right to appeal to the Wisconsin State Board of Personnel under the provisions of the County Merit System Rules PW-PA 10.13(4).

4. That the appellant upon receipt of such notice of termination filed his letter of appeal dated May 14, 1970 requesting a formal hearing before the State Personnel Board and that such appeal was timely in accordance with the existing regulations.

5. That after a pretrial hearing held in Madison, Wisconsin, July 7, 1970, formal hearing was held before the State Personnel Board in Friendship, Wisconsin on July 23, 1970 and July 24, 1970.

6. That of the specific charges made by the employing department as reasons for the termination action, William A. Berkan exhibited throughout his administration as Director of the County Department of Health and Social Services an unwillingness to cooperate with the Adams County Welfare Board and on occasions belittled the members of such Board and made disparaging remarks concerning their competence.

UNWILLING
NESS
TO
COOPERATE
+
BELITTLING

7. That throughout the administration of the County Welfare Department, William A. Berkan exhibited a lack of rapport with both the Adams County Board and refused to cooperate with the Adams County Welfare Board.

LACK
OF
RAPPORT

8. That on numerous occasions throughout the appellant's tenure as Director of the County Welfare Department the appellant failed to cooperate with or permit the Adams County Welfare Board to participate in its statutory responsibilities and consistently refused to permit the County Welfare Board to make policies and control the general relief program of the Department.

LACK
OF
COOPERATION

9. That William A. Berkan during his tenure of Director of the County Welfare Department failed to advise and communicate with the County Welfare Board on matters of administration of the Department, Departmental policy and throughout his entire administration of the County Department deliberately excluded and prevented the Welfare Board from any participation therein.

LACK
OF
COMMUNICATION

10. The appellant by his demeanor and actions toward the County Welfare Board and its members exercised a belligerent, uncooperative attitude and refused to accept any direction from such Board in the operation of the County Department and not only failed to consult with them in matters of policy but affirmatively excluded them from any determinations thereof.

8/19/70
ATTITUDE
-
Refuse to
ACCEPT
DIRECTION

11. That the County Welfare Board is vested with the statutory responsibility to supervise the working of the County Department of Public Welfare and shall be a policy-making body to determine the broad outline and principles governing the administration assigned to the County Department and that William A. Berkan failed to permit the County Welfare Board from performing these statutory functions and he instituted a deliberate effort to exclude them from all participation in the general County Welfare program.

DENIED
BOARD
POLICY
PRAGMATIC

12. The Adams County Welfare Board has the responsibility and prerogative to supervise the operation of the County Welfare Department and has a right to be advised as to the method, manner and means in which the categorical aids are administered by such Department. That the appellant as Director failed to so advise the Board and deliberately excluded them from any information or direction in such administration.

REPORT
+
ADVISE
ON
OPERATION

13. That after the nonpartisan elections in April, 1970 a large number of County Board members were replaced

and a new welfare board created in an attempt to properly supervise the appellant and his administration of the County Welfare Program and that the appellant failed to cooperate with and accept such supervision and resisted any efforts of such Board to so participate.

14. Throughout the entire tenure as Director of the County Welfare Department, the appellant continually and consistently failed to cooperate with the County Welfare Board.

15. That the appellant reaffirmed his preexisting defiant attitude towards his Welfare Board and that such persistent conduct resulted in his termination effective May 13, 1970.

16. That the basic allegations of reasons for the appellant's discharge number 3, number 4, number 5, number 10, excepting references therein to a tape recorder, are found to have been proven and that such conduct constitutes misconduct and just cause for discharge.

Conclusions of Law

1. That dismissal of the appellant, William A. Berkan, effective May 13, 1970 from his position as Director II of the Adams County Department of Health and Social Services was for just cause and the same is hereby affirmed.

2. That the appeal of William A. Berkan from such discharge be and the same is hereby ordered dismissed

with prejudice on its merits.

Dated at Madison, Wisconsin, this 13th day of June,
1972.

STATE BOARD OF PERSONNEL

By: _____
