

State of Wisconsin



Labor and Industry Review Commission

Rondo Tyus, Complainant

Fair Employment Decision<sup>1</sup>

Minact, Inc., Respondent

Dated and Mailed:

ERD Case No. CR201604318

February 28, 2025

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The decision of the administrative law judge is **reversed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

<sup>1</sup> **Appeal Rights:** See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

### **Procedural Posture**

This case is before the commission to consider the complainant's allegation that the respondent rescinded its offer of employment to the complainant on the basis of his conviction record, in violation of the Wisconsin Fair Employment Act. An administrative law judge (hereinafter "ALJ") for the Equal Rights Division of the Department of Workforce Development held a hearing and issued a decision finding that the respondent's decision to rescind its job offer to the complainant was based in part on permissible reasons and in part on his conviction record, which was not substantially related to the job. Because the ALJ found that the respondent would have made the same decision based on the non-discriminatory reason alone, the ALJ limited the complainant's remedies to a cease and desist order and attorney's fees. The complainant and respondent both filed timely petitions for commission review.

The commission has considered the petitions and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

### **Findings of Fact**

1. The respondent, Minact, Inc. (hereinafter "respondent"), is a private business that contracts with the U.S. Department of Labor (hereinafter, "DOL") to operate some of its Job Corps Centers. Job Corps is a federally-funded program administered by the DOL. The program provides educational and vocational services to disadvantaged, at-risk youth ages 16 to 24, on residential campuses known as Job Corps Centers. The respondent has contracts to operate eight Job Corps Centers in different regions of the country, including one in Milwaukee, Wisconsin, known as the Milwaukee Job Corps Center (hereinafter "MJCC").

2. The complainant, Rondo Tyus (hereinafter "complainant"), is an individual with a conviction record. On August 20, 2007, the Milwaukee County Circuit Court issued a domestic abuse injunction against the complainant under Wis. Stat. § 813.12(4). The request for an injunction had been filed by the complainant's former girlfriend and the mother of his child, Michelle Pirelli. On May 19, 2008, the Court upheld the injunction after a *de novo* hearing. On February 18, 2009, the Court issued an Amended Domestic Abuse Injunction against the complainant which prohibited him from having any contact with Pirelli. The injunction included a provision that "there shall be no telephone contact for any reason at all" with Pirelli. The amended injunction remained in effect until August 20, 2011.

3. On March 18, 2010, while the amended injunction was still in effect, the complainant sent a text message to Pirelli that said, among other things:

*You ass! I don't give a crap what you are claiming about your mother!  
You have pulled this shit for years! I really don't give a damn about*

*whether you turn me in for contacting you since all you have been doing is interfering with my life!*

4. On April 6, 2010, the complainant was charged with knowingly violating an amended domestic abuse injunction, contrary to Wis. Stat. § 813.12(8)(a), by sending that text message. The complainant pled guilty to the charge. On October 18, 2011, he was convicted of knowingly violating a domestic abuse injunction, in violation of Wis. Stat. § 813.12(8)(a), a misdemeanor. He was given a stayed sentence of 45 days in the House of Correction, placed on probation for 12 months, and required to attend an anger management class. During his sentencing, the complainant admitted that he had knowingly sent the text to Pirelli in a moment of “emotionality.”

5. On May 16, 2016, the respondent posted an advertisement online for a security officer position at the MJCC.

6. The MJCC’s campus encompasses several buildings, including an administrative building, an education building, dormitories, a recreation center, a cafeteria, and the Welcome Center, which primarily functions as a security checkpoint.

7. The MJCC serves approximately 400 students. Under its contract with the DOL, the respondent is responsible for providing students with on-campus housing, classroom instruction, and vocational training. In addition, counselors provide training in independent living, job-seeking, and social skills.

8. Many of the students who attend the MJCC come from troubled home environments, including some who have experienced violence in their homes and neighborhoods and had enrolled in the Job Corps program in order to avoid unsafe living situations.

9. The respondent has about 120 employees on staff at the MJCC, including instructors, counselors, administrative, food service, and custodial staff, residential advisors, and security officers. All of the respondent’s employees, no matter what their specific duties and areas of responsibility, are expected to act as positive role models for the students in the program.

