

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 DIANA MAC DONALD, \*  
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 Appellant, \*  
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 v. \*  
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 SECRETARY OF STATE, \*  
 \*  
 Respondent. \*  
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 Case No. 80-364-PC \*  
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ORDER

Pursuant to a settlement stipulation entered into by the parties, the attached Proposed Decision and Order is adopted by the Commission and the appeal shall be dismissed on its merits, with prejudice.

Dated: August 17, 1983

STATE PERSONNEL COMMISSION

  
 DONALD R. MURPHY, Chairperson

KMS:ers

  
 DENNIS P. MCGILLIGAN, Commissioner

Parties

Diana MacDonald  
 c/o Jenswold, Studdt, Hanson,  
 Clark and Kaufmann  
 16 N. Carroll St.  
 Madison, WI 53703

Douglas LaFollette  
 Secretary of State  
 13 W. Capitol Bldg.  
 Madison, WI 53702

STATE OF WISCONSIN

PERSONNEL COMMISSION

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DIANA MACDONALD

Appellant,

v.

SECRETARY OF STATE

Respondent.

Case No. 80-364-PC

\* \* \* \* \*

PROPOSED  
DECISION  
AND  
ORDER

NATURE OF THE CASE

This matter is before the Commission as an appeal from disciplinary suspensions imposed against the appellant. The parties agreed to the following issue for hearing:

1. Whether the memo of November 11, 1980, from the respondent to the appellant provides adequate notice.
2. If so, whether the allegations contained in said letter are true in whole or part.
3. If so, whether there was just cause for the imposition of discipline.
4. If so, whether the discipline actually imposed was excessive.

FINDINGS OF FACT

1. Beginning in 1976 and including all times relevant to this proceeding, the appellant was employed as the Administrator of Government Records Division in the Office of the Secretary of State.

2. During the period relevant to this proceeding, Vel Phillips was the Secretary of State. An organizational chart of the office would show James Rowan, Assistant Secretary of State, and Ms. Phillips as the top ranking persons in the office. The third ranking employe was Terry Waitrovich, Office Operations Manager. The appellant was one of three division administrators who reported to Mr. Waitrovich.

3. As Administrator of the Government Records Division, the appellant supervised four positions occupied by five employes.

4. Gloria Pearson, a program assistant, was one of the five employes.

5. During portions of September and October, 1980, the interpersonal relationship between Ms. Pearson and the appellant was quite strained. On September 16, 1980, the appellant orally reprimanded Ms. Pearson. In response, Ms. Pearson yelled at the appellant, pounded her fists on a book on the appellant's desk and threatened the appellant by stating, "You've hurt me and you've hurt me bad and I'll hurt you back the same way." There was no physical contact between Ms. Pearson and the appellant during the incident.

6. As a consequence of the incident on September 16, 1980, Ms. Pearson was issued a written reprimand. The reprimand was grieved, but was upheld at each step of the grievance procedure.

7. On September 26, 1980, Ms. Phillips issued a memo to all staff members regarding, "Disruptive behavior on premises of the offices of Secretary of State." The memo read as follows:

In recent weeks, there have been several loud, angry outbursts of temper by some staff persons which have occurred in full public view in the Madison office.

The Secretary of State's offices are professional in nature and have almost constant exposure to the general public. They are staffed by adults who must exercise a reasonable level of self-control in order to meet their job requirements.

No office can function with disruptive behavior and our offices are no exception. Members of the staff with complaints should discuss them with the appropriate person. The grievance procedure is also available as a means of rectifying problems.

I want it clearly understood that displays of temper on the premises of our offices are unacceptable and will not be tolerated at any time. After the issuance of this memo, the policy shall be that any member of our staff who engages in any emotional outburst involving shouting swearing throwing of furniture, pounding on desks, making threats, or in any manner losing control in anger, will definitely be disciplined. That discipline will almost surely result in at least a suspension without pay. This policy shall apply even if the person has never before engaged in such conduct on the premises.

I hope this is unequivocally clear. I am amazed that it has become necessary for me to send a general office memo on a matter which should be dictated by common sense. However, in light of some recent, very regrettable and unacceptable occurrences, I feel the need to clearly spell out the consequences for any future conduct of this type.

