

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

COREY BRANDENBURG Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0372

Case Type: PA

DECISION NO. 38459-A

Appearances:

Corey Brandenburg, 3825 Mitchell Lane, Harshaw, Wisconsin, appearing on his own behalf.

Jad Itani, Attorney, Department of Corrections, 3099 East Washington Avenue, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER

On June 5, 2020, Corey Brandenburg filed an appeal with the Wisconsin Employment Relations Commission regarding the decision of the State of Wisconsin Department of Corrections not to promote him. The appeal was assigned to Commission Examiner Peter Davis. A telephone hearing was conducted by Examiner Davis on August 6, 2020 and the parties made oral argument at the conclusion of the hearing. A Proposed Decision and Order dismissing the appeal was issued by Examiner Davis on September 8, 2020. No objections were filed by the parties and the matter became ripe for Commission consideration on October 9, 2020.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

FINDINGS OF FACT

1. The State of Wisconsin Department of Corrections (DOC) is a state agency that among other matters operates the Copper Lake School/Lincoln Hills School (CLS/LHS)
2. Corey Brandenburg (Brandenburg) is employed by DOC as the Assistant Nursing Supervisor at CLS/LHS.

3. In May 2020, DOC decided not to promote Brandenburg to the position of Nursing Supervisor at CLS/LHS

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

CONCLUSIONS OF LAW

1. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to Wis. Stat. § 230.44 (1)(d).

2. Corey Brandenburg has the burden of proving that the State of Wisconsin Department of Corrections acted illegally or abused its discretion when he was not promoted to the position of Nursing Supervisor.

3. The State of Wisconsin Department of Corrections did not act illegally or abuse its discretion when it did not promote Corey Brandenburg to the position of Nursing Supervisor.

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

ORDER

The appeal is dismissed.

Issued at Madison, Wisconsin, this 23rd day of October, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Brandenburg is pursuing his appeal pursuant to Wis. Stat. § 230.44(1)(d), which provides in relevant part:

Illegal action or abuse of discretion. A personnel action after certification which is related to the hiring process in the classified civil service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

An illegal act is one that is contrary to Wisconsin civil service statutes or administrative rules. An abuse of discretion is when an agency exercises discretion “to an end or purpose not justified by and clearly against reason and evidence.” See *Moeller-Bunker v. DWD*, Dec. No. 36786 (WERC, 5/17)

In November 2019, the Wisconsin Board of Nursing disciplined Brandenburg for his role in a February 2016 incident that occurred at CLS/LHS where he was a nurse. The Milwaukee Journal Sentinel subsequently published an article that referenced the discipline that Brandenburg received.

In early 2020, Brandenburg was the Assistant Nursing Supervisor at CLS/LHS. He twice applied to be promoted to the CLS/LHS Nursing Supervisor position which became vacant in February 2020. The Supervisor oversees all on-site medical issues that may arise at CLS/LHS. Brandenburg was found to be a qualified candidate by the interview panels and his immediate supervisor (the CLS/LHS warden) believed DOC should offer him the position. However, the DOC Division Administrator decided not to do so because the November 2019 discipline gave him concerns-particularly in light of the ACLU litigation/consent decree impacting CLS/LHS and the potential for ongoing media coverage of personnel transactions.

Brandenburg disputes the Administrator’s decision citing the support of the interview panel and the then CLS/LHS warden, his successful service as the de facto Nursing Supervisor while the position has remained vacant, and his successful job performance since the February 2016 incident. It is clear that for some within DOC, Brandenburg’s qualifications warranted promoting him to Nursing Supervisor. But the Administrator’s decision to the contrary was not illegal. Wisconsin civil service law does not require that an applicant found to be qualified by an interview panel be offered a vacant position. Nor should it be concluded that the Administrator’s decision was an abuse of discretion. The Administrator’s concerns were not clearly against reason and evidence. CLS/LHS continues to be under the scrutiny of the courts and the public and promoting Brandenburg in light of his November 2019 discipline can reasonably be viewed as contrary to a legitimate DOC purpose of enhancing legal and public confidence in the operation of CLS/LHS.

In light of the foregoing, the appeal is dismissed.

Issued this 23rd day of October, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner