

DECISION ON REVIEW

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adjustment to personnel records and all other actions necessary to restore her to the position she would have been in had she been suspended for five days rather than terminated.

Counsel for the parties, Henry Widen for the State and Mark Hedberg for Dawson, telephonically presented oral arguments to the Board on October 9, 2018. Prior to the oral arguments, the State filed a brief outlining its position and Dawson relied on her brief submitted after the evidentiary hearing.

Dawson contends, based on the totality of the circumstances, the State did not have just cause for termination or for the five-day suspension ordered by the ALJ. Dawson claims that counseling should have been offered instead. Dawson argues that although she may have been “coarse” in some of her words, the allegations made against her were false, the investigation into her conduct was flawed, and the State failed to use progressive discipline. Dawson generally agrees with the ALJ’s conclusions except she seeks to clarify that she made an incorrect statement regarding time, but did not falsify a timesheet. Dawson also believes the ALJ’s conclusions should have emphasized the poor investigation and the Board should ultimately conclude the five-day discipline is too harsh.

The State, however, generally agrees with the majority of the ALJ’s findings on the allegations as contained in the ALJ’s analysis although the State disagrees with the ultimate conclusion. The major point of contention the State identifies is whether Dawson used abusive or profane

language, including ethnic slurs in the workplace. The State argues Dawson made a racially insensitive comment in front of co-manager, Jennifer Reha. The State further argues the ALJ did not give enough weight to Reha's testimony and gave too much weight to Dawson's testimony in which Dawson denied making that statement. The State claims the racially insensitive remark and a conversation Dawson had regarding a sexual matter with a subordinate would justify termination alone without any of the other evidence in the record.

On board review, the board has the same power it would have had if the board had initially made the determination except the board may limit the issues with notice to the parties or by rule. Pursuant to PERB rules 621—11.8 and 621—9.5 on this petition for review, we have utilized the record as submitted to the ALJ.

After a review of the record, as well as the parties' briefs and oral arguments, the Board adopts the ALJ's findings of fact with additions and we adopt the ALJ's conclusions of law with additional grounds. We conclude the State did not establish just cause for termination of Dawson's employment and agree with the ALJ that a five-day suspension is appropriate.

FINDINGS OF FACT

The ALJ's findings of fact, as set forth in the proposed decision and order attached as "Appendix A," are fully supported by the record, and we adopt the ALJ's findings of fact with additions.

The State disputes the ALJ's finding that Reha's testimony concerning racially derogatory statements Dawson allegedly made about SM was not credible. The State argues the ALJ should have given Reha's testimony more weight than Dawson's testimony in which she denied making such statements. The State frames its argument as a question of Reha's credibility versus Dawson's credibility. That is not the proper framework as the State bears the burden of establishing just cause. The question is not whether to believe Reha over Dawson, but whether Reha's allegation that Dawson made this statement is accurate. There is no corroboration for the allegation; it is the allegation of solely one person. The only question at issue is whether to believe Reha. The ALJ was present to observe Reha's demeanor and the Board cannot find anything in the record to discount that credibility determination. *Williams and State of Iowa (Department of Correction)*, 10-MA-01, at 3. We find, as the ALJ did, that Reha's testimony about this statement is not credible. The ALJ accurately pointed out that Reha and Dawson had a bad relationship and Reha could have a reason to exaggerate the truth. But further, no one corroborated Reha's version either in testimony or elsewhere in the record. The State is now relying on this one statement as a basis in, and of itself,

for termination. The only evidence submitted is Reha's investigatory interview and her testimony about this alleged statement.

Reha claims that Dawson's statement took place during a conversation in a managers' meeting with Dawson, Jones, Brooks, and herself. Neither Brooks nor Jones, the other persons allegedly present for this conversation, testified. Brooks was interviewed for the investigation, but based upon the record, Brooks was never asked about Dawson's alleged statements. Reha also claims that she told a former coworker about this situation, but there is nothing in the record to support that claim other than Reha's statement. The State relies solely on Reha's testimony about this statement, even though, by Reha's own recall, multiple other people would have known about Dawson's alleged statement.

As we do not find Reha's testimony concerning this statement credible, the State has not met its burden of demonstrating Dawson's guilt of the offense in this instance and this statement cannot form the basis for termination.

In oral arguments, the State also emphasizes a conversation Dawson had with Tart, a person she managed who later transferred out of Dawson's division. In the conversation Dawson and Tart were talking about someone Tart was seeing and Dawson said she didn't understand what Tart saw in that person. Additionally, Tart testifies "we talked about, you know, the size of his, you know." It is unclear from the record how this line of conversation arose. In the investigatory interview, however, prior to

being asked about this conversation, Dawson volunteers to the investigators that Tart shares a lot about her personal life in the office. In the investigation, Tart claims that she was “flabbergasted” by Dawson’s comment, but she was not going to make waves. However in her testimony, Tart says the comment “probably wasn’t appropriate” and when asked if the conversation upset her she says “kind of, sort of.”

In her examination of the record, the ALJ also discusses general discord in the office concerning office protocol and requirements. Throughout the testimony and the investigatory interviews, the staff at IWD repeatedly complained about the changing standards and protocols at the office. Many people on the staff were upset about Cano and Born’s reassignment. The staff noted the public’s general concern about the IWD office. The evidence shows the Des Moines IWD office staff was required to increase internships and increase the letters of commitment received. But the record also reveals Dawson was not responsible for these changes. Dawson’s evaluation demonstrates she was instructed to monitor and have her staff meet these new requirements. The staff also almost uniformly complained about the President’s Day in-service in which Ridgway was humiliated. Although Dawson may have known generally about the content of the President’s Day in-service, the presenter’s investigatory interview shows Dawson did not plan the training or have a hand in the content of that training. The evidence clearly shows the staff

at the Des Moines IWD office was generally unhappy, and Dawson became the focus for all the disgruntlement the staff felt.

This is not to say that Dawson's management style was exemplary or that she did not invite some of the disgruntlement and discord in the office. Both her subordinates, and others in the IWD building whom she did not manage, felt Dawson targeted certain individuals. Again and again the record reveals that Dawson made comments that were inappropriate and detrimental to the creation of a productive work environment. Unlike the ALJ, we view the comments Dawson repeatedly made to certain members of the staff as more than just arrogant. Nonetheless, we agree with the ALJ that Dawson's comments were not intimidating or threatening.

Notably, despite the general discord of the office and Dawson's treatment of certain members of her staff and certain coworkers, the management at IWD gave Dawson no notice that her behavior could lead to discipline. The only discussion from management of Dawson's treatment of the staff was a glowing 6-month evaluation given in January 2014 which instructed her to "Keep doing more of what [you're] doing [in your] first 6 months." The record is replete with evidence from staff who felt Dawson treated people poorly and was an ineffective manager, but yet there is no evidence in the record to show that her supervisor, Marlys Jones, or anyone else in IWD management ever told Dawson her comments and behavior were a problem. The record demonstrates some of the staff

discussed Dawson's behavior with Lori Adams, the division administrator, and Adams told Jones about the complaints. The record does not show, however, that any of those complaints ever led to coaching and counseling, discipline, or even a general reminder to Dawson to treat her fellow coworkers and her staff with respect. The State has failed to show that Dawson was notified that her actions were in violation of IWD's work rules or other applicable State rules or policies. On the contrary, the record reveals that management lauded her for her actions.

CONCLUSIONS OF LAW

After consideration of the State and Dawson's arguments and review of the ALJ's conclusions, we find the ALJ correctly analyzed the totality of circumstances to reach the determination the State did not establish just cause to support the termination of Dawson's employment, but, instead, a five-day suspension was appropriate. Except as otherwise noted, we agree with the ALJ's conclusions as set forth in the attached appendix and adopt them as our own.

We agree with the ALJ's conclusion that the State did not establish just cause for termination after considering the totality of the circumstances, especially whether the employee was given forewarning or had knowledge of the employer's rules and expected conduct and whether sufficient evidence or proof of the employee's guilt of the offense was established. *See Hoffman and State of Iowa (Dep't of Transp.)*, 93-MA-21, at 22.

The State contends a racially derogatory statement Dawson allegedly made to Reha and Dawson's sexually explicit conversation with Tart would each individually justify termination. The State adds Dawson was disrespectful in her comments and treatment of coworkers and staff, Dawson lied during the investigation, and Dawson made a false statement about a subordinate's use of time sheets as reasons for termination as well.

