

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**RONALD M. MOLNAR**, Appellant,

vs.

**Secretary, WISCONSIN DEPARTMENT OF CORRECTIONS**, Respondent.

Case 76  
No. 67495  
PA(adv)-133

**Decision No. 32336-C**

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**Appearances:**

**Louis Edward Elder**, Attorney, Law Offices of Louis Edward Elder, 3111 W. Wisconsin Avenue, Milwaukee, Wisconsin 53208-3057, appearing on behalf of Ronald Molnar.

**Deborah Rychlowski**, Attorney, Department of Corrections, P.O. Box 7925, Madison, Wisconsin 53707-7925, appearing on behalf of the Department.

**DECISION AND ORDER**

This matter is before the Wisconsin Employment Relations Commission as an appeal from a disciplinary action. Ronald Molnar contends there was no just cause for his demotion for allegedly violating the following work rules of the Department of Corrections (DOC): Work Rule 6 (knowingly giving false information); Work Rule 13 (intimidating, interfering with or harassing others) and Work Rule 29 (improper use of state property). The parties agreed to the following statement of the issue for hearing:

Whether there was just cause for respondent's action in demoting the appellant effective October 21, 2007.

A hearing was conducted on September 28, 29, and October 8, 2010,<sup>1</sup> before Coleen A. Burns, as the designated Hearing Examiner. Ms. Burns retired from state service before the last post-hearing brief was filed on February 11, 2011. Kurt M. Stege was re-designated as the examiner in this matter on September 12, 2011. The examiner issued a proposed decision on October 14, 2011, objections were filed and the response was received on November 16, 2011. The Commission has adopted the proposed decision except as noted in footnotes.

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<sup>1</sup> In January 2008, this matter was scheduled for hearing to commence on September 8 of that year. Molnar represented himself until August 26, 2008 when Alan Eisenberg filed a notice of appearance. Three days later, Attorney Eisenberg indicated he would not be prepared for the scheduled hearing and asked the Commission to appoint a staff member to serve as a mediator. The matter was mediated but efforts were unsuccessful. Shortly after a pre-hearing conference was conducted in February 2010, Attorney Elder filed a notice of appearance. In May 2010 the hearing was scheduled to convene on September 28 of that year.

For the reasons that are explained below, the Commission affirms the Respondent's decision.

Being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. At the time of his demotion, Ronald Molnar was the security director at the Racine Correctional Institution (Racine). Molnar began working at DOC in 1985 as a correctional officer and he was subsequently promoted to sergeant, lieutenant, captain, corrections unit supervisor, and, in 2001, to security director at Racine. In that capacity, Molnar was responsible for the overall security program that was carried out by approximately 350 subordinates at the institution. Security director is third in the chain of command at the institution, beneath the warden and the deputy warden. The security director serves as the administrative duty officer in the absence of the warden, and as the acting warden in the absence of both the warden and deputy.

2. Prior to the conduct that is the subject of this appeal, Molnar had been disciplined three times during the relevant time period:<sup>2</sup>

a. DOC issued him a letter of reprimand dated December 23, 1996 for violating the work rule relating to “[i]ntimidating . . . harassing . . . demeaning . . . in dealing with others.”:

[D]uring an incident in the Segregation unit you undermined the shift Lieutenant's directives to unit and other staff . . . .  
[O]n two separate occasions involving the arrival of the Dodge Correctional bus, it is my conclusion that your actions were meant to intentionally demean Lt. [W] while performing her duties.

b. On June 18, 2004, he was suspended for five days for violating the work rule prohibiting “[u]nauthorized or improper use of state . . . property . . . including but not limited to vehicles . . . .” He had knowingly driven an institution vehicle that was not registered and had no registration plates, despite being advised not to do so by the institution's business manager.

c. DOC suspended him for 10 days by letter dated April 9, 2007. He engaged in “inappropriate and unprofessional confrontation[s]” with a lieutenant and, two days later, with a female co-worker. He intimidated and threatened the female by a series of comments and by his physical actions. He also ignored directives to stay away from all staff during the

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<sup>2</sup> The Commission has modified the final clause in this sentence of the proposed decision to more accurately reflect the dates of Molnar's prior discipline.

investigation of the confrontations, and he failed to disclose those contacts. The letter referenced the work rules relating to insubordination, failing to provide truthful information, and intimidating others.