Please acknowledge that you have read and understand this memo and stated policy by initialing the staff list on the front, and pass it along to the next person under your name. The memo and the staff list should be returned to Ekita. Thank you for your cooperation.

The appellant read and understood the memo.

8. On October 7, 1980, the appellant requested Ms. Phillips and Mr. Rowan to discipline Ms. Pearson for allegedly leaving her work area despite a direct order from the appellant to remain in the work area.

9. Also on October 7, 1980, the appellant advised Ms. Phillips that the appellant could not work with Ms. Pearson and that Ms. Pearson was being insubordinate. Ms. Phillips responded by stating that disturbances in office activities had to cease and that she did not know what she was going to do about it.

10. On October 8, 1980, the appellant encountered Ms. Pearson going in the opposite direction in a 5 foot wide office hallway. When they were just a few feet apart, the appellant perceived Ms. Pearson sticking out her tongue at the appellant. The appellant then grabbed Ms. Pearson's arm which caused Ms. Pearson to fall against the hallway wall. Ms. Pearson immediately regained her balance and made a statement to the effect of: "Do you know what you've done. Who do you think you are?" The appellant then stated, "I order you to discontinue this discussion and follow me." This verbal exchange was repeated and the appellant then had Ms. Pearson follow her to Ms. Phillip's office.

11. While in Ms. Phillip's office, the appellant and Ms. Pearson presented different versions of what had occurred in the hallway. However, the appellant admitted that she had grabbed Ms. Pearson and that Ms. Pearson had fallen against the wall.

12. As a consequence of the incident on October 8, 1980, the appellant was suspended without pay. The suspension letter, dated November 11, 1980, states, in part:

After much thought and an inquiry into the circumstances of the incident of October 8, 1980, I have reached the following decision:

1. For physically grabbing Gloria Pearson, you shall be suspended for two days without pay. This was a violation of Work Rule #2 and #3, Personal Appearance/Actions;

2. and, for the emotional outburst which occurred simultaneously, you shall be suspended for 1 day without pay. This was a violation of Work Rule #2 and #3, Personal Appearance/Actions.

These suspensions shall run concurrently.

I would like to formally note here that your actions also violated the memo of September 26, 1980, regarding emotional outbursts and prohibited behavior by employees of this office.

13. The Work Rules that were in force in the Office of the Secretary of State in October, 1980, include the following prohibitions:

Employees of the Office of the Secretary of State are prohibited from committing any of the following acts:

\* \* \*

PERSONAL APPEARANCE/ACTIONS

2. Threatening, intimidating, interfering with, or using abusive language toward others.

3. Discourtesy or impolite actions toward supervisors, other employees or the public.

14. Ms. Pearson received no discipline for her conduct during the October 8th incident.

15. The appellant had had no prior discipline and was considered by Ms. Phillips to be a very good employe.

16. In August or September of 1980, the appellant had attended a seminar offered by personnel of the Department of Employment Relations where she was told to use the phrase, "I order you" when she believed an employe's actions to be insubordinate.

17. The appellant's conduct of grabbing Ms. Pearson on October 8, 1980, constituted a violation of Work Rules 2 and 3.

18. The appellant's "simultaneous emotional outburst" did not constitute a violation of Work Rules 2 and 3, but was within the range of response appropriate for a supervisor.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(c), Wis. Stats.

2. The respondent has the burden of proof.

3. There was just cause for the imposition of discipline with respect to the appellant's action of grabbing Ms. Pearson.

4. There was no just cause for the imposition of discipline with respect to the appellant's "simultaneous emotional outburst."

5. The discipline imposed for the grabbing incident was not excessive.

6. The suspension letter provided adequate notice to the appellant for the imposition of discipline as a consequence of the grabbing incident and of appellant's statements to Ms. Pearson from the time of the grabbing incident until they reached Ms. Phillip's office.