The State first discusses Reha's claim that Dawson made a derogatory statement as grounds for Dawson's termination. As discussed in the factual findings, we agree with the ALJ the State has not proven Dawson made a racially derogatory statement about SM as alleged by Reha. The question is correctly framed as whether we find Reha's testimony concerning this matter truthful. The ALJ, who observed the witness, did not find Reha to be credible on this issue. Further, based on Reha's investigatory interview and her testimony, other people would have heard Dawson make this statement, and Reha told someone about this statement. Yet, there is no corroboration in the record Dawson ever made a racially derogatory statement about SM. Therefore, the State has not met its burden of demonstrating Dawson's guilt of the offense in this instance and this statement cannot form the basis for her termination.

The State also claims Dawson's conversation with Tart, who Dawson managed at one time, about a man Tart was seeing and "the size of his, you know" was grounds for termination. Even in Tart's testimony, this

sounds like a conversation between friends or at least friendly coworkers. The record is not clear who started this line of conversation. It's also unclear whether Tart was actually offended by this conversation or whether this was simply a conversation between friends. Further, there is no evidence in the record of any similar incident. Although this conversation may have been inappropriate and may be worthy of discipline, this one-time offense does not rise to the level of termination, in and of itself.

We agree with the ALJ and the State that Dawson lied during the investigation. Some of the lies may have been intentional and some may have occurred because of the nature of the investigation which we find have been flawed. Dawson was interviewed for over five hours with only one short break. Interview subjects ranged from the substance of collective bargaining agreements to hiring practices to specific conversations Dawson had with specific people over a two-year period. This type of lengthy, meandering interview can lead to confusion and intentional or unintentional lies. Dawson was not given a chance to adequately reflect and respond to the myriad of topics that were brought forward during the interview. Further, at the end of the interview Dawson likely still did not know the allegations.

We also agree with the ALJ's finding that Dawson made a false statement to a subordinate that vacation and sick leave were interchangeable. Dawson did tell someone "leave is leave," because that is

what she was told by her coworkers. She was incorrect, but she did not knowingly give false information about timesheets. Additionally, there is no evidence in the record that Dawson ever approved time sheets that were inappropriate.

The State and the ALJ also found Dawson violated IWD work rules through her treatment of certain individuals. Dawson's coworkers, subordinates, and others in the office have legitimate concerns about her treatment of certain individuals and her management style. The record does not reveal Dawson was ever disciplined for this behavior, coached and counseled on this behavior, or even spoken to by management about her behavior. The record only reveal Dawson was praised by management for her treatment and handling of her subordinates. Although we disagree with the ALJ's characterization of Dawson as an effective manager, the record reveals management thought of Dawson as an effective manager. Management failed to provide Dawson with any notice her actions or behavior would lead to discipline.

The State has not shown why it did not follow progressive discipline. The State also did not show why it needed to go to the extreme of forgoing all other discipline in this case and impose the maximum discipline possible of termination, which is only done in the most egregious of situations. The State relies on two statements it claims Dawson made and Dawson's management and communication skills (or lack thereof) as the main reasons justifying the termination. The State has not proven that the

statement about SM occurred and the comments to Tart and the inappropriate comments to her subordinates are not enough to justify termination without some prior warning given to Dawson about her behavior.

Dawson's conversation with Tart and her comments to certain individuals may have been inappropriate. However, there is nothing in the record that would demonstrate her attitude and behavior were beyond correction. Dawson's treatment of certain individuals is precisely the situation in which to employ progressive discipline and coaching to determine whether the attitude and behavior can be corrected or whether further discipline and potentially termination is necessary. *See Nimry and State of Iowa (Dep't of Natural Resources)*, 08-MA-09, 08-MA-18, at App. 30; *Stockbridge and State of Iowa (Dep't of Corrections)*, 06-MA-06 at 28. Unfortunately, management never gave Dawson notice or an opportunity to correct her behavior and her relationship with her staff suffered because of it. Although we believe progressive discipline needed to be utilized in this situation, Dawson is a supervisor and her treatment and comments were unacceptable, thus we find the ALJ's five-day suspension appropriate.

Given the State's failure to prove guilt of certain allegations, namely the racially derogatory statement, the lack of notice provided to Dawson regarding the inappropriateness of her behavior, the failure of the investigation to allow Dawson to adequately reflect on and respond to the

litany of individual comments IWD staff claim Dawson made over her two-year tenure at IWD, and the failure of the State to provide any progressive discipline, the State has not shown just cause for Dawson's termination.

Although we agree with the ALJ in the imposition of a five-day suspension for Dawson, we question returning Dawson to the same position considering the widespread nature of the investigation and the aftermath. As such, we modify the ALJ's order for the State to reinstate Dawson to her former position. Reassignment is more appropriate. The State shall reassign Dawson to a similar position, if possible.

The Board has fully considered all of the State's other arguments on appeal. None have persuaded us to reach conclusions different than those reached by the ALJ. Accordingly, we enter the following:

ORDER

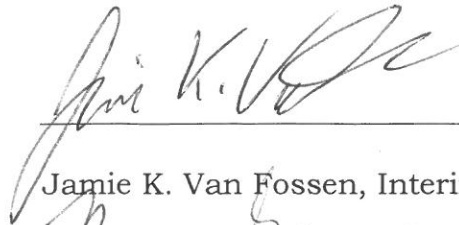
Iowa Workforce Development shall reinstate Annette Dawson to a substantially equivalent position as a manager in Iowa Workforce Development, or to her former position if it is not possible to reinstate Dawson to a substantially equivalent position, with back pay and benefits, less interim earnings and less any other deductions associated with a five-day suspension; restore her benefit accounts to reflect accumulations she would have received but for her discharge and less any adjustments for the suspension; make appropriate adjustments to her personnel records; and take all other actions necessary to restore her to the position she

would have been in had she been suspended for five days rather than her employment terminated on December 31, 2015.

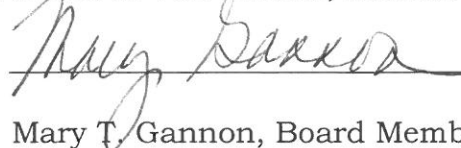
The Board retains jurisdiction of this matter in order to address any remedy-related matters which might hereafter arise and to specify the precise terms of the remedy. In order to prevent further delay in the resolution of this matter, in the event the parties fail to reach agreement, the Board will schedule a hearing to receive evidence and arguments on the precise terms of the remedy, within 45 days of the date in which this decision becomes final. Agency action will not be final until the appropriate remedy is approved or determined by the Board. The Board retains jurisdiction to enter whatever orders may be necessary or appropriate to address any remedy-related matters which may hereafter arise.

DATED at Des Moines, Iowa this 6th day of February, 2019.

PUBLIC EMPLOYMENT RELATIONS BOARD

A handwritten signature in black ink, appearing to read "Jamie K. Van Fossen", written over a horizontal line.

Jamie K. Van Fossen, Interim Chair

A handwritten signature in black ink, appearing to read "Mary T. Gannon", written over a horizontal line.

Mary T. Gannon, Board Member

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STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

ANNETTE DAWSON,)	
Appellant,)	
)	
and)	CASE NO. 100732
)	
STATE OF IOWA)	
(IOWA WORKFORCE DEVELOPMENT),)	
Appellee.)	

PROPOSED DECISION AND ORDER

Appellant Annette Dawson filed a state employee disciplinary action appeal with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 8A.415(2) and PERB rule 621—11.2(8A,20). Dawson alleges that there was not just cause to support the State of Iowa's termination of her employment on December 31, 2015. The hearing was closed to the public pursuant to Iowa Code section 8A.415(2)(b) and PERB subrule 621—11.6(1).

Pursuant to notice, an evidentiary hearing on the appeal was held before me on November 8 and 9, 2016. Both parties were represented by counsel: Mark Hedberg for Dawson and Jeff Edgar for the State. The parties filed post-hearing briefs, the last of which was filed on December 16, 2016.

Based upon the entirety of the record, and having reviewed and considered the parties' briefs, I conclude the State failed to establish that

just cause existed to support its termination of Dawson's employment, but just cause existed to support the imposition of a five-day suspension.

I. FINDINGS OF FACT.

A. Background.

The State employed Dawson on July 15, 2013 as one of three Workforce managers for Iowa Workforce Development (IWD) at its Des Moines office. At the time, Teresa Wahlert was the director of Iowa Workforce Development and Ed Wallace was the deputy director.¹ Lori Adams was the division administrator over all the field offices, which were considered "One Stop Centers" for reemployment services. This included the Region 11 Des Moines office. Under Adams was the district manager, Marlys Jones, who supervised the three Des Moines office managers: Doug Brooks, the Promise Jobs manager located on the second floor; and the two co-managers of the first floor, Dawson, and Steve McCann who left in 2014 and was replaced by Jennifer Reha a few months later. Craig Immerfall was listed on the organizational chart as an executive officer parallel to District Manager Jones. Jeff Chamberlain worked at the offices, but was employed by the Des Moines Area Community College as an executive director from Iowa Employment Solutions.