3. Molnar's supervisor noted significant performance problems on his 2003-04, 2004-05 and 2005-07 performance evaluations. Two of the problem areas were in fulfilling work objectives A9 ("Develop and maintain positive and professional interpersonal relationships with peers, subordinates, and supervisors.") and A10 ("Ensure that all your communications with others are consistently professional and promote problem solving and cooperation between yourself and other staff and departments.")

4. By memo dated May 2, 2007, the warden and deputy warden placed Molnar on a "Performance Improvement Plan" and informed him that his "performance must improve to an acceptable/satisfactory level." The plan identified two major performance problems, the first of which was interpersonal skills. The plan described this problem area as containing three components, two of which were:

- a. Ron has portrayed past negative communication with employees bringing forth issues. This discourages staff from communicating with him and also makes staff fear retaliation.
- b. Ron has demonstrated behavior that has intimidated staff and they are unwilling to address necessary issues.

5. MM, a female, began working for DOC in 1993. At the time of the relevant incidents, MM worked as an Offender Classification Specialist at Racine. Her job was to evaluate the custody level, program needs and placement of individual offenders. Her duties required that she interact with Molnar but he also stopped at her office for merely social reasons. While she was not his subordinate, Molnar provided input for MM's performance evaluation.

6. DOC's Work Rule 13 prohibits "Intimidating, interfering with, harassing (including sexual or racial harassment), demeaning or using abusive language in dealing with others."

7. *Hallway incident.* Sometime in the spring or early summer of 2007, MM and Molnar were walking toward each other in a hall at Racine. Molnar was staring at MM's breasts. Molnar did not avert his eyes until he was two or three feet away. MM felt uncomfortable and told Molnar to stop looking at her breasts and to look at her in the eyes. After MM's admonition, Molnar averted his gaze and the two had a conversation about an unrelated matter.

8. *Sweater incident.* In approximately June 2007, Molnar was in MM's work area standing only 2 or 3 feet away from her. Molnar stared at MM's breasts to the point that it made her uncomfortable. MM again upbraided Molnar by asking him what he was staring at

and telling him to look in her eyes when they talked. Molnar explained that he was looking at the cabling on MM's sweater, but the sweater was a solid color and the cabling was not unusual. One of MM's co-workers overheard this conversation.

9. DOC's Work Rule 29 prohibits:

Unauthorized or improper use of state or private property . . . including but not limited to . . . telephones, electronic communications, mail services, . . . computers, software, . . . while in the course of one's employment; or to knowingly permit, encourage, or direct others to do so.

10. DOC's Executive Directive 50 applies to all DOC information technology (IT) resources and is "designed to help DOC users understand the department expectations for the appropriate use of IT resources." The directive sets forth DOC policy and notes that "[a]ll IT resources, including . . . e-mail . . . could be subject to open record laws." (Emphasis removed.) It specifies that "IT resource users . . . should have no expectation of privacy" and lists the following:

V. Examples of Acceptable Use of IT Resources

. . .

In general, if the exchange of information would be acceptable in person or by phone, it is acceptable to use e-mail or the Internet.

VI. Examples of Unacceptable Use of IT Resources

Knowingly accessing, creating, sending, saving, viewing, printing or downloading defamatory, abusive, obscene, pornographic, profane, sexually oriented . . . material not specifically related to an approved work activity.

On one or more occasions, DOC has applied Work Rule 29 and Executive Directive 50 to discipline an off-duty employee who has used his personal computer and home email account to send an excessive number of emails to other employees at their DOC email addresses.

11. *E-mail incident.* On July 3, Molnar sent an email titled "The Perfect Wedding" from his home computer to MM's work computer. The email contained an introductory paragraph describing a couple being photographed immediately after their wedding ceremony, followed by a color photo of the couple. In the photo, the bride's dress had fallen down, completely exposing her breasts. Molnar sent the email when MM was on vacation. When she returned to work and saw the email, MM became very upset and, questioning its propriety, shared it with several co-workers. At a co-worker's suggestion, she deleted the email and wrote Molnar: "Please don't send me stuff like this at work." Molnar later visited MM in her cubicle and apologized. A co-worker overheard the apology.

12. *Safety pin incident.* In August of 2007, Molnar entered MM's work area while another co-worker was present. MM had placed a pin between two buttons on the front of her shirt to make sure that the shirt could not open if a button came off. The pin was put into place from beneath the shirt so all that was visible was a silver bar at chest level. Upon entering, Molnar again began to stare at MM's breasts. She asked him what he was looking at and told him she had warned him previously not to stare at her chest. Molnar continued to stare for several seconds after the warning and responded that he was looking at her pin. MM told him his behavior was inappropriate. Molnar responded that if she was going into a meeting looking like that, she should sit behind a tall table or else she would have all sorts of people looking at her.

