

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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YESICA CRUZ, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0357

Case Type: PA

DECISION NO. 38469

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**Appearances:**

Yesica Cruz, 3430 Chatham Street, Racine, Wisconsin, appearing on her own behalf.

Anfin Jaw, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**DECISION AND ORDER**

On April 17, 2020, Yesica Cruz filed an appeal with the Wisconsin Employment Relations Commission asserting she had been suspended for one day without just cause by the State of Wisconsin Department of Corrections. The appeal was assigned to Examiner Peter G. Davis. A telephone hearing was held on July 1, 2020. The record was closed on July 17, 2020, when Cruz advised that she wished to have the matter proceed without the testimony of a witness who was unavailable on July 1, 2020. On August 5, 2020, Examiner Davis issued a Proposed Decision and Order affirming the suspension. No objections were filed, and the matter became ripe for Commission consideration on August 11, 2020.

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

**FINDINGS OF FACT**

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1. Yesica Cruz, herein Cruz, is employed as a Correctional Sergeant at the Robert Ellsworth Correctional Center (RECC) and had permanent status in class at the time of her suspension.

2. The Department of Corrections (DOC) is a State agency responsible for the operation of adult correctional facilities, including the RECC located in Union Grove, Wisconsin.

3. On November 8, 2019, Cruz initiated a loud verbal confrontation with a co-worker that was heard by inmates.

4. Cruz had previously received a letter of expectation from DOC in December 2018 for an unprofessional communication with a co-worker.

5. DOC suspended Cruz for one-day for the loud verbal confrontation noted in Finding 3.

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)(c).

2. The State of Wisconsin Department of Corrections had just cause, within the meaning of Wis. Stat. §230.34(1)(a), to suspend Yesica Cruz for one day.

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

### **ORDER**

The one-day suspension of Yesica Cruz by the State of Wisconsin Department of Corrections is affirmed.

Issued at the City of Madison, Wisconsin, this 11<sup>th</sup> day of August 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

... may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

Yesica Cruz had permanent status in class at the time of her suspension and her appeal alleges that the suspension was not based on just cause.

The State has the burden of proof to establish that Cruz was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

While there is some dispute about exactly what was said, it is clear that Sergeant Cruz was upset at a Correctional Officer and initiated what became a loud verbal confrontation that was heard by multiple inmates. DOC persuasively asserts that such workplace confrontations between employees create an additional security risk-particularly when they occur in the presence of inmates. Cruz could have but did not address her co-worker in a non-confrontational manner after making sure that no inmates could hear the conversation. She did not do so.

Cruz contends that no formal discipline was appropriate because she and the co-worker subsequently discussed and came to terms with the issue between them. However, that subsequent discussion did not and could not undo the negative security impacts created by inmate knowledge of the prior confrontation. It is also noted that Cruz had previously received a letter of expectation for unprofessional communication with a co-worker.

Given all of the foregoing, the Commission concludes that Cruz did engage in misconduct and that there was just cause for a one-day suspension.

Issued at the City of Madison, Wisconsin, this 11<sup>th</sup> day of August 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James Daley, Chairman