In September 2015, IWD Deputy Director Wallace received multiple complaints regarding Dawson and her immediate supervisor, District

¹ Wahlert left IWD at the beginning of 2015 and was replaced by Beth Townsend.

Manager Jones.² On October 8, 2015, IWD Director Townsend contacted Personnel Officer Andrea Macy for assistance in determining whether a hostile work environment existed. The next day, management placed Dawson on administrative leave. Employee Relations Coordinator Chris Peden and Personnel Officer Erin Reinders were assigned to investigate the complaints and met with Wallace on October 14, 2015.

Peden and Reinders conducted interviews of 30 people (in some cases there were follow-up interviews) and one interview of Dawson. On December 29, 2015, they completed their investigative report, which ultimately led to Dawson's discharge on December 31. Dawson was terminated for the following: her alleged treatment of and statements regarding staff and peers; her failure to raise an objection to the reassignment of staff members that allegedly did not comply with the collective bargaining agreement (CBA) and the Iowa Administrative Code; her alleged failure to ensure staff was appropriately scheduled and paid for hours worked in accordance with the CBA; her alleged falsification of timekeeping sheets of a staff member to allow the use of sick leave rather than vacation; her alleged failure to process an employee's Position Description Questionnaire in accordance with the Iowa Administrative Code; and her alleged untruthfulness during the investigation.

The investigative report summarized the interviews, contained findings and conclusions and is State's Exhibit 4 admitted into evidence at

² District Manager Jones is no longer with IWD as a result.

hearing. Thirteen employees testified at hearing, all of whom had been interviewed by management.

The evidence concerning Dawson is of a complex variety, ranging from employees' beliefs or impressions of Dawson to accounts of both personal and professional interactions. Although the litany of every complaint and allegation is not reflected in the findings, I reviewed the hundreds of pages of open-ended narrative employee interviews in conjunction with other parts of the record. In making the following findings, I have given greater weight to substantiated evidence. I have attempted to reconcile perceived conflicts in the evidence, which consists primarily of employees' interviews conducted in the course of management's investigation and testimony elicited at the hearing. Where the evidence is not reasonably reconcilable, I have credited that which is most reasonable and consistent with other credible evidence, giving consideration to established criteria for the making of credibility determinations such as the witnesses' actual knowledge of the facts, memory, interest in the outcome of the case and candor. The findings include many of the employees' unsubstantiated allegations and complaints—not for their veracity, but for their relevance to the context and nature of the overall investigation as well as each employee's allegations and complaints.

B. Dawson's Management.

Dawson received her degree in business and corporate wellness from the University of Iowa in 1996. Before becoming employed with the State, she had worked in private industry and managed a team of 20 for a telecommunications business. Once at IWD, Dawson managed a Business Services Team (BST or BSR), which was responsible for providing services to Iowa employers related to recruitment, business closings, job fairs, marketing and targeting hard-to-place job applicants, training initiatives and generally providing job-related resources for employers. Her team consisted of employees who worked with businesses to match company vacancies with job seekers; employees who worked with disabled veterans to gain reemployment skills; and employees who worked in the correctional institutions to assist inmates with employment.

Dawson and her staff were located on the first floor of the Des Moines office. On the first floor, there was an area where people could come in and sign up for unemployment, get assistance with resumes, and search for jobs. There was an area set aside for employment readiness training where two-week workshops were conducted. One area was dedicated to work with veterans and another area was where the Business Services Team was located.

Dawson initially supervised approximately two Workforce associates and eleven Workforce advisors. When a new position, business marketing specialist, was created a year later, she supervised approximately two

associates, seven advisors and the two new specialists. The first floor co-manager, McCann and later Reha, supervised approximately two associates and seventeen advisors. The second floor manager, Brooks, managed one associate and fifteen advisors. These supervised employees were covered by a CBA between the State and the employees' union representative, AFSCME Iowa Council 61. The terms and conditions of the employees' employment were addressed in part by the agreement. Nonetheless, Dawson did not receive any training on the collective agreement and the procedures required under its provisions.

There were a number of ongoing IWD initiatives from the time Dawson became an IWD manager. Some of which were thought to be political and part of campaign platforms. One such initiative was "Skilled Iowa," an IWD program to provide skilled workers to Iowa businesses. The initiative included the implementation of a universal testing system to rate workers. Upon completion of the assessment, workers were awarded a National Career Readiness Certificate (NCRC). Dawson's team administered the testing. Also relevant to Dawson's area was IWD's push for increased numbers in employer contacts and in the letters of commitment (LOC) from employers. There was an emphasis on obtaining more unpaid internships and job shadowing with employers. The initiatives placed new and increased demands on IWD staff and created a pressure cooker atmosphere. There were many changes during this time. There had also been a closing of IWD technology available to the public

where IWD computers had been placed throughout the State in churches, libraries, and armories. Some Region 11 employees did not believe IWD had a good reputation in the community as a result of all the changes.

During Dawson's time at IWD, Division Director Adams and District Manager Jones evaluated her first six months of employment, July 15, 2013 to January 15, 2014. They marked her as exceeding expectations on effective supervision.³ They noted in part for "RESULTS" in this area:

Annette met with staff immediately with any concerns or questions they may have. Provided documented coaching and counseling when necessary to staff members. Met with BSR team each individually one-on-one weekly for the first 6 months to provide them with information needed plus get questions and answers from each of them individually. Annette set objectives for each staff member and tracks individual and team results.

For communication with employees, they evaluated Dawson as exceeding expectations. They noted her various meetings, including her daily meetings with all first floor employees to cover information, available trainings, and topics requested by staff members; her weekly meetings with the BSR and Vet teams; and her regularly scheduled one-on-one meetings with staff she supervised. They marked Dawson as meeting expectations in public relations and as exceeding expectations in the last area covering such things as employee development, supervision in a manner that employees contribute to the strategic plan of the organization, and achievement of program goals. For the last area, they noted:

³ Employee evaluation ratings consisted of does not meet, meets, or exceeds expectations.

Worked with and motivated BSR team to begin making 10 face to face contacts each week, including riding along with staff members to learn from them as well as make suggestions on areas to improve. Spent considerable time aiding and assisting BSR's in getting internships approved and in place. Assigned each county in Region 11 to individual BSR team member. Required each BSR to participate in following-up with employers for monthly follow-up report. Getting Correctional team involved with BSR and doing business outreach for their specific program along with promoting Skilled Iowa. *The BSR's have not received goals and expectations very well; some still do not accept the reality of being held accountable. Annette continues to be diligent in this.*

(emphasis added). The record is absent of evidence that Dawson's supervision assisted her in addressing "The BSR's [who] have not received goals and expectations very well; some still do not accept the reality of being held accountable."

For "Development Plans," they noted in part that Dawson should keep doing more of what she had been doing and improvement was needed in Skilled Iowa metrics. They provided her a "goal of 70% of all high schools with LOCs" and an increase in the number of interns.

Dawson expected the employees she supervised to meet the goals that IWD set. As to their evaluations, Dawson rated her employees as meeting or exceeding expectations. She did not mark any employee as "does not meet" in any area of expectations. However, she did hold them accountable as indicated on her evaluation and would frequently ask them about their employer contacts. Some employees complained to the investigators about Dawson constantly hounding them to get their contacts

or reports into her. Dawson was also under the gun by higher-ups to meet goals and report her staff numbers.

Dawson's communication style was not effective or well-received by some employees. Dawson made statements to some of the staff, such as "I'm the boss," "That's why I'm paid the big bucks," "I do it because I can," "Because I said so," "I'm the new sheriff in town," and "It would take an act of God to get me fired." She told several of the women to "pull up your big girl pants." She told another, "Don't be a Debbie Downer." While the statements were perhaps arrogant on Dawson's part or part of her no-nonsense, get the job done attitude, they were not intimidating or threatening. Rather, they reflect Dawson's aversion to providing explanations or listening to complaints in response to work demands. Dawson did not engage in intimidating or threatening behavior or use abusive or profane language or racial slurs.⁴

Other employees who were interviewed indicated they did not have any problems with Dawson. There was one employee who told the investigators, "I think that I was treated pretty fairly in my opinion." One employee indicated that Dawson treated her like a manager should treat an employee. Another employee described Dawson as compassionate. Yet another described the rest of the staff as "a lot of unhappy people ... [who] complain about things a lot." "My perception is that staff are negative, but

⁴ Although there were allegations that Dawson engaged in some of these actions, I did not find them persuasive based on the record.