13. DOC's Work Rule 6 prohibits "falsifying records, knowingly giving false information, or knowingly permitting, encouraging or directing others to do so. Failing to provide truthful, accurate, and complete information when required."

14. *Conduct during investigation.* During the investigation regarding his conduct toward MM, Molnar falsely claimed that MM had never told him to not look at her breasts or her chest area. He also falsely claimed that he did not recall apologizing to MM for having sent the "Perfect Wedding" email.

15. Molnar's continuing harassment<sup>3</sup> of MM intimidated her and had a strong tendency to impair the operations of the correctional institution. Molnar's long record of improperly interacting with personnel in the institution and his prior history of intimidating a female employee at DOC interfered with his ability to carry out the functions of security director. By making false statements during the investigative interview, Molnar substantially undermined his credibility with his superiors.

16. By letter dated October 17, 2007, the Racine warden involuntarily demoted Molnar from security director to a position classified as Corrections Unit Supervisor.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

### **CONCLUSIONS OF LAW**

1. The Commission has the authority to review this matter pursuant to Sec. 230.44(1)(c), Stats.

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<sup>3</sup> The Commission has, at various locations in the proposed decision, deleted the word "sexual" that preceded the term "harassment" because it was not material to the Commission's conclusion and suggested the Commission was deciding a question of law not before us. The underlying letter of discipline in this matter merely asserted that Molnar "exhibited a pattern of harassing treatment."

2. Respondent DOC has the burden to establish just cause to demote Appellant.
3. DOC has sustained that burden.
4. There was just cause to demote Molnar.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER**<sup>4</sup>

Respondent's action, as set forth in a letter dated October 17, 2007 to demote Appellant to a Corrections Unit Supervisor position, is upheld and this appeal is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of January, 2012.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Judith Neumann /s/

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Judith Neumann, Commissioner

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

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<sup>4</sup> Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference.

Wisconsin Department of Corrections (Molnar)

MEMORANDUM ACCOMPANYING DECISION AND ORDER

This matter is before the Commission as an appeal of the decision to involuntarily demote Appellant from the classification of Security Director to Corrections Unit Supervisor.

In its decision in DOC (DEL FRATE), DEC. NO. 30795 (WERC, 2/04), the Commission summarized the analytical structure to be applied when determining whether, pursuant to Sec. 230.44(1)(c), Stats., there was just cause for the imposition of discipline:

On appeal of a disciplinary matter the Respondent must show by a preponderance of credible evidence that there was just cause for the discipline. . . . The Courts have equated this to proof to a reasonable certainty by the greater weight or clear preponderance of the evidence. The underlying questions are 1) whether the greater weight of credible evidence shows the appellant committed the conduct alleged by respondent in its letter of discipline; 2) whether the greater weight of credible evidence shows that such chargeable conduct, if true, constitutes just cause for the imposition of discipline; and, 3) whether the imposed discipline was excessive.

The October 17, 2007 letter that demoted Molnar from security director to corrections unit supervisor alleged he engaged in the following misconduct:

You have exhibited a pattern of harassing treatment directed primarily toward MM. You repeatedly focused your eyes on her chest area. On at least three occasions MM directed you to stop staring at her chest and look her in the eyes when you were speaking to her.

*[Hallway incident:]* In April 2007 MM told you to stop staring at her chest. The incident involved you and MM walking towards each other in the hallway. When asked about this incident during the investigation, you noted that you look to see where you are going so that you do not bump into someone else. You maintained that you did not make any other eye contact with MM more than you do with anyone else. You noted that you are hearing impaired and never heard her say anything to you.

*[Sweater incident:]* The second incident, approximately June 2007, occurred in MM's office. Again, during the investigation you noted that you have had numerous conversations with MM and you do not recall her saying anything to you about not looking at her chest and instead to look her in the face when talking to her.

*[Pin incident:]* The third incident occurred on August 28, 2007 when you again stared at MM's breasts. She confronted you by asking what you were looking at and told you it was inappropriate to stare at her breasts. During the investigation you indicated you thought this was the date she asked you if you were looking at her pin to which you responded "I did notice it was exposed." You noted that you had entered her office to discuss an inmate and she asked, "What are you looking at? My pin?" You noted that there was a pin in the middle of her shirt and told her yes. Further you indicated that she was upset about something. You stated that you apologized and that you did not go there to upset her.

