

**FILED**  
**03-21-2024**  
**Clerk of Circuit Court**  
**Brown County, WI**  
**2023CV000204**

**BY THE COURT:**

**DATE SIGNED: March 21, 2024**

Electronically signed by Donald R. Zuidmulder  
Circuit Court Judge

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

BROWN COUNTY

TRICIA PAUZE,

Petitioner,

v.

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION, et al.,

Respondents.

Case No. 23CV204

WERC Decision # 39753-A

**DECISION AND ORDER**

Before the Court is a petition for judicial review from Petitioner Tricia Pauze (“Pauze”). Pauze seeks review of a decision by the Wisconsin Employment Relations Commission (the “WERC”) affirming the Wisconsin Department of Corrections’ (the “DOC”) termination of Pauze for serious conduct violations. For the following reasons, Pauze’s motion will be **DENIED**.

**FACTUAL BACKGROUND**

Pauze was employed by the DOC as a Correctional Officer at Green Bay Correctional Institution (GBCI). (Doc. 88:2.)<sup>1</sup> On January 3, 2022, Pauze brought a copy of *Awakening the Buddha Within*, a self-help book, into GBCI without scanning her belongings in as per GBCI’s

<sup>1</sup> The Wisconsin Employment Relations Commission’s brief was filed and docketed as document 88.

security protocols. (Doc. 89:7.)<sup>2</sup> Pauze entered GBCI with the book in her backpack during a time in which bags were not being scanned and slipped the book into an inmate's cell. (*Id.* at 1.) When these events were confirmed by an investigation, Pauze's employment was terminated. (*Id.*)

Pauze appealed her discharge to the WERC. (*Id.*) After a hearing was conducted, the WERC affirmed Pauze's discharge in a January 13, 2023, decision. (*Id.* at 1-2.) In affirming, the WERC found that Pauze's conduct constituted a "Serious Act of Misconduct" and that the Wisconsin Department of Corrections therefore had just cause to discharge her. (Doc. 88:6.) Pauze now petitions the Court for judicial review of that decision.

### STANDARD

A State employee who believes that their termination was without just cause can appeal their termination to the WERC. WIS. STAT. § 230.44(1)(c) (2021-22).<sup>3</sup> The WERC's findings of fact "shall, in the absence of fraud, be conclusive." § 108.09(7)(c)1. The Court may only set aside the WERC's decision upon one or more of three grounds: (1) "the commission acted without or in excess of its powers;" (2) "the order was procured by fraud;" or (3) "the findings of fact by the commission do not support the order." § 108.09(7)(c)6.a.-c.

The burden of proof rests with the party seeking to overturn the decision and not on the agency to justify its decision. *City of La Crosse v. Wis. Dep't. of Nat. Res.*, 120 Wis. 2d 168, 178, 353 N.W.2d 68 (Ct. App. 1984). The reviewing court shall give due weight to the "experience, technical competence, and specialized knowledge of the agency involved" and shall give "respectful, appropriate consideration" to the agency's views while still exercising independent judgment. *Tetra Tech v. Wis. Dept. of Rev.*, 2018 WI App 75, ¶¶ 77-78, 382 Wis. 2d 496, 914 N.W.2d 21.

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<sup>2</sup> The Wisconsin Department of Corrections' brief was filed and docketed as document 89.

<sup>3</sup> All subsequent references to the Wisconsin Statutes are to the 2021-22 version.

## ANALYSIS

Under Wisconsin law, just cause is required to terminate a State employee with permanent employment status. WIS. STAT. § 230.34(1)(a). While this generally requires that an employee be subject to progressive discipline prior to termination, a DOC employee may be terminated immediately upon a determination that they have committed a “Serious Act of Misconduct.” (Doc. 53:6-7).<sup>4</sup>

A “Serious Act of Misconduct” is defined as including “bringing... contraband into a DOC employing unit where there are offenders.” (*Id.* at 7.) Under Wisconsin law, it is a Class I felony to deliver to any inmate confined in a state prison, any article, contrary to the rules or regulations and without the knowledge or permission of the warden. WIS. STAT. § 302.095(2)(a)1. Given that an unauthorized item could contain illicit substances, escape plans, or personal notes that could facilitate an improper relationship between inmates and DOC employees, the DOC considers any unauthorized item to be per se contraband. (Doc. 84:1.)<sup>5</sup>

Pauze does not dispute that she brought an unauthorized item into GBCI and that she gave that item to an inmate without the proper procedures and permissions. Instead, Pauze argues that the DOC disciplined her similarly-situated male counterparts less severely on account of their sex in violation of the equal protection clause. Pauze asserts that the DOC frequently “drops the most serious charges for male employees accused of similarly serious rule violations... [and] considers their lack of prior discipline.” (Doc. 96:2.)<sup>6</sup> Further, she claims that the DOC, in investigating misconduct by male employees, “does not draw unreasonable inferences about their romantic or sex lives against them.” (*Id.*) Despite this, Pauze notes that John Kind, a security director at GBCI,

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<sup>4</sup> Appendix 8, an excerpt from DOC Executive Directive 2, “Employee Discipline,” was filed and docketed as document 53.