I recognize ... they might have been doing some things a certain way for a really long time, and now they are being asked to do things differently.”

When Reha took over for McCann as a manger on the first floor, she felt left out of some of the mangers’ meetings between District Manager Jones, Dawson, and Brooks. There was conflict between her and Dawson on management style and who they supervised.⁵ This conflict spilled over to the employees. Reha tried to assist Dawson’s employees although Dawson believed the employees needed to figure things out. Dawson had to remind Reha that they were Dawson’s employees to manage, but Reha admittedly continued to assist Dawson’s employees.

When it was announced to the staff that District Manager Jones and Dawson were no longer with the IWD, some of the Des Moines staff cheered and clapped.

**C. Reassignments of Gloria Cano and Kirstin Born/
Creation of Business Marketing Specialists.**

Dawson supervised two business service representatives (Workforce advisors), Cano and Born, who were on her Business Services Team from July 2013 until they were reassigned to the membership and skills area in July 2014.⁶ Although Division Director Adams made the decision to reassign them, Cano and Born blamed Dawson. Dawson only learned of the reassignments after joining a meeting where Adams, District Manager

⁵ Due to this conflict and in the absence of corroborating evidence, Reha’s testimony was not given as great of weight had it been otherwise.

⁶ They would have then worked for Steve McCann who resigned on July 8, 2017. Thereafter, they were directly supervised by District Manager Jones until Jennifer Reha came on board on September 12, 2014.

Jones, and a union steward, Tina Woods, were present. Division Director Adams informed Dawson and Jones of the reassignments and advised Jones to notify Cano and Born immediately because within the week she was going to post two Des Moines openings for a newly-created business marketing specialist position. Dawson was not part of the decision-making process and she did not object to the reassignments.

After the reassignments, Cano and Born retained their same pay and titles as advisors, but they no longer worked out in the community. They were told that they were reassigned because they had not met their Skilled Iowa numbers and both received work directive letters indicating that they had failed to meet their goals. After they challenged the letters as disciplinary in nature, Division Director Adams and the union worked out an agreement and the letters were rescinded.

The reassignments did not violate the CBA.⁷ The union investigated the matter and concluded that management's actions did not violate the CBA. Neither Cano nor Born filed a grievance to allege a violation of the CBA. The investigators did not interview the union representative, Tina Woods, or Division Administrator Adams or District Manager Jones who were present for the meeting when Dawson was informed of the reassignments.

⁷ My finding is based on the evidence in the record as a whole indicating the reassignments did not violate the CBA and in the absence of any evidence to support a finding otherwise including, but not limited to: a grievance arbitration award relevant to reassignments, a grievance filed on this matter, credible testimony from an AFSCME union representative, or any other credible evidence to indicate the reassignments violated the CBA.

Born did not take her reassignment well. Other employees were not happy about the reassignments and also blamed Dawson. Jones told Cano that the decision had been made by Division Director Adams and the union steward. The investigators did not know who had made the reassignments. Investigator Peden testified at the hearing:

- Q: Who made the reassignments, or do you know?
A: I don't know because there wasn't documentation that was provided for us.

Peden further testified, "Employees told us that in their opinion, that [Dawson] didn't like Born and Cano, wanted them to not be in the roles that they were in anymore."

The concurrent posting of the new business marketing specialist positions created more turmoil and resentment amongst staff. The investigation did not reveal who created the specialist position, but the position existed at other IWD regional offices. The business service representatives (Workforce advisors) and the new business marketing specialists performed similar, but not identical work. The business service representative position was compensated at a paygrade 24 with eligibility for premium overtime. The specialist was a paygrade 26 and received hour-for-hour compensatory time. The similarities in work, but difference in pay contributed to resentment by employees with blame placed on Dawson who was the only Des Moines regional officer manager of the newly-created position. Personnel Officer Andrea Macy had noted that the similarity in duties for the two positions had created issues in at least one

other IWD regional office. Nevertheless, there were greater goals for the specialists to meet. The distinction was not always identified by the higher-ups at IWD when goals and initiatives were set. This frustrated District Manager Jones and Dawson.

After Division Administrator Adams posted the vacancies, District Manager Jones, Dawson, and Executive Officer-Workforce Advisor Craig Immerfall interviewed candidates for the positions. They offered courtesy interviews to two current employees, Ted Johnson and Sherri Marion, who had not received qualifying screening scores. Johnson declined an interview. They hired two new employees, Mark Jungman and Jim Wightman, on November 7, 2014. Because the new hires came at the same time as the reassignments thought to be done by Dawson, some employees incorrectly believed Dawson was guilty of gender discrimination by replacing the two females with men albeit in different classifications. After his hire, Jungman incorrectly believed Dawson was guilty of age discrimination because he believed that he was treated differently than his elder peer Wightman.

D. Employees' Allegations.

1. Kirstin Born.

Born made numerous complaints about Dawson during the course of the three investigatory interviews of Born on October 19, 21 and 28, 2015. Born was not happy about her reassignment and blamed Dawson for it. Born complained to the investigators that, after her reassignment,

Dawson moved her to an occupied office and “refused” to help her move when Born was on crutches and wearing a boot. Dawson did not refuse Born’s request for help, but presumably did not set up the move for Born. According to Investigator Peden’s testimony, Dawson was supposed to “[g]et other people to help her box her materials and move them to a different office.” Apparently, Born felt she could not interrupt other employees and ask for help herself.

Born complained to the investigators that the move put her four cubicles down from a former co-worker, Renaldo Ellis, who she alleged harassed her when they both worked in Ames. Dawson was unaware of any issue between Born and Ellis; they had worked on the same floor before the reassignment and Born had not expressed any concern to Dawson. Born’s supervisor in Ames, Antonia Gotta, had not conducted an investigation into Ellis’ behavior at the time because Born had not filed a formal complaint. After her reassignment, Born emailed Personnel Officer Jon Nelson on August 25, 2014, to inquire about Ellis. Nelson reminded Born that there had not been an investigation of Ellis and Born had been directed to notify management if a problem arose. Ellis subsequently transferred to Promise Jobs on the second floor and months later, Born transferred to the second floor as well.

Born told investigators that her co-worker who worked at one of the prisons, Daniel Noonan, made a joke about giving Born’s home address to

a sex offender. Born alleged that Dawson chuckled and did nothing about it. Born never filed a complaint regarding Noonan's joke.

Born made other complaints to the investigators, some of which include the following: Dawson had not signed a sympathy card for Born when Born's mother died although Dawson personally expressed her sympathy (Dawson's own mother had passed the previous month); Dawson constantly walked by employees' desks to see if people were working or goofing off; and the morning after an Iowa Wild career fair event, Dawson told the staff that she heard the event did not go well and relayed what she had heard.

2. Brent Camery.

Camery worked as an advisor in the veteran unit. Camery was supervised by the US Department of Labor, but his local supervisor was Dawson beginning in July 2013. He took offense to Dawson's bias towards veterans who served in Vietnam like her father.

Although untrue, Camery alleged that Dawson said her daughter had won an iPhone at one of the job fairs. Camery complained to the investigators about an event in early 2015 when Camery and Dawson worked together on a safety plan for their building to get updated information and contacts. Around this time, Camery had learned about an electrical fire at the Hoover Building and commented, "Well, I hope that they used their safety plan." He was offended by what he alleged to be

Dawson's response, "Well, duh, Brent, they know enough to get out of the building.

3. Gloria Cano.

Cano did not believe her reassignment violated the CBA. Cano told the investigators that after her reassignment, Dawson did not ask permission from Cano's supervisor, Reha, prior to assigning Cano to assist with a career fair. In her testimony, Investigator Peden characterized Dawson's action as "disrespectful" of the other supervisor. Although Dawson and Cano disagreed on how to do things for the fair, Cano indicated that Dawson thanked Cano many times for her work getting a major job fair in place.

4. Inger Hall.

Inger Hall worked as a Workforce associate on the Skills Team and was managed by Dawson 2014-2015. Dawson hounded her about getting job orders in (employer-posted jobs on "Iowa Jobs"). Hall complained to the investigators that Dawson wanted to meet every day from 3:30 to 4:00 p.m.