*[Email incident:]* On July 3, 2007 you sent an email entitled "The Perfect Wedding" from your personal email account to MM's state email account. This email was not work related and contained nudity (i.e. exposed breasts). *[Conduct during investigation, incident A:]* As a result of the investigation and your investigatory interview, Work Rule #6 was included based on a witness who corroborated the fact that MM confronted you on staring at her chest and directed you to look in her eyes when you spoke to her. . . .<sup>5</sup>

*[Conduct during investigation, incident B:]* In regards to Work Rule #6, a witness statement corroborated that you did apologize to MM for sending the email. You indicated that you do not recall this ever happening. You noted that just because someone does not remember something does not mean they are not being truthful. It is my contention that this type of incident would be hard to forget and your claiming that you do not recall is simply not credible.

Each bracketed allegation of misconduct is addressed separately below.

### **1. Did the alleged misconduct occur?**

The role of the Commission in a State civil service appeal arising from a disciplinary action<sup>6</sup> is to hear the matter *de novo*, rather than reviewing the adequacy of the employer's investigation of the alleged misconduct. The initial question for the Commission is whether the employing agency, at hearing, established that the employee engaged in the conduct serving as a basis for imposing the discipline.

The demotion letter that is the subject of this appeal alleges four separate instances of harassment and also contends that Molnar lied during the subsequent investigation of his conduct.

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<sup>5</sup> The deleted paragraph describes aspects of DOC's investigation of Molnar's conduct.

<sup>6</sup> Sec. 230.44(1)(c), Stats.



DOC's case relies, in part, on the testimony of MM, the object of the alleged harassment. However, there are a number of corroborating witnesses whose testimony supports the assertion that the alleged misconduct actually occurred. Molnar's defense, on the other hand, is grounded entirely on his own unconvincing testimony.<sup>7</sup>

Molnar was not a credible witness in terms of the disputed facts. He was often evasive, answered a different question than was asked, or said he was unable to recall.<sup>8</sup> His poorly articulated conspiracy theory would have required complicity by numerous people who had no apparent reason to conspire against him. In contrast, there were numerous witnesses who contradicted his denials and his version of events. The testimony of those witnesses convinces the Commission that Molnar's supposed inability to recall significant events was merely a part of his larger effort to avoid discipline.<sup>9</sup>

MM's testimony was consistent and logical. She confirmed that Molnar acted as described in the demotion letter in terms of the hall incident, the sweater incident, the email incident and the pin incident. MM was in close proximity to Molnar during the hallway, sweater and pin incidents, and she was in a position to observe that Molnar was directing his gaze at her breasts rather than elsewhere.

A co-worker, Dawn Christman, overheard (but did not see) the sweater incident and observed the pin incident. Christman's testimony is consistent with the evidence provided by MM and witnesses other than Molnar. Two other witnesses' testimony about Molnar's email to MM contradicted Molnar's version of events and supported MM's testimony.<sup>10</sup> Molnar did not merely glance fleetingly at MM's breasts. MM and Christman both testified that Molnar continued to stare at MM's breasts for several seconds after he was told to redirect his gaze.

Molnar was interviewed as part of DOC's investigation and the interviewers took careful and complete notes of the conversation. Molnar told the investigators he had never heard MM tell him to stop staring at her breasts or to look at her eyes when they conversed. To the extent that Molnar contends MM never directed him to change his behavior, MM and Christman offered a more believable description of MM's statements. Molnar also testified

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<sup>7</sup> For example, Molnar testified that the pin incident arose because MM had used a pin the size of a diaper pin with 1½ inches of the silver bar exposed (1½ to 2 inches according to his statement when interviewed as part of the investigation). MM and her co-worker, Dawn Christman, testified that the pin was much smaller and less apparent. Given the undisputed testimony that MM had used the pin in an effort at modesty and that she had put the pin inside rather than outside her blouse, it would be illogical for her to have used a highly visible pin as described by Molnar.

<sup>8</sup> Molnar's selective memory was evidenced well before his testimony at hearing. In his letter of appeal, he wrote that he began working at DOC on October 28, 1985 and "[f]or over 18 years . . . had never been disciplined." The statement is inconsistent with the fact that DOC issued him a written reprimand in 1996.