OPINION

In disciplinary appeals, the Commission is required to apply a two step analysis:

First, the Commission must determine whether there was just cause for the imposition of discipline. Second, if it is concluded there is just cause, for the imposition of discipline, the Commission must determine whether under all the circumstances there was just cause for the discipline actually imposed. If it determines that the discipline was excessive, it may enter an order modifying the discipline. Holt v. DOT, Case No. 79-86-PC (11-8-79).

In the present case, the appellant was charged with violating two work rules by both grabbing another employe and simultaneously engaging in an "emotional outburst".

The facts presented at the two day hearing indicate that intense tensions had existed between the appellant and Ms. Pearson for some time. Ms. Pearson had been issued a written reprimand for her conduct in the appellant's office on September 16th. Just a day before the incident that resulted in the instant appeal, the appellant had advised the Secretary of State that Ms. Pearson was insubordinate and that the appellant could not work with her. The only indications of any effort by the appellant's superiors to deal with the situation was the issuance of an edict by Ms. Phillips on September 26th threatening to suspend employes for any further "displays of temper" on the premises.

There is conflicting testimony in the record as to whether Ms. Pearson actually stuck out her tongue at the appellant on October 8th. The



appellant is unequivocal in her statement that Ms. Pearson made such a gesture. On the other hand, Ms. Pearson denies that she stuck out her tongue, but thinks she might have "licked her lips because of her habit of eating sunflower seeds." In any event, the Commission is satisfied that the appellant at least perceived that Ms. Pearson had stuck out her tongue. Her response of grabbing Ms. Pearson was clearly inappropriate, even though it may have been understandable. By grabbing her, the appellant "interfered with" and acted "impolitely" toward Ms. Pearson, thereby violating the terms of the work rules.

However, the Commission is not satisfied that the other actions and statements by the appellant, simultaneous<sup>FN</sup> to the grabbing, also violated the work rules. The appellant had previously been advised to "order" an employe to do something if that employe was insubordinate. Ms. Pearson's testimony that the appellant was acting "hysterically"

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<sup>FN</sup> Although it was identified as an issue for hearing, very limited testimony and no argument were offered regarding the adequacy of notice provided by the suspension letter. The letter refers to the appellant's "emotional outburst" as occurring simultaneous to the grabbing of Ms. Pearson. Ms. Phillips testified that the appellant loudly ordered Ms. Pearson back to her work station after they had spoken with Ms. Phillips for awhile. The Commission concludes that this statement, if it was an "emotional outburst," did not occur "simultaneously" to the grabbing incident. The Commission construes the second count of the suspension letter as including the appellant's conduct up to the time that Ms. Phillips admitted the two employes into her office.

towards her was uncorroborated and Ms. Pearson's testimony lacked credibility, specifically in light of her threat against the appellant. Ms. Phillips only testified that both persons were very upset when they appeared at her office door. The appellant's testimony showed that, except for actually grabbing Ms. Pearson, her emotions did not manifest themselves in objectionable behavior or statements. Her effort to immediately get the controversy before Ms. Phillips was certainly appropriate, given the prior relationship between the appellant and Ms. Pearson.

By concluding that the appellant's non-physical conduct was not inappropriate in this case, the Commission is not suggesting that supervisors use the words, "I order you" on a regular basis. However, where, as here, the subordinate employe is reasonably perceived as being insubordinate, the supervisor may need to resort to similar language.

The final issue in this matter is whether or not imposing a two day suspension for the grabbing incident was excessive. A mere statement in a memorandum that displays of temper "will almost surely result in at least a suspension "is not in itself an adequate basis for determining the level of discipline. The fact that the appellant was a supervisor is definitely a factor as is the nature of the conduct involved. The existence of actual physical contact between the appellant and Ms. Pearson, when coupled with the appellant's supervisory status, is sufficient for finding that the two day suspension was not excessive.

ORDER

The respondent's decision to suspend the appellant for two days is upheld but its decision to impose a concurrent one-day suspension is reversed. This matter is remanded for action in accordance with this decision.

Dated: \_\_\_\_\_, 1983      STATE PERSONNEL COMMISSION

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DONALD R. MURPHY, Chairperson

KMS:lmr

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LAURIE R. McCALLUM, Commissioner

\_\_\_\_\_  
JAMES W. PHILLIPS, Commissioner

Parties:

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