Other employees complained to Dawson about Hall constantly visiting with friends and family who were present at the office. On one such occasion, Dawson approached Hall in front of a person Dawson believed to be a friend and interrupted to say they had a meeting at 3:30 p.m. Hall complained that Dawson was discourteous to the customer. Hall complained that after she changed jobs and started working for Reha, Dawson still wanted Hall to report to her rather than Reha.

5. Lea Hubbard.

Lea Hubbard worked as a Workforce advisor for Steve McCann until his retirement in July 2014 then she worked for Reha. Dawson was never Hubbard's supervisor. Hubbard worked under a New Iowan Center grant and assisted non-English speaking people. Although the grant that funded Hubbard's work expired, she blamed Dawson for eliminating the services. She also blamed Dawson for moving her from the "bullpen" to the skills area to assist everyone who came into the Workforce Center.⁸ It was actually District Manager Jones and Jeff Chamberlain who decided to turn the bullpen into an Assessment Center.

6. Mark Jungman.

Jungman complained to the investigators that he was not given adequate training or training resources. However, District Manager Jones, not Dawson, was responsible for employee training. The specialist position was new and IWD did not have formal training in place when Jungman and Wightman were hired. Since these positions were intended to work with employers and offer services such as interview and resume training, Jungman and Wightman attended "One Stop Shop," a training lasting several weeks on these services. Jungman complained the training was not beneficial. As a training tool, it was Dawson's idea to team Jungman and Wightman up with Immerfall although they both complained to the investigators that she kept them from working with Immerfall.

⁸ The bullpen was a back room that contained a microwave, coffee pot, refrigerator and some desks.

Jungman went with Immerfall when there was business in the Story County or Ames areas. Jungman had lived in Ames and went to Iowa State so Immerfall thought Jungman knew these areas well. Wightman lived in Madison County so he went with Immerfall to Winterset, Madison County, and Dallas County. They all worked the Polk County area.

As a new hire with the State, Jungman served a six-month probationary period. Dawson constantly asked Jungman, “Who’s your boss?” and “Who do you work for?” He complained that she would state, “You need to make sure you get your contacts in, and you need to make sure they’re in by the end of the week.” District Manager Jones and Dawson briefly consulted Personnel Officer Macy during Jungman’s probationary status about a concern and its effect, if any, on his employment status. However, they had never determined to terminate him. Jungman was never disciplined either although Dawson talked to him several times about his chronic tardiness. Jungman completed his probationary period and became a permanent State employee in May 2015.

7. Sherri Marion.

Dawson supervised Marion who was an advisor on her team. Marion had been told by Dawson, District Manager Jones, and Division Administrator Adams that Marion’s leather pants were unprofessional attire. Reha alleged to the investigators that after Marion had a dispute with a co-worker, Dawson made racial remarks about Marion in a meeting with Reha and Jones. Reha never protested or filed a formal complaint.

8. Jolene Ridgway.

Dawson supervised Workforce Associate Jolene Ridgway for several years. Ridgway worked the Job Bank. She and Lori Allen believed they should have been advisors. Ridgway was humiliated at an in-service training conducted by Chris Nilles and incorrectly blamed Dawson for it. District Manager Jones had contacted Nilles to conduct the training as Nilles had done for other offices. At the training, Nilles showed job orders done by Ridgway and pointed out errors that had been made. Division Administrator Adams received several complaints about the training and how Ridgway had been humiliated. She called in and questioned Nilles. According to Nilles, Dawson had nothing to do with the training and they had not even talked.

Ridgway complained to the investigators that Dawson had required her to prepare a spreadsheet of the 39 computers located in libraries, churches, and armories. Ridgway suspected Dawson's motives and necessity for the work because after Dawson left, Denise Schippers and Reha told her to stop the project. Unknown to Ridgway, Dawson had required the spreadsheet to assist in tracking the retrieval of the computers when IWD stopped the program.

9. Brenda Tart.

Tart had worked in the Promise Jobs unit until she transferred. She never had any problems with Dawson and they engaged in personal discussions. However, Dawson made Tart uncomfortable from several of

Dawson's statements regarding Tart's private relationship with Mike Wilkerson.

10. Kristi Zeransky.

Zeransky was an advisor who administered and proctored the NCRC test assessment. Dawson managed her for several years. Dawson made several changes to the testing process based on recommendations from Reha who had a background in the area. Zeransky disagreed with the changes Dawson made to the testing procedure, but with some difficulty, she successfully implemented the procedures. Some employees were frustrated because Dawson did not allow them to assist Zeransky with her duties. Unknown to other employees, Dawson often found Zeransky absent and unaccounted for in her work area. Thus, Dawson did not believe Zeransky was making the best use of her time and productivity.

Zeransky was offended when, on an occasion, she complained of wrist pain from excessive typing, Dawson told her to file a workers compensation claim.

11. Office supplies.

Employees felt it was demeaning that Dawson kept supplies in a locked cabinet in her office although that had been the practice when Dawson started IWD. Doug Brooks ordered and replenished the supplies.

12. Sick Leave directives.

In mid to late September 2015, District Manager Jones requested Personnel Officer Macy's advice about tenured employees who had low sick

leave banks, which were not due to a FMLA qualifying event. There were 12 employees with sick leave banks below 40 hours. Based on Macy's guidance and a sample letter she provided, Jones and Dawson issued sick leave directives to these employees that required medical verification for their absences. Employees were upset with the directives and with Dawson as a result. At least four of these employees were ones who complained about Dawson to the investigators. Much was made of the fact that Dawson attributed the sick leave requirement to the department of administrative services, DAS-HRE (DAS) and Macy.⁹

E. Compensation for Hours Worked, Flex Time, and the CBA.

Dawson had limited authority with respect to staff schedules and did not have authority to approve overtime. When Dawson began employment at IWD, she was told by District Manager Jones that only Division Director Adams or IWD Director Wahlert could approve overtime. Dawson followed IWD policy and rules in her management of staff hours and compensation; management worked career fairs after hours or Dawson asked for volunteers who then flexed their schedules thereafter without overtime compensation.

The CBA provided in relevant part, "Temporary work schedules shall not be made for the purpose of avoiding overtime, except for the voluntary agreement by the employee." The IWD work rules prohibited "Working overtime hours without prior approval of the supervisor," and prohibited

⁹ DAS is the State's department of human resources.

“Flexing schedule[d] hours of work without prior approval of the supervisor.”

On one occasion Kristin Zeransky wanted paid overtime instead of compensatory time and sent an email to Personnel Officer Jon Nelson and another to inquire of the procedure. Subsequently, Division Director Adams contacted Zeransky and took care of her overtime.

Julie Little was upset when she signed up for an offender workshop that would have required her to spend many hours outside the classroom on related projects. District Manager Jones determined that Little could not quit the class because it had been paid for, but gave permission for Little to work on the projects during her workday.

Although Wightman worked as one of the new specialists and never worked over his scheduled hours, there were claims that Jungman worked over his scheduled hours. Jungman never requested approval to work the time and he never filed a grievance to allege that his work schedule or compensation for hours worked violated the CBA. The investigation did not reconcile his missed time due to tardiness with these other hours or reveal any recordkeeping of this time.

Dawson did not fail to ensure staff was appropriately paid for time worked in accordance with the CBA.¹⁰ Some employees indicated they

¹⁰ A blanket policy of requiring employees to flex their hours seemingly runs contrary to the CBA's requirement that employees volunteer to a temporary schedule change. Nonetheless, I make my finding based on the evidence in the record and in the absence of credible and persuasive evidence to the contrary, such as the following: an arbitration award relevant to flexing hours, a filed grievance, testimony from an AFSCME representative, or any other credible evidence of this nature.

never “worked off the clock.” The investigators never interviewed Adams or other IWD management personnel to determine IWD’s practices and policies in comparison with Dawson’s requirement of having employees flex their hours. The investigators did not interview AFSCME union representatives regarding Dawson’s actions allegedly failing to conform to the CBA.

F. Falsification of Sick Leave.

Deborah Zeller worked for the Job Bank and was managed by Dawson for six months. Because Zeller was new and did not have accrued leave, Dawson admittedly told Zeller that she could use sick leave to attend her daughter’s wedding. When Dawson had first started, she had been told by McCann that “time was time” under IWD Director Teresa Wahlert. Zeller ended up using vacation to attend the wedding. She testified:

Q: Did you then use sick time?

A: I didn’t have to use the sick time. I ended up having enough vacation time.

G. Processing Ted Johnson’s PDQ.

Ted Johnson worked as an advisor on Dawson’s team. Johnson had been a union representative while previously employed by a company. He was upset with Born’s reassignment and believed it violated the CBA. He did not like all the changes. Johnson told the investigators that directions changed daily; he would start something only to later get pulled off the project.