<sup>9</sup> The Commission has eliminated unnecessary language in this sentence as it appeared in the proposed decision.

<sup>10</sup> These two witnesses observed the email in its original form, as it appeared on MM's computer screen.

that he has a “not correctable” hearing impairment, implying that even if MM told him to change his behavior, he never actually heard it.<sup>11</sup> There is insufficient evidence to believe that Molnar had a significant hearing impairment, or at least one that would have prevented him from hearing MM’s directives. MM testified that she used her normal speaking voice during the conversations in question and she had never noticed Molnar having difficulty hearing in those or any other conversations. Elsewhere in his testimony Molnar also admitted that during the sweater incident, MM asked him: “What are you looking at?” He had no trouble hearing that statement, so there is good reason to believe he heard all of MM’s directives to not stare at her chest and to look at her eyes.

During his investigatory interview with DOC, he also said that he did not recall apologizing to MM for sending her the July 3 email. However, MM showed the email to Teresa Wiegand and Wiegand happened to be in MM’s office area to overhear Molnar’s subsequent apology. We do not believe Molnar would have forgotten his effort to apologize to MM. We believe that Molnar actually remembered it and chose not to acknowledge his conduct.

In summary, the record showed that Molnar relied on his rank and authority to target a female co-worker by staring at her breasts. This occurred on three separate occasions and each time the woman promptly and clearly informed Molnar that the stare was unwelcome.<sup>12</sup> Molnar also sent an inappropriate email to the woman’s work address. The email contained a photograph of a bride with her breasts fully exposed. Molnar apologized to MM for sending the photo to her. After the fourth incident of harassment, the woman finally concluded that Molnar’s conduct would continue unless she had her employer intervene. She informed Molnar’s superior and DOC conducted an investigation. When Molnar was interviewed, he lied when he said: 1) the woman had never told him not to look at her chest or breasts or to look her in the eye when he spoke to her; and 2) he did not recall apologizing to the woman for sending her the email.

## **2. Was some form of discipline warranted?**

Having determined that the Appellant engaged in the conduct described in the letter of discipline, the second step of the analysis is to determine whether this conduct warranted any discipline. We find the greater weight of evidence establishes cause to impose some level of discipline.

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<sup>11</sup> During the investigation, Molnar said: “I am completely deaf on my right side so I look at someone’s mouth to see what they are saying.”

<sup>12</sup> The Commission has eliminated unnecessary language in this and the previous sentence as it appeared in the proposed decision.

### Work Rule 13

The first work rule cited in the demotion letter prohibits intimidating and harassing conduct.

Molnar engaged in an obvious pattern of harassing behavior. His actions were intentional and intimidating.<sup>13</sup> MM's level of discomfort very reasonably increased after each incident.<sup>14</sup> She occupied a position with far less authority than the security director which would be an important reason why Molnar apparently expected that he would not suffer any adverse consequences from his misconduct. A reasonable person in MM's position relative to Molnar would have been slow to raise her complaints formally. Molnar's actions were contrary to Work Rule 13 and justified the imposition of discipline.

### DOC Rule 29 and Executive Directive 50

According to the letter of discipline, Molnar violated Work Rule 29 when he sent an email from his home to MM's DOC email address because the email included a photograph of a woman with exposed breasts. The rule in question prohibits "improper use of state or private property . . . including . . . telephones, electronic communications . . . computers . . . and identifications while in the course of one's employment . . . ." Also relevant to the present appeal is Executive Directive 50, a policy statement setting forth the agency's expectations for all persons using DOC's "information technology" resources, including email.

Molnar argues that the work rule and Executive Directive 50 do not apply to an employee who uses his home computer to send an email message into the DOC system because DOC "does not own the internet, Molnar's e-mail message server, nor his computer."<sup>15</sup> The language used in Work Rule 29 only applies when the employee is acting "in the course of one's employment." Here, it is undisputed that Molnar was at home and not in work status when he sent the email to MM, so that particular work rule and executive directive do not apply to Molnar's action.<sup>16</sup> However, the conclusion that one of the three work rules cited in a letter of discipline has not been violated does not necessarily undermine the agency's action. In this instance, the email was still intimidating and harassing conduct in violation of Work

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<sup>13</sup> The Commission has eliminated unnecessary language in this sentence as it appeared in the proposed decision.

<sup>14</sup> While MM's hearing testimony suggested that Molnar's conduct was only somewhat discomfoting, other witnesses testified that MM was very disturbed.

