COURT OF APPEALS
DECISION
DATED AND FILED

December 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 98-1373

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

LINNEA VERGES,

PLAINTIFF-APPELLANT,

V.

PIERCE COUNTY AND PIERCE COUNTY EXECUTIVE/PERSONNEL COMMITTEE, SERVING AS THE PIERCE COUNTY GRIEVANCE COMMITTEE,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Pierce County: JOHN A. DAMON, Judge. *Affirmed in part; reversed in part.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Linnea Verges appeals a judgment affirming a decision of the Pierce County Executive/Personnel Committee which had discharged her from employment as a sheriff's dispatcher. Verges sought certiorari review under § 801.02(5), STATS., and also appealed under

§ 59.26(8)(b), STATS. Verges argues: (1) the committee proceeded on an incorrect theory of law because it treated her as a probationary employee; (2) the committee denied her due process because the attorney for Pierce County acted as a prosecutor and a decision-maker; and (3) the trial court improperly awarded costs. Other issues raised in Verges's brief are not properly before this court. We affirm the trial court's judgment upholding the committee's decision to discharge Verges. Based on the County's concession that no costs should have been awarded, we reverse the judgment as to costs.

This court lacks jurisdiction to review the circuit court's decision under § 59.26(8)(b)6, STATS. *See* ***In Re Discipline of Bier***, 220 Wis.2d 175, 180, 582 N.W.2d 742, 744 (Ct. App. 1998). This court has jurisdiction, however, to review the trial court's decision on certiorari to the extent the factors considered in certiorari review are not encompassed in § 59.26(8)6. *See* ***State ex rel. Kaczkowski v. Fire & Police Comm.***, 33 Wis.2d 488, 501-02, 148 N.W.2d 44, 50-51 (1967). Therefore, our jurisdiction is limited to deciding whether the board kept within its jurisdiction and whether it proceeded on a correct theory of law. ***Id.*** Verges's argument that there was no "just cause" to terminate her is not properly before this court.

Verges argues that the committee proceeded on an erroneous theory of law because it considered her a probationary employee.[1] While the committee's decision recites that Verges was a probationary employee, its decision to terminate her employment was based on the "just cause" standard after the committee

[1] As punishment for a previous infraction, Verges was placed on probation. The trial court ruled that probation was not authorized under the collective bargaining agreement and was an illegal remedy as a form of discipline. That holding is not challenged on appeal.

accorded Verges a hearing as a nonprobationary employee. Had the committee considered her a probationary employee, no such hearing would have been required. *See* ***Hussey v. Outagamie County***, 201 Wis.2d 14, 16, 548 N.W.2d 848, 849 (Ct. App. 1996). The committee accorded Verges the full panoply of due process protections available under § 59.26, STATS., including a hearing before an impartial body, representation by an attorney and the opportunity to call and confront witnesses. The County's attorney informed the committee at the beginning of the hearing:

> Now, those of you who have been serving on the personnel committee know that we have a just cause standard in our contract for non-probationary employees. And, just cause standard is what is required in this case, even though Linnea Verges is in a trial period, or a probationary period of time, under the terms of her personnel status.

The committee was then given the specific questions that relate to the just cause standard set out in § 59.26(8)(b)5m, STATS. We conclude that the committee afforded Verges all of her rights as a nonprobationary employee and applied the correct law to find just cause for her termination.

Verges cites several parts of the record in which her probationary status was discussed. The committee's consideration of her probation and the offense that led to it does not mean that the committee believed it was considering termination of a probationary employee or that it applied a lesser standard than "just cause." The facts relating to the earlier incident and the imposition of probation relate to Verges's reasonable expectations of the probable consequences of her conduct and whether termination reasonably relates to the seriousness of the violation, factors that the board was required to consider under § 59.26(8)(b)5m, STATS. The committee's discussion about her probationary status relates to those

factors and does not establish that the committee based its decision on something other than just cause for terminating a nonprobationary employee. The committee was not required to use "magic words" to signify that it was proceeding on the correct theory of law.

The County's attorney did not act as both a prosecutor and a decision-maker. The committee deliberated for two and one-half hours in closed session before reaching its decision. The County's attorney was not present. The committee then asked the County's attorney to draft a written decision memorializing its findings and conclusions. The County's attorney drafted the decision after soliciting and receiving input from Verges's attorney. There is nothing illegal, or even unusual, about asking the prevailing party to draft documents that reflect a decision-maker's ruling. The record does not support Verges's argument that the prosecutor participated in the decision-making process in any improper manner.

Verges argues that the trial court should not have imposed costs. The County agrees that § 59.26(8)(b), STATS., prohibits costs to either party. Based on the parties' agreement, we reverse that part of the judgment imposing costs.

By the Court.—Judgment affirmed in part; reversed in part; no costs to either party on appeal.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.