Johnson applied for the newly-created business marketing specialist in 2014. Dawson offered Johnson an opportunity to interview and he declined. Johnson applied for the position again when another vacancy opened in 2015, but he did not make the list of qualified candidates. From a DAS-provided list of 35 to 40 screened candidates, Division Director Adams, District Manager Jones, and Dawson determined the highest seven scoring candidates to interview.¹¹ Dawson told Johnson that he had not made the list of top candidates to receive an interview. Johnson complained to DAS, but never heard back from the department.

In 2015, Johnson subsequently requested a desk audit of his current advisor duties in comparison with the specialist duties. DAS completed desk audits to determine if reclassification of an employee was appropriate. On August 13, 2015, Dawson emailed Personnel Officer Macy to inquire about the process because she had never handled a desk audit. Macy responded in relevant part:

Ultimately, he's going to need to fill out a PDQ based on the work he's performing now and submit it to you. You'll then have 30 days to review it and determine how you're going to move forward with it.

Marlys and I met this morning and discussed this situation a bit. If the employee submits a PDQ that you don't feel is accurate, we can meet and determine next steps.

Johnson completed a PDQ, but turned it in unsigned to Dawson. Afterwards, on September 15, 2015, Personnel Officer Macy met with both

¹¹ They prepared the scoring instrument utilized by changing previous worksheets based on requirements of the specialist position. Scores were based on such things as education, work experience, veteran status, and NCRC certification.

District Manager Jones and Dawson to advise them on the process and address Jones' concern that Johnson's PDQ did not accurately reflect Johnson's current duties. Macy recommended they meet with Johnson and attempt to reach a consensus of those duties and modify the PDQ. Macy stressed that ultimately Johnson was required to sign the PDQ and then the form had to be turned into DAS. Macy testified to the form's "explicit" instructions: next to the employee signature line, it directs the employee to submit the form to management and, if management does not act and submit the form to DAS within 30 days, the employee can submit the form to DAS directly.

Dawson returned the form to Johnson sometime following her and Jones' meeting with Macy on September 15, 2015. She communicated, albeit ineffectively, management's disagreement with the duties he listed and indicated he needed to sign the document. Dawson went on administrative leave thereafter on October 9, 2015. Neither management nor Johnson followed-up on the PDQ.

H. Investigation.

The investigation team interviewed Dawson on only one occasion on November 4, 2015. She was interviewed from 11:58 a.m. to 5:30 p.m. and given only one break from 3:14 p.m. to 3:25 p.m. During the course of the next two months of the investigation, Dawson was not provided a transcript of the recorded interview to review its accuracy or to provide further explanations.

The investigators did not interview the union steward, Tina Woods, or any other AFSCME union representative to determine whether certain actions or inactions violated the CBA. They did not interview District Manager Jones, Division Administrator Adams, Jeff Chamberlain, or IWD management from a different regional office to determine IWD practices and policies, who was responsible for decision-making of relevant incidents, and whether Dawson had acted in a manner consistent with policies she was expected to follow.

As a result of their investigation, Peden and Reinders determined that Dawson violated a number of IWD work rules. However, they concluded Dawson did not engage in a level of harassment or discrimination based on age or race to establish a violation of Title VII or Iowa Code chapter 216. They also concluded that Dawson did not engage in retaliation under Title VII or Iowa Code chapter 216.

In addition to their findings and conclusions regarding Dawson, the investigators made the following recommendations:

- The PDQs of the Business Service Team need to be reviewed for appropriate classification.
- DAS-HRE should provide training on the classification process for managers and supervisors at IWD.
- DAS-HRE will review the FLSA designation of the Business Marketing Specialist class.
- IWD managers and supervisors should work with the DAS-HRE to ensure scoring tools are appropriate and fair.
- In consultation with DAS-HRE, a decision needs to be made to determine if extra points should be applied to applicants for having the NCRC. While it could work to the advantage of unemployed persons from outside of State

Government, it can unfairly impact State employees applying for promotional opportunities.

I. Termination.

Following the investigation, the new Workforce Development director, Beth Townsend, notified Dawson by letter dated December 31, 2015, that the State was terminating her employment for the following conduct:

- You treated subordinate staff and peers in a manner that was disrespectful, demeaning, intimidating, and threatening on multiple occasions.
- You used abusive or profane language, including ethnic slurs, in the workplace.
- Several staff members were reassigned in a manner that did not comply with the applicable collective bargaining agreement and the Iowa Administrative Code, and you raised no objection to the reassignments despite being aware of them.
- You failed to ensure staff was paid appropriately for time worked when you required staff who worked outside of their regularly assigned work hours to flex their time rather than paying them in accordance with the applicable collective bargaining agreement, and by instructing one staff member to attend assigned training on her own time.
- You falsified timekeeping records by instructing a staff member to use sick leave rather than vacation for an absence unrelated to a medical condition and approving that staff member's timesheet.
- You failed to process an employee's Position Description Questionnaire in accordance with the Iowa Administrative Code.
- You were untruthful on multiple occasions during the investigation when questioned about a number of allegations.

The letter indicated her actions were in violation of the following:

IWD Work Rules

2. Work Performance-Employees will perform all assigned work in a competent, timely fashion within standards provided by management.

The following are prohibited:

d. Deliberate falsification of time sheets, benefit selections, work sheets, production records, materials, or any other records related to work activities. This does not apply to advance projections of time worked which must be indicated on time sheets.

e. Deliberate or grossly negligent disclosure of confidential information and records to unauthorized individuals; giving false information to management, other government agencies, private organizations, or to employees responsible for record-keeping; or the personal or unethical use of such information.

3. Personal Action and Appearance

The following are prohibited:

b. Rude, intimidating, aggressive, personally demeaning or unprofessional behavior in general or directed at any individual(s) on state time or property or in the performance of official duties that is unprofessional or creates or contributes to an unprofessional work environment.

c. Displaying rude, threatening, intimidating, coercing, unprofessional, personally demeaning or aggressive behavior towards any individual; including operating a state vehicle.

e. Using abusive or profane language towards others, including ethnic slurs regardless of location.

i. Lying, while in the performance of official duties, during an investigation or making false, malicious statements about other employees, supervisors, or the agency.

State of Iowa Violence-Free Workplace Policy for Executive Branch Employees

II. Policy Statement

The State of Iowa recognizes that violence at work can seriously affect employee work performance and morale. Threats, intimidation, harassment, or acts of violence will not be tolerated. The State of Iowa further establishes, as its vision, that all of its officials, managers, supervisors, and employees will treat each other with courtesy, dignity, and respect. The State of Iowa is committed to a violence-free workplace, and its goal is to prevent violence in the workplace.

III. Prohibitions

C. Employees are prohibited from making threatening or intimidating statements or engaging in threatening or intimidating behavior directed to another employee, supervisor, manager, vendor, customer, or client.

E. Employees are prohibited from purposefully and without legitimate purpose having personal contact with another employee, supervisor, manager, vendor, customer, or client with the intent to threaten, intimidate, or alarm the other person.

II. CONCLUSIONS OF LAW.

A. Just Cause Standard.

Dawson's DAS and PERB appeals were filed pursuant to Iowa Code section 8A.415(2), which provides:

2. Discipline resolution.

a. A merit system employee ... who is discharged, suspended, demoted or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the [DAS] director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The employee has the right to a hearing closed to the public, unless a public hearing is requested by the employee. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies.

The relevant DAS rule provides:

11-60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

Just cause must exist to support the disciplinary action taken. The State bears the burden of establishing that just cause supports the discipline imposed. *Harrison & State (Dep't of Human Servs.)*, 05-MA-04 at 9.

In the absence of a definition of "just cause," PERB has long considered the totality of circumstances and rejected a mechanical, inflexible application of fixed elements in its determination of whether just cause exists. *Wiarda & State (Dep't of Human Servs.)* 01-MA-03 at 13-14 appendix. In analyzing the totality of circumstances, examples of factors which may be relevant to a just cause determination include, but are not limited to:

whether the employee has been given forewarning or has knowledge of the employer's rules and expected conduct; whether a sufficient and fair investigation was conducted by the employer; whether reasons for the discipline were

adequately communicated to the employee; whether there is sufficient proof of the employee's guilt of the offense; whether progressive discipline was followed, or is not applicable under the circumstances; whether the punishment imposed is proportionate to the offense; whether the employee's employment record, including years of service, performance, and disciplinary record, have been given due consideration; and whether there are other mitigating circumstances which would justify a lesser penalty.