10. As a federal contractor operating Job Corps Centers, the respondent is required to comply with the DOL’s Policy and Requirements Handbook, which requires, among other things, that the respondent:

- Ensure that staff display appropriate behavior and demonstrate appropriate interpersonal skills and are able to work effectively with applicants, students, employers, coworkers, and the public.

- Protect the personal safety and security of students, staff, and property at the center at all times.
- Ensure staff acquire and maintain the skills necessary to serve as role models for students.

11. In furtherance of the respondent's responsibility to maintain a safe and secure environment at the MJCC, it employs security officers and conducts criminal background checks on all potential hires.

12. The MJCC has a closed campus, meaning that all students, staff, and visitors are required to go through a security check before entering the facility. In addition, because the MJCC is located in an area with a relatively high crime rate, the facility has a security fence around its perimeter.

13. Shortly before the events at issue in this case, the DOL's Office of Inspector General issued a report recommending that Job Corps Centers "beef up" security at their facilities. The report was issued in response to incidents of violence that had recently occurred at some of the job centers, including some that had resulted in the death of students. The respondent was aware of this directive from the DOL.

14. The purpose of the security officer position at the MJCC is to "[secure] from harm, theft or misuse the grounds, property, students and personnel of the Center."

15. At the MJCC, the respondent schedules security officers to work all three shifts, every day of the year. Security officers spend most of their work time in the Welcome Center, which is where security officers conduct security searches.

16. Responsibilities of the security officer position at the MJCC include:

- Reviewing documentation to confirm that all people entering the premises are authorized to be on the campus.
- Refusing entry to people who are not authorized to visit campus, including those who are barred from entry due to restraining orders or injunctions that have been issued against them.
- Conducting security checks of staff, students, and visitors before they enter the facility to ensure that the individual is not bringing in any weapons, alcohol, or other prohibited items. When conducting searches, the security officers look through backpacks and bags.
- Scanning people entering campus with a hand-held metal detector.
- Verifying that any minor leaving campus has permission to leave.
- Searching the vehicles of exiting staff members to ensure that no students are hiding in them.

- Responding as needed to any security-related incidents that are reported to them during their shift.
- Calling for assistance from outside law enforcement agencies for incidents involving weapons or threats or acts of violence.
- Walking the fenced perimeter of the campus to check for security breaches.

17. During third shift, there is much less activity and many fewer people on campus. Other than the security officers, the only employees on campus at that time of day are the residential advisors who work in the dorms. The respondent usually assigned three or four security officers to work during the first and second shifts but only two officers to work during the third shift.

18. The two officers who work on third shift spend most of their time taking turns walking the perimeter of the campus and patrolling campus buildings, while the other officer stays in the Welcome Center conducting searches and watching security monitors. The security officers also respond to any security incidents that are reported to them or that they observe on the monitors during their shift.

19. During the third shift, security officers check in students who have off-campus jobs and return to campus late at night, and students who have gone home for weekend visits return to the campus late at night. Between 6:00 a.m. and 9:00 a.m., Monday through Friday, most staff members arrive to report to work. In addition, approximately 20 students who live off campus arrive between 7:00 a.m. and 8:00 a.m. As a result, the last two hours of the third shift security officer position is very busy, with two security officers conducting numerous searches and verifying authorized admissions.

20. Security officers on all shifts have to deal with potentially volatile situations. Some of these situations involve students who are belligerent and combative while under the influence of alcohol or drugs, or who are upset when an officer confiscates a weapon or other prohibited item. Visitors who are denied entry to the facility sometimes have become confrontational as well. Security officers are the first responders to security incidents anywhere on the grounds, including in the dorms, and can find themselves in a confrontational situation with a student at any time during their shift. Students at the MJCC have threatened to hurt and sometimes pushed or hit a security officer. The security officers are expected to try to defuse or de-escalate such situations as much as possible, until police officers arrived on the scene.

21. Because security officers working at the MJCC are sometimes called upon to maintain security in stressful situations that could easily escalate into violence, the respondent seeks to hire individuals for security positions whom it believes will be

able to handle such incidents well. It requires security officers who show great restraint in tense situations and do not let their own emotions cause them to overreact or lash out in anger.

22. The respondent expects its security officers to follow all laws and regulations, as well as work rules and directives from management. Job Center staff are also expected to mentor and model professional behavior for the students who participate in the Job Corps program.