<sup>5</sup> Part 2 of the deposition of John Kind was filed and docketed as document 84.

<sup>6</sup> Pauze’s combined reply brief was filed and docketed as document 96.

implied in his testimony that the DOC needed to act to prevent “Pauze’s inevitable future escalation to romance, drugs, or sex.” (*Id.*)

A review of Kind’s deposition testimony, however, does not support the notion that Pauze’s termination was based on any “unreasonable inferences” about Pauze based on her sex. Instead, Kind merely articulated the general rationale for a zero-tolerance policy regarding contraband and fraternization, stating that the unsanctioned passing of contraband to an inmate by a DOC employee “gives the inmate power over that staff member” that could lead to the inmate effectively blackmailing the DOC employee into engaging in further illegal conduct like smuggling in drugs, helping an inmate escape, or engaging in prohibited sexual activity with an inmate. (Doc. 84:1.) These concerns clearly persist regardless of the particular sex of the correctional officer.

Pauze asserts that there is “absolutely no evidence” that an improper relationship existed between herself and the inmate involved. But Pauze misses the point. An improper relationship, if one was not already in progress, was initiated the instant that Pauze slipped the book into the inmate’s cell, and the potential for that improper relationship to further escalate into one that could threaten the security of GBCI and its staff is the reason that the DOC takes misconduct of this kind so seriously.

Pauze most credibly supports her claims of disparate treatment by reference to a specific employee that she claims was not subject to the same level of discipline for substantially the same conduct. When an employee makes a claim of disparate treatment, the DOC does not need to prove consistency in its treatment of employees. Instead, the burden is on the employee to present evidence of disparate treatment among similarly situated employees. *Racine Unified Sch. Dist. v. LIRC*, 164 Wis. 2d 567, 594-95, 476 N.W.2d 707 (Ct. App. 1991).

Pauze alleges that Drew Weycker, a sergeant employed by the DOC, did not suffer the same level of administrative consequences when he provided a snack bag to an inmate in the middle of the night outside of the normal meal hours. (Doc. 83:4.)<sup>7</sup> The WERC analyzed this alleged disparity and determined that the Weycker's conduct was readily distinguishable from Pauze's conduct. (Doc. 89:9.) Most importantly, the snack bag that Weycker provided came from within the GBCI facility. It was not brought into the facility from outside and in contravention of normal screening protocols. As such, it presented none of the same security concerns as were present as a result of Pauze's conduct, since the snack bag was not "contraband" and could not therefore be the basis for subsequent blackmail, and because the snack bag had already been subject to internal security procedures.

Further, Dylon Radtke, the Warden at GBCI, credibly testified that Weycker's conduct did not constitute fraternization, since there were no definitive rules at the time regarding when sergeants could provide additional food to inmates. (Doc. 83:7.) In practice, different sergeants allowed additional food at various times, and this practice by itself does not indicate the existence of an inappropriate relationship. (*Id.*) The Court finds that the WERC's conclusion that Weycker "was authorized to provide the bag lunch" and therefore did not engage in misconduct is substantiated by the record. (Doc. 80:8.)<sup>8</sup>

Given the above, the Court affirms WERC's determination that the DOC had just cause to terminate Pauze. Pauze admitted to serious misconduct, and, in failing to meet her burden to demonstrate disparate treatment, likewise failed to raise any meritorious defense to her discharge. The WERC's relevant findings of fact were substantiated by the record, and the WERC correctly applied the law. For the foregoing reasons, Pauze's petition for judicial review is denied.

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<sup>7</sup> The deposition of Warden Radtke was filed and docketed as document 83.

<sup>8</sup> WERC's decision affirming Pauze's termination was filed and docketed as document 80.

### **CONCLUSION AND ORDER**

Based upon the foregoing, it is hereby **ORDERED** that Pauze's petition for judicial review is **DENIED**.