Gleiser & State of Iowa (Dep't of Transp.), 09-MA-01 at 16-17.

PERB also considers the treatment afforded other, similarly situated employees relevant to a just cause determination. *Woods & State of Iowa (Dep't of Inspects. and Appeals)*, 03-MA-01 at 4. All employees who engage in the same type of misconduct must be treated essentially the same unless a reasonable basis exists for a difference in the punishment. *Id.*

The presence or absence of just cause must rest on the reasons stated in the disciplinary letter. *See Eaves & State of Iowa (Dep't of Corrections)*, 03-MA-04 at 14. Thus, my analysis is of each reason as stated in the notice of disciplinary action.

B. Analysis of Each Allegation.

1. Alleged treatment of "subordinate staff and peers in a manner that was disrespectful, demeaning, intimidating, and threatening on multiple occasions."

The State provided sufficient proof that Dawson made statements and remarks to staff that were demeaning and unprofessional and violated IWD work rule 3(b), which prohibits demeaning and unprofessional behavior. There is consistent testimony as to specific statements Dawson made and to the overall nature of her remarks. Although there is some

hypersensitivity amongst the staff, Dawson could have conveyed her no-nonsense, nose-to-the grindstone message in a manner other than, “Put on your big girl pants.” There was no reason for Dawson to constantly harangue Jungman and ask, “Who is your boss?” Although Dawson had a personal as well as professional relationship with Tart, she should not have made inappropriate comments involving the private life of Tart, which made Tart uncomfortable. Dawson’s statements were demeaning and unprofessional.

Nonetheless, as my Findings of Fact provide, Dawson did not treat subordinate staff and peers in a manner that was intimidating and threatening. Therefore, the State failed to provide sufficient proof that Dawson engaged in intimidating or threatening behavior towards staff and peers in violation of IWD rules and the State’s Violence-Free Workplace Policy. Dawson did not single out and pick on certain employees as they had alleged. Unfortunately, she was righteous in her management power. Because she retorted that, “I’m the boss,” it was incorrect, but understandable that some employees placed the blame on her for IWD policies, initiatives, and workloads they resented. Employees incorrectly blamed her for the reassignments, the sick leave directives, IWD overtime policies, lack of training, and the humiliation of Ridgway at the in-service training. As a result, some staff’s resentment snowballed and they were hypersensitive, overly critical of Dawson’s management, and skeptical of her motives in the midst of increased workload demands and changes that

Dawson had to administer and implement. As one employee indicated, some staff was negative and complained because they did not like the changes that took place.

Dawson should have been given some guidance and support in dealing and communicating with this group. As Dawson's evaluation reflects, her supervision was aware that some staff "had not received goals and expectations very well; some still do not accept the reality of being held accountable." Yet, she was not provided resources or tools in guiding the staff through these transitions. Had she been given support and guidance from her supervision to address these issues effectively, the staff may have been more understanding that many of the matters were out of Dawson's hands and she was under the same pressure to perform and meet IWD goals. Had some staff known that Dawson was not responsible for the reassignments, perhaps resentment would not have snowballed.

In any event, Dawson did not treat subordinate staff or peers in an intimidating or threatening manner in violation of IWD work rules or the State's Violence-Free Workplace policy. However, she did make demeaning and unprofessional statements in violation of IWD work rule 3(b).

2. Alleged use of "abusive or profane language, including ethnic slurs, in the workplace."

As my Findings of Fact provide, Dawson did not use abusive or profane language, including ethnic slurs. Thus, the State failed to provide sufficient proof that Dawson used abusive or profane language or ethnic

slurs in the workplace in violation of IWD work rules or the State's Violence-Free Workplace Policy.

3. Alleged reassignment of staff members "in a manner that did not comply with the applicable collective bargaining agreement and the Iowa Administrative Code," and failure to raise "objection to the reassignments despite being aware of them."

The State failed to provide any proof that Dawson violated IWD work rules, any State policy, the CBA, or the Iowa Administrative Code by her actions or inactions with respect to staff reassignments. As an initial matter, the State failed to cite any specific IWD work rule, State policy, CBA provision, or Iowa Administrative Code rule that Dawson allegedly violated by reassignments she did not make. The record is absent of specific references. Thus, there was no notice of management's expected conduct, which she allegedly violated.

Division Administrator Adams made the decision to reassign Cano and Born. Based on the timing, the record supports an inference that the reassignments were made to make way for the business marketing specialists that were newly-created positions in IWD. Regardless of the reason for the reassignments, Dawson did not make the decision to reassign Cano and Born.

As my Findings of Fact provide, the reassignments did not violate the CBA. The AFSCME union representative, Tina Woods, was present when Adams notified Dawson and District Manager Jones of the reassignments. And yet, no grievance was filed to challenge the reassignments as a violation of the CBA. AFSCME representatives were not interviewed during

the investigation either. Dawson was not trained on the CBA and its procedures. The investigators did not interview Division Administrator Adams, District Manager Jones, or the union representative, Tina Woods, who were all present for the meeting for the reassignments were discussed.

In any event, Dawson did not violate any IWD rules or State policies by remaining silent by her Division Administrator's actions. She did not have notice of any IWD rule or Iowa Administrative Code rule that would have required her to affirmatively act and object under the circumstances. Had there been such a rule, the State cannot excuse Dawson's peer, Reha, from failing to act and filing a complaint when Reha allegedly heard racial remarks and yet, hold Dawson accountable.

The investigation was insufficient, there is an absence of any notice that Dawson was expected to take a "stand" and object under these circumstances, and the State failed to provide any training on the AFSCME contract, its provisions and related procedures. The record is absent of evidence that Dawson was responsible for the reassignments, that the reassignments violated the CBA or the Iowa Administrative Code, and that Dawson's actions or inactions violated IWD work rules or State policies.

4. Alleged failure to "ensure staff was paid appropriately for time worked" when requiring "staff who worked outside of their regularly assigned work hours to flex their time rather than paying them in accordance with the applicable collective bargaining agreement, and by instructing one staff member to attend assigned training on her own time."

The State failed to provide sufficient proof that Dawson failed to ensure staff was appropriately paid for time worked by requiring flexing of

hours rather than payment in accordance with the CBA. Dawson's unequivocal testimony regarding IWD's overtime policy and her administration of work schedules is consistent with IWD's work rules and the CBA.

The IWD work rules specifically allow for flex schedules and only require the employee to receive prior supervisory approval. The CBA requires mutual consent of the employee for temporary schedules (flexing hours)—this is exactly what Dawson requested. The IWD work rules require an employee to obtain a supervisor's approval before working overtime hours—this is exactly what Jungman failed to do. However, this is what some other employees did and their situations were resolved.

The relevant isolated incidents in the record are consistent with IWD rules and the CBA. Zeransky was paid overtime when she requested it through Division Administrator Adams, not Dawson who did not have the authority for overtime approval. Little was allowed to complete class projects during working hours rather than during her outside hours for a class that had been paid for by IWD.

Despite claims that Jungman worked overtime and was not paid, he never followed IWD rules and requested approval. He never filed a grievance. There is no recordkeeping of the hours he allegedly worked. Jungman was in a newly-created position. He was probationary and under pressure. Nonetheless, he never pursued available options by requesting overtime or filing a grievance and only complained about it after-the-fact.

A fair assessment of his work and ability to meet goals in comparison to his peer Wightman could not be made if he was working “extra” hours to complete his duties, but not reporting those hours. As Zeransky’s request for overtime demonstrated, there were ways to obtain overtime compensation.

Dawson followed IWD rules and the CBA by having management work career fairs or by asking for volunteers to work and flex their hours. There were no contract grievances filed and AFSCME union representatives were not interviewed to provide perspective on whether these practices violated the CBA. Dawson was not trained with respect to the CBA’s overtime provisions in conjunction with IWD policies. As my Findings of Fact provide, Dawson’s administration of work schedules and compensation for employees did not violate the CBA.

Dawson followed IWD work rules and practices that had been set by IWD. This was not a result of Dawson’s conspiracy against any individual employee. Through no fault of Dawson’s, the overtime and scheduling policies and practices were too-rigid for a department with increased initiatives and workloads.

5. Alleged falsifying “timekeeping records by instructing a staff member to use sick leave rather than vacation for an absence unrelated to a medical condition and approving that staff member’s timesheet.”

The State failed to provide sufficient proof that Dawson falsified timekeeping records. There is sufficient proof that Dawson failed to

provide accurate timekeeping information to the employees she supervised, which violated IWD work rule 2(e).