23. On May 16, 2016, the complainant submitted an online application for the position. The application asked, "Have you ever pled guilty, or no contest to, or been convicted of, a misdemeanor or felony?" and "If yes, please given the date(s) and details." The complainant responded "yes" and provided the following detail:

*10/18/2011 – Violation of Domestic Abuse Injunction – This was due to a text message which was accidentally sent to the Mother of my child while we were going through a custody battle. It is not a crime of Domestic Violence.*

24. The application contained a note that stated:

*Answering "Yes" to these questions does not constitute an automatic bar to employment. Factors such as age and time of the offense, seriousness and nature of the violation, and rehabilitation will be taken into account.*

25. The respondent invited the complainant to two interviews. During both interviews, the issue of his conviction was discussed. Both times, the complainant indicated that his conviction was for violating a domestic abuse injunction by sending a text message to the mother of his child. He did not share any information regarding the underlying facts that led to the issuance of the injunction.

26. After the second interview, the respondent's human resources officer gave the complainant a letter containing a conditional offer of employment. The letter stated that the offer was for a position as a security officer at the MJCC on third shift (11:30 p.m. to 8:30 a.m.), Wednesday through Sunday, with days off on Mondays and Tuesdays, starting on June 22, 2016. The letter also stated that the offer was conditioned on the complainant passing a pre-employment drug test and background check, and that a positive result on the drug test or an "unfavorable" result on the background check would void the offer. The complainant signed the bottom of the letter to confirm his acceptance.

27. The respondent obtained a background report from an outside company, which included the following information regarding the complainant's conviction for violating a domestic abuse injunction:

Charge:	VIOLATE A DOMESTIC ABUSE INJUNCTION
Charge Type:	MISDEMEANOR
Disposition:	GUILTY
Date:	16/Oct/2011
Sentence:	HOUSE OF CORRECTION - IMPOSED AND STAYED 45 DAYS; PROBATION 12 MONTHS; FINE AND COSTS

28. Under the respondent's policy, when a background investigation reveals that an applicant for a position at a job center has a conviction record, the matter is referred to the company's corporate office for review. After receiving the complainant's background check report the Human Resources manager sent an email to the corporate office with a copy of the background report attached, inquiring if they could proceed with hiring the complainant.

29. The email was reviewed by Kabah Ealy, the respondent's Vice President of Human Resources. After reviewing the complainant's background report and learning that he had been convicted of violating a domestic abuse injunction that had been entered against him, Ealy decided that the complainant should not be hired for a security officer position at the MJCC.

30. On June 17, 2016, the respondent sent a letter to the complainant, rescinding its offer of employment.

31. At the time she made her decision, Ealy did not know any details related to the alleged behavior that had resulted in the issuance of a domestic abuse injunction against the complainant, nor did she know of the conduct that had led to his conviction for violating the injunction.

32. The respondent's decision to rescind its job offer to the complainant was because of the complainant's conviction for violating a domestic abuse injunction.

33. The circumstances of the complainant's conviction substantially relate to the circumstances of the position of Security Officer, third shift, with the respondent.

### **Conclusion of Law**

1. The respondent's decision to rescind its job offer to the complainant based on the complainant's conviction record did not violate the Wisconsin Fair Employment Act because the circumstances of the conviction substantially relate to the circumstances of the job.

### Memorandum Opinion

The Wisconsin Fair Employment Act prohibits an employer from engaging in any act of employment discrimination against any individual on the basis of arrest or conviction record (Wis. Stat. §§ 111.321 and 111.322), subject to the following relevant exception:

Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual if any of the following applies to the individual:

1. Subject to sub. (4) (b) to (d), the individual has been convicted of any felony, misdemeanor, or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.

\* \* \* \*

Wis. Stat. § 111.335(3)(a).

#### Motive to rescind job offer

The commission first addresses the reason that the respondent rescinded its offer of employment to the complainant. The complainant was the subject of a domestic abuse injunction which included an order to have no contact with his ex-girlfriend, Michelle Pirelli, including no telephone contact for any reason. Subsequently, the complainant was found guilty of knowingly violating the domestic abuse injunction, when he sent a text message to Pirelli.

