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OF WISCONSIN

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

April 6, 1995

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-0450

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

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ALAN L. ASCHE,

Petitioner-Respondent,

v.

WISCONSIN PERSONNEL COMMISSION,

Respondent-Co-Appellant,

WISCONSIN DEPARTMENT OF CORRECTIONS,

Respondent-Appellant.

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APPEAL from an order of the circuit court for Dane County:

DANIEL R. MOESER, Judge. *Affirmed.*

Before Eich, C.J., Dykman and Sundby, JJ.

PER CURIAM. The Wisconsin Personnel Commission and the Department of Corrections appeal from an order setting aside the Commission's order affirming a DOC disciplinary decision. That decision imposed a fifteen-day suspension on Alan Asche, a DOC employee. The issue is whether the DOC provided sufficient notice to Asche of the charges against him. We conclude that Asche received insufficient notice, and therefore affirm the trial court's order.

From April 1988 through February 1990, Asche supervised the security unit at the University of Wisconsin Hospitals and Clinics. In April 1990, DOC notified Asche by letter that he was to be disciplined for violating work rules prohibiting negligence and behavior unbecoming a state employee, including profane or abusive language. The letter alleged that DOC staff on the security unit had sexually harassed and created a hostile environment for hospital workers. The letter then explained that Asche was disciplined for failing to recognize and react to inappropriate acts of his staff, for using profane language, and for bringing a vulgar photograph to work and showing it to a hospital worker.

Asche appealed to the Commission which found, after a hearing, that DOC had just cause to suspend him for fifteen days, although it did not find any basis to punish him for his own alleged use of profane language. Asche conceded adequate notice of the photograph incident but challenged the notice given him of the other

charges. The Commission found that the disciplinary letter gave Asche adequate notice of all of the charges that justified the discipline.

Section 230.34(1), STATS., provides that a state employe may be suspended for "just cause." The disciplinary authority must inform the employe in writing of the reasons for its action. Section 230.34(1)(b). Due process requires that the notice, whether written or otherwise, be sufficient to allow the employe a reasonable opportunity to know the charges and to meet them. *Weibel v. Clark*, 87 Wis.2d 696, 702, 275 N.W.2d 686, 689, cert. denied, 444 U.S. 834 (1979).

Asche did not receive adequate notice of the charges used to discipline him. All Asche knew from the disciplinary letter was that he was accused of failing to recognize and react to inappropriate staff action and behavior. Although some particulars were provided at an earlier investigatory meeting, Asche did not receive any prehearing notice of the dates or times of the alleged incidents involving other staff, or the names of the complaining hospital employes. Without such information, Asche did not have a meaningful opportunity to meet the charges that he neglected his responsibility as unit supervisor.<sup>1</sup>

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<sup>1</sup> The appellants argue that we must defer to the Commission's ruling as to what constituted sufficient notice. We will accord due weight to the Commission's determination on a question of law if the Commission possesses expertise that is significant to a value judgment involved in the determination. *Nottelson v. DILHR*, 94 Wis.2d 106, 116-17, 287 N.W.2d 763, 768 (1980). The Commission's expertise is not relevant to a determination of whether a party's constitutional due process rights have been violated.

The matter must now be remanded to the Commission for further proceedings. We understand the issues to be whether the rule violation concerning the vulgar photograph provides just cause to discipline Asche, and if so, whether the discipline imposed in this case was excessive. Our decision makes it unnecessary to determine the other issues raised by the appellants.

*By the Court.*--Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.