Dawson incorrectly believed that time was interchangeable regardless of source (*e.g.* sick leave or vacation). She gave Zeller permission to use sick leave to attend her daughter's wedding when Zeller believed she did not have vacation time. Regardless, Zeller ended up using vacation time to attend the wedding. No one falsified Zeller's timesheet. However, Dawson did violate IWD work rules by providing false information to Zeller on the use of her time off.

6. Alleged failure "to process an employee's Position Description Questionnaire in accordance with Iowa Administrative Code."

The State failed to provide sufficient proof that Dawson failed to process Johnson's PDQ in accordance with the Iowa Administrative Code. The State failed to identify the Iowa Administrative Code allegedly violated by Dawson. Dawson did not have notice of what was expected other than the guidance provided by Personnel Officer Macy, which she followed.

There are a number of facts relevant to my conclusion with respect to the processing of the PDQ. First, IWD was experiencing potential department-wide issues with its creation of the business marketing specialist and its similarity with the advisors/business service representatives. Second, it was District Manager Jones, not Dawson, who contacted Personnel Officer Macy with her concerns regarding the accuracy of Johnson's listed duties on the PDQ. It created issues and slowed down the process. Again, Dawson got caught in the cross-fire

between her supervision and her staff. Nonetheless, Dawson sought advice herself because she had never processed a PDQ. Third, Johnson had responsibility for ultimately returning the form to DAS. He did not sign the PDQ and he never followed what Macy referred to as the “explicit instructions” to submit the form to DAS within 30 days if his management had not acted upon the document. Finally, the State failed to account for the time of Dawson’s return of the form to Johnson sometime after September 15, 2015, and Dawson’s departure shortly thereafter on October 9, 2015. No one in management followed-up on Johnson’s PDQ in Dawson’s absence.

Dawson did not intentionally or negligently fail to submit Johnson’s PDQ. These facts do not constitute sufficient proof that Dawson failed to process Johnson’s PDQ in accordance with the instructions she had been given.

7. Alleged “untruthful[ness] on multiple occasions during the investigation when questioned about a number of allegations.”

The State provided sufficient proof that Dawson was untruthful in the investigation to the extent she denied making statements and remarks that are set out in the Findings of Fact. Examples include, but are not limited to statements such as “I’m the boss,” and “Put on your big-girl pants.”

The State failed to provide sufficient proof that she was untruthful with respect to other questions, which were asked of her during the investigation. It is not reasonable to hold Dawson accountable for every

last detail of her management during the course of a five-hour interview with only one 15-minute break. For instance, much was made of the fact that Dawson indicated that the sick leave directive came from DAS and Personnel Officer Macy. Macy may not have made the decision to use the sick leave directive, but Macy did suggest it as an option and provided guidance and a sample letter when District Manager Jones inquired about employees' low sick leave banks. DAS was a source for the directive. Dawson should have been allowed to view the transcript of her interview, interviewed a second time, and allowed an opportunity to further explain situations and fill in any gaps. The investigation was insufficient in this regard.

C. Analysis of Totality of Allegations.

The State failed to provide sufficient proof that Dawson committed a number of infractions. Dawson did not violate IWD rules or the State's Violence-Free Workplace Policy by engaging in intimidating or threatening behavior or using abusive or profane language or racial slurs; she did not violate the Iowa Administrative Code or the CBA by her actions or inactions with respect to reassignments; she did not violate any IWD rules or the CBA by requiring staff to flex their time and allowing one employee to work on class projects during working hours; she did not falsify timekeeping records; and Dawson did not fail to process an employee's PDQ in accordance with the Iowa Administrative Code.

There is sufficient proof in the record that Dawson violated IWD rules by making demeaning and unprofessional statements to employees; by providing false information to an employee regarding the use of sick leave rather than vacation; and by being untruthful during the investigation. Having concluded that these violations of IWD work rules occurred does not, however, end the inquiry. Consistent with the just cause standard, there are other factors to examine. These other factors support a modification of the disciplinary action to a five-day suspension.

First, due regard must be given to Dawson's commendable employment record. Dawson had a commendable employment record. Albeit not a lengthy time, Dawson did not have any prior disciplinary action during her tenure. She exceeded her supervisors' expectations. When she was evaluated, she was told to do more of what she had been doing. Dawson had been commended for setting up the shadow training for new employees to go out with Immerfall and she was also praised for all of the various meetings she held with staff. Not once was she reprimanded in any way for her conduct or performance.

Second, there are other mitigating circumstances, which support a lesser penalty than termination in this case. IWD had implemented politically-based initiatives that placed increased workload demands and changes on the department and all of its employees. Yet, overtime policies were rigid. Technologies were removed. New positions were created without regard to training or similarity to other existing positions. Dawson

came from the private sector and entered a pressure-cooker environment. The employees she managed had difficulties adjusting to the new goals and accountability under the IWD regime. Her supervision, Adams and Jones, were aware that Dawson's employees had these difficulties. However, Dawson was not given recommendations, tools, or support to effectively manage the employees during the transitions. Unfairly or not, the employees blamed her for many of the changes they did not like. They incorrectly blamed her for the reassignments, the sick leave directives, IWD overtime policies, lack of training and the humiliation of Ridgway at the in-service training.

As a result, some employees were hypersensitive to her remarks and during the investigation, many piled-on in an open-ended critique of Dawson and everything she did. To them, Dawson represented the changes, goals, and increased workloads they did not like. However, she was a performer and should have had an opportunity to redirect her course and style of management during these tumultuous times. These circumstances justify a lesser penalty than termination.

Third, the State had failed to follow progressive discipline although its application is entirely appropriate in this case. PERB has long recognized that the purpose of employee discipline is to correct an

employee's behavior, rather than merely to punish. *Barnard & State of Iowa (Dep't of Human Servs.)*, 17 ALJ 100758 at 20.¹²

Progressive discipline is a system of addressing employee behavior over time, through escalating penalties. The purpose of progressive discipline is to correct the unacceptable behavior of an employee. Employers impose some penalty less than discharge to convey the seriousness of the behavior and to afford employees an opportunity to improve.

Norman Brand, *Discipline and Discharge in Arbitration* at 57 (BNA Books 1998). The State's policy is one of progressive discipline "whereby measures of increasing severity are applied to repeat offenses until the behavior is corrected or it becomes clear that it cannot be corrected." *Phillips & State of Iowa (Dep't of Corrections)*, 98-MA-09 at 14.

Some offenses may be serious enough to justify skipping some of the progressive steps ordinarily imposed in the application of progressive discipline. *Hoffman & State of Iowa (Dep't of Transp.)*, 93-MA-21 at 26. But such is not the case here, where Dawson's conduct was not so egregious. While her statements and remarks needed a filter and were not well-received by a frazzled staff, she was an effective manager. Dawson's willingness and ability to achieve goals, implement State policies, and get the job done are worthy of an opportunity to correct her demeanor and communication style toward the employees she supervises.

¹² PERB case citations have changed since PERB's implementation of an electronic document management system.

D. Summary.

After consideration of the IWD work rules violated by Dawson, sufficiency of the investigation, her employment record, mitigating circumstances, the appropriateness of progressive discipline, and other relevant factors, I conclude the State failed to establish just cause existed to support its termination of Dawson's employment. Under the totality of the circumstances revealed by the record here, a modification of the disciplinary action is warranted from a termination to a five-day suspension. I consequently propose the following:

ORDER

The Iowa Workforce Development shall reinstate Annette Dawson to her former position as manager (if the position still exists, and if not, to a substantially equivalent position), with back pay and benefits, less interim earnings and less any other deductions associated with a five-day suspension; restore her benefits accounts to reflect accumulations she would have received but for the discharge and less any adjustments for the suspension; make appropriate adjustments to her personnel records and take all other actions necessary to restore her to the position she would have been in had she been suspended for five days rather than her employment terminated on December 31, 2015.

This proposed decision and order will become PERB's final agency action on the merits of Dawson's appeal pursuant to PERB rule 621-9.1(17A,20) unless, within 20 days of the date below, a party files a

petition for review with the Public Employment Relations Board or the Board determines to review the proposed decision on its own merits.

The ALJ retains jurisdiction of this matter in order to address any remedy-related issues which might hereinafter arise and to specify the precise terms of the remedy. In order to prevent further delay in the resolution of this case, a hearing to receive evidence and arguments on the precise terms of the remedy, should the parties fail to reach agreement, will be scheduled and held within 45 days of the date this proposed decision becomes PERB's final action on the merits of Dawson's appeal.

DATED at Des Moines, Iowa, this 2nd day of July, 2018.



Diana S. Machir
Administrative Law Judge