In his petition, the complainant challenges the appropriateness of considering the circumstances of the underlying injunction when analyzing the motive of the respondent to rescind its offer of employment, given that the respondent was not aware of those facts at the time it made that decision. The commission agrees that the circumstances underlying the injunction were not considered by the respondent in arriving at its decision, and the commission does not analyze the circumstances surrounding the underlying injunction in determining the respondent's motive.

The ALJ found that the respondent was motivated to rescind its offer of employment to the complainant based on both the existence of the injunction itself and the conviction for violating the injunction and concluded that the respondent would have rescinded its offer based on the injunction alone, even if the complainant did not have a conviction for violating the injunction. The ALJ treated the respondent's consideration of the existence of a domestic abuse injunction as a separate, permissible, basis on which it made its decision to rescind the job offer to the complainant, and therefore held that the respondent had a mixed motive for its



decision not to hire the complainant.<sup>2</sup> The ALJ, therefore, issued a cease and desist order and awarded attorney fees, but did not order reinstatement.

In arriving at that conclusion, the ALJ noted, correctly, that an injunction is not a conviction or arrest record. The commission has previously rejected the theory that the issuance of a temporary restraining order against an individual constituted an “arrest record,” because the restraining order was not issued pursuant to law enforcement authority. *Immel v. Arbor Vitae Woodruff School District*, ERD Case No. CR201501501 (LIRC June 27, 2019). In this case, however, the existence of a domestic abuse injunction is an element of the crime for which the complainant was convicted (knowing violation of a domestic abuse injunction). Therefore, to the extent that the respondent did consider the existence of a domestic abuse injunction, it was considering an element of the offense. The existence of the domestic abuse injunction is part and parcel of the conviction itself—it does not constitute a separate reason for the discharge. Therefore, the respondent’s decision to rescind its offer of employment was based solely on the complainant’s conviction record.

#### Substantial relationship test

The substantial relationship exception attempts to balance the goal of rehabilitation of offenders with the goal of protecting employers, who assume some degree of risk in hiring former offenders.

This law should be liberally construed to effect its purpose of providing jobs for those who have been convicted of crime and at the same time not forcing employers to assume risks of repeat conduct by those whose conviction records show them to have the ‘propensity’ to commit similar crimes long recognized by courts, legislatures and social experience.

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<sup>2</sup> A “mixed motive” case exists where an employer’s decision is based on both permissible and impermissible factors. In such a case, different remedies may apply. In *Hoell v. LIRC*, 186 Wis. 2d 603, 522 N.W.2d 234 (Ct. App. 1994), the court adopted the following test:

[I]f an employee is terminated solely because of an impermissible motivating factor, the employee normally should be awarded a cease and desist order, reinstatement, back pay, interest and attorney’s fees under the Wisconsin Fair Employment Act. If an employee is terminated in part because of an impermissible motivating factor and in part because of other motivating factors, but the termination would not have occurred in the absence of the impermissible motivating factor, the Commission has the discretion to award some or all of the remedies ordinarily awarded. Finally, if an employee is terminated in part because of an impermissible factor and in part because of other motivating factors, and the termination would have taken place in the absence of the impermissible motivating factor, the employee should be awarded only a cease and desist order and attorney’s fees.

*Id.* at 609-10.

**In balancing the competing interests, and structuring the [statutory] exception, the legislature has had to determine how to assess when the risk of recidivism becomes too great to ask the citizenry to bear. The test is when the circumstances, of the offense and the particular job, are substantially related.**

*County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 823, 407 N.W.2d 908 (1987) (emphasis added).

The commission has repeatedly held that a finding of a substantial relationship requires a conclusion that a specific job provides an unacceptably high risk of criminal recidivism for a particular employee:

The question is whether the circumstances of the employment provide a greater than usual opportunity for criminal behavior or a particular and significant opportunity for such criminal behavior. It is inappropriate to deny a complainant employment opportunities based upon mere speculation that he might be capable of committing a crime in the workplace, absent any reason to believe that the job provides him with a substantial opportunity to engage in criminal conduct. The mere possibility that a person could re-offend at a particular job does not create a substantial relationship.