<sup>15</sup> Molnar also argues that the image included in his July 3 email to MM's work email address was neither "nudity or pornography" and that the bride was "fully clothed", apparently because her attire was merely displaced rather than completely separated from her body. The work rule refers to "improper" use and the directive refers to "sexually oriented" material. Those terms are broad enough to encompass the image that Molnar sent to MM on July 3.

<sup>16</sup> This is the case even though DOC has, in one or two instances, relied on Work Rule 29 and Executive Directive 50 to discipline employees who send an excessive number of emails from their home computers to DOC email addresses. There is also nothing in the executive directive clearly encompassing conduct by an off-duty employee who uses his personal computer outside the institution to send an inappropriate email to an on-duty co-worker.

Rule 13 so the email is still misconduct that justifies the imposition of some discipline. The email undermined Molnar's credibility and stature as the security director for the institution, interfering with his ability to credibly carry out his responsibilities.

### Work Rule 6

The final basis for discipline was for violating the work rule relating to giving "false information" and to "[f]ailing to provide truthful, accurate and complete information when required." Molnar provided false information during DOC's investigation of whether he had harassed MM. Molnar's false statements undermined his credibility, and substantially interfered with the functioning of the prison.

### 3. Was demotion excessive discipline?

The final step in the DEL FRATE analysis requires the Commission to examine whether the discipline imposed was excessive. Here we consider, at a minimum, "the enormity of the offense" (including the degree to which it has a tendency to impair the employer's operation), the number of incidents cited in the disciplinary letter for which the employer established just cause, the employee's prior work record, and the employer's practices for imposing discipline for comparable misconduct. See *KLEINSTEIBER V. DOC*, CASE NO. 97-0060-PC (PERS. COMM. 9/23/1998). DOC is justified in holding its supervisors to higher standards than non-supervisory employees. DOC (DEL FRATE), DEC. NO. 30795 (WERC, 2/04). The present case arises from the imposition of an involuntary demotion and the relevant considerations strongly support the decision to demote.

The evidence showed that Molnar engaged in a pattern of harassing behavior and that he relied upon his elevated position in the prison hierarchy to do so. Subordinates view the security director position as wielding substantial discretion and power. He ignored MM's repeated entreaties to stop the behavior and his position of power allowed him to engage in the harassment with minimal fear.<sup>17</sup> Molnar's misconduct eroded his superiors' confidence in him as a security directory because his word could no longer be trusted. His credibility with subordinate staff was undermined and he had marginalized his ability to properly supervise security staff.

Molnar had a long record of related and recent discipline: a written reprimand, a five-day suspension and a ten-day suspension. Molnar's recent performance evaluations repeatedly noted that he had problems with interpersonal relationships and DOC had placed Molnar on a performance improvement plan at approximately the same time as the first incident cited in the letter of discipline. DOC designed the plan to address Molnar's negative and intimidating communication practices.

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<sup>17</sup> The Commission has eliminated unnecessary language in this sentence as it appeared in the proposed decision.

The position of security director is one of great responsibility. Molnar was near the very top of the chain of command at Racine and he supervised 350 employees either directly or indirectly. He was expected to set an example for others. Had any other employee been subject to harassment, the employee would look to Molnar for help. He understood he was the one to whom such complaints could be made.

There is little evidence of record showing how DOC has treated similarly situated employees but what evidence there is supports the decision that is under review.<sup>18</sup> One regional chief who had engaged in harassing and intimidating behavior was demoted to unit manager. There is no evidence that DOC singled-out Molnar relative to other supervisors.<sup>19</sup>

Molnar exhibited a continuing and escalating pattern of harassment toward MM and, during the investigation, denied engaging in the conduct. DOC's decision to demote him from his position as Racine security director was warranted.<sup>20</sup>

Dated at Madison, Wisconsin this 20th day of January, 2012.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Judith Neumann /s/

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Judith Neumann, Commissioner

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

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<sup>18</sup> The Commission has clarified this sentence as it appeared in the proposed decision.

<sup>19</sup> Molnar ran for county sheriff in 2006 and in his testimony suggests that his foray into politics motivated the imposition of discipline. All of the key actors in the subject demotion were aware of Molnar's candidacy, but all denied it had an impact on their actions and there is absolutely no evidence that it played any role.

<sup>19</sup> The Commission has eliminated unnecessary language in this sentence as it appeared in the proposed decision.