*Robertson v. Family Dollar Stores, Inc.*, ERD Case No. CR200300021 (LIRC Oct. 14, 2005); *Nathan v. Wal-Mart*, ERD Case No. CR201400689 (LIRC Oct. 20, 2015). See, also, *Moore v. Milwaukee Bd. of School Directors*, ERD Case No. 199604335 (LIRC July 23, 1999) (commission looks at whether the job presents a particular or significant risk of recidivism for the complainant); *Herdahl v. Wal-Mart*, ERD Case No. 9500713 (LIRC Feb. 20, 1997) (relevant question is whether the job presents a “greater than usual opportunity for criminal behavior”).

The respondent has the burden of establishing that the complainant’s conviction record is substantially related to the job. *Moran v. State of Wisconsin*, ERD Case No. CR200900430 (LIRC Sept. 16, 2013), citing *Robertson v. Family Dollar Stores*, ERD Case No. CR200300021 (LIRC Oct. 14, 2005), *Chicago & Northwestern R.R. v. LIRC*, 91 Wis. 2d 462, 467, 283 N.W. 2d 603 (Ct. App. 1979).

A determination as to whether the circumstances of a criminal offense are substantially related to a particular job requires assessing whether the tendencies and inclinations to behave in a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed. It is the circumstances which foster criminal activity that are important, *e.g.*, the opportunity

for criminal behavior, the reaction to responsibility, or the character traits of the person. *County of Milwaukee*, at 824.

Historically, the circumstances of the offense have been gleaned exclusively from a review of the elements of the crime, and an inquiry into the factual details of the specific offense was not required. *County of Milwaukee*, at 823-824. Recently, however, the Wisconsin Supreme Court addressed the substantial relationship issue in *Cree, Inc. v. Labor and Industry Review Commission*, 400 Wis. 2d 827, 970 N.W.2d 837 (2022), and broadened the definition of “circumstances” to include more than the simple elements of the offense. The Court held that the factual details of the offense also must be considered:

The statute requires that these circumstances must “substantially relate” to each other. “Substantial” is defined in Black’s Law Dictionary as “important, essential, and material; of real worth and importance.” Substantial, Black’s Law Dictionary 1728 (11th ed. 2019). We take this to mean that the circumstances must materially relate to each other, not merely superficially relate. We do not take “substantially relate” to mean that the circumstances must be nearly identical to satisfy the test. Indeed, elsewhere in the law “substantially” is used and interpreted to denote a middle ground—a heightened but not extreme standard. Therefore, the plain language of the substantial relationship test requires that the employer show that the facts, events, and conditions surrounding the convicted offense materially relate to the facts, events, and conditions surrounding the job.

*Id.* at ¶ 18. The Court in *Cree* explained that the substantial relationship test requires first inquiring into the character traits revealed by the elements of the offense. *Id.* at ¶ 30. The Court next looked at the context of the offense. *Id.*

Specifically, the Court provided this guidance for determining the level of risk to the employer posed by the particular offense:

In addition to these character traits, we consider other relevant and readily ascertainable circumstances of the offense such as the *seriousness and number of offenses, how recent the conviction is, and whether there is a pattern of behavior*. We consider the seriousness of the convicted offense because the more serious the offense, the less we can expect an employer to carry the risk of recidivism. .... The possible consequences to an employer of hiring a recidivist shoplifter is a matter of petty cash and missing property. The experience may be inconvenient and frustrating but is unlikely to result in any great harm to the employer, its staff, or its customers. In contrast, the possible

consequences of an employer hiring someone who has committed strangulation, battery, and sexual assault include a threat to the very safety and bodily autonomy of employees and customers. If harm were to befall a customer or employee, an employer could face potential liability.

*Id.* at ¶ 32 (emphasis added).

*Character traits revealed by having committed the offense*

The complainant in this case was convicted of knowingly violating a domestic abuse injunction, in violation of Wis. Stat. § 813.12(8)(a). In order to be convicted of a violation of this section, a defendant must have

- been subject to a domestic abuse injunction under Wis. Stat. § 813.(3) or (4), and
- knowingly violated that injunction.

The complainant was subject to an injunction under Wis. Stat. § 813(4). In order for that injunction to have been issued, a judge was required to find “reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the petitioner and the respondent may engage in, domestic abuse of the petitioner.” Wis. Stat. § 813.12(4)(a)3. The complainant admitted to the Court that he had knowingly violated the injunction.

In his petition, the complainant points out that he filed a motion for a protective order asking the ALJ to exclude evidence of the alleged acts giving rise to the original injunction, which he contends the ALJ denied in error. However, the commission reviews this case *de novo* and has not considered specific allegations regarding the underlying injunction. Rather, the commission analyzes the substantial relationship in this case solely on the circumstances of the criminal offense at issue, a violation of a domestic abuse injunction. However, because an element of the offense of violation of a domestic abuse injunction includes the existence of an injunction, the commission considers it necessary to analyze the character traits revealed by having been the subject of a domestic abuse injunction.

The “character traits revealed” by having engaged in the offense of violating a domestic abuse injunction include, generally, a tendency to solve problems with violence (domestic abuse), specifically a “willingness to use violence when one’s power and authority is threatened” (*see, Cree*, ¶ 28), an inability to control anger (domestic abuse), a disregard for the health and safety of others (domestic abuse) (*see, McClain v. Favorite Nurses*, ERD Case No. 200302482 (LIRC April 27, 2005)), and a lack of respect for authority and refusal to follow orders or directives (knowingly violating a court issued injunction).

*Seriousness and number of offenses*

Only one conviction is at issue. However, the offense was a serious one. It involved a knowing violation of a court ordered injunction, and the injunction itself necessarily included a separate underlying act of violence or likelihood to commit violence. In addressing the seriousness of potential recidivism, the Court in *Cree* noted the seriousness of crimes involving violence:

“The possible consequences to an employer of hiring a recidivist shoplifter is a matter of petty cash and missing property. The experience may be inconvenient and frustrating but is unlikely to result in any great harm to the employer, its staff, or its customers. In contrast, the possible consequences of an employer hiring someone who has committed [crimes of violence] include a threat to the very safety and bodily autonomy of employees and customers. If harm were to befall a customer or employee, an employer could face potential liability.”

*Id.* at ¶ 32.

*Recency of the conviction and pattern of behavior*

In *Cree*, the Court described a “significant period of time” between the conviction and the employment action as reflecting a reduced risk of recidivism, whereas previous similar convictions may suggest a greater propensity to reoffend. *Id.* at ¶ 33. In this case, although there is only one conviction, there is, in fact, a “pattern of behavior.” First, there was the complainant’s behavior that warranted issuance of the domestic abuse injunction and then, in 2010, there was a violation of the injunction. Each of these instances involved conduct related to domestic violence. Although the commission recognizes that the conviction at issue occurred six years prior to when the respondent rescinded its offer of employment, the repeated behavior suggests a worrisome pattern of conduct.

*Opportunity to re-offend*

The opportunity to reoffend is the commission’s most serious concern in this case. In the role of a night security officer at a residential facility for at-risk youth, the complainant would be charged with enforcing the laws and rules of the organization. Yet the complainant’s offense arose out of his disregard of a lawful order. The job for which the complainant applied involved providing security services in a residential setting to at-risk youth. The complainant would be called upon to intervene in moments of danger and high emotion, in a residential setting. He would have to respond to incidents, sometimes physical in nature, and occasionally involving weapons, and to safely de-escalate the situation. The inherent danger posed by potential recidivism in this setting is simply too great to ask the employer to bear.

The complainant argues that recidivism is unlikely due to the fact that he did not have personal relationships with any of the respondent's employees or participants, and the crime he was convicted of requires a personal relationship. However, in *Cree*, the Court stressed the fact that the domestic nature of an offense cannot be used as a mitigating factor in the analysis. The Court opined that individuals who behave violently in a domestic setting may well behave violently in the workplace. Therefore, the complainant's lack of a personal relationship with colleagues or students does not prevent a conclusion that the crime of which he was convicted was substantially related to the job.

The circumstances surrounding the offense, including the existence of the underlying injunction, suggest a willingness on the complainant's part to use violence, particularly when his power is challenged. Given the enhanced opportunity to reoffend, and the high risk of harm from any potential criminal recidivism, the commission finds that the offense in this case is substantially related to the job, and that the respondent's decision to rescind its job offer to the complainant did not violate the Wisconsin Fair Employment Act. The complainant's complaint is therefore dismissed.

NOTE: The commission did not request credibility impressions from the ALJ who held the hearing in this case because the commission's decision is based on a differing legal analysis, and not based on weighing the credibility of the witnesses.

cc: Atty. Thomas Lenz  
Atty. Erin Cook

**Editor's Note: This case has been appealed to circuit court.**