

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PAULA C. DECKER, Appellant,

v.

Secretary, DEPARTMENT OF CORRECTIONS, Respondent.

Case 125
No. 70160
PA(adv)-193

Decision No. 33593

Appearances:

Michael P. Hagan, Racine Correctional Institution, 2019 Washington Street, Sturtevant, Wisconsin 53711, appearing on behalf of Paula C. Decker.

Deborah Rychlowski, Assistant Legal Counsel, Department of Corrections, P.O. Box 7925, Madison, Wisconsin 53707-7925, appearing on behalf of the Department of Corrections.

ORDER DISMISSING APPEAL FOR LACK OF SUBJECT MATTER JURISDICTION

This matter is before the Wisconsin Employment Relations Commission on an issue of subject matter jurisdiction raised by the Respondent. Appellant's representative provided written comments, the last of which was received on October 27, 2011.

Solely for the purpose of ruling on the motion in a manner that conforms with the requirements of Sec. 227.47(1), Stats., the Commission has rendered the following Findings of Fact that are based upon what appear to be uncontested matters as well as a liberal construction of the information set forth in the Appellant's submissions.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. As of August 20, 2010, Appellant was a permanent full-time employee of the Department of Corrections, serving as the Juvenile Education Director at the DOC's Ethan Allen School facility in Wales, Wisconsin.

2. On August 20, 2010, Ethan Allen School Superintendent Paul Ninneman issued Appellant a letter of reprimand in lieu of a one-day suspension for a purported violation of a department work rule.

3. On September 7, 2010, Appellant filed an appeal with the Wisconsin Employment Relations Commission pursuant to Secs. 230.44(1)(c) and 230.45(1)(a), Stats., contending the discipline was without just cause.

No. 33593

4. On February 25, 2011, hearing in the matter was set for April 12, 2011. The hearing was subsequently postponed pending efforts to resolve the matter voluntarily.

5. On October 4, 2011, the Respondent withdrew the letter of August 20, 2010, issuing in its stead a letter of reprimand for the same purported violation. The letter notified the Appellant she could “file a grievance in accordance with the non-contractual grievance procedure outlined in Section ER 46, Wisconsin Administrative Code, and Chapter 402, Section 2, of the DOC Supervisors Manual.”

6. On October 13, 2011, the Respondent notified the Commission that it had reduced Appellant’s discipline to a letter of reprimand, and requested that the appeal be dismissed for lack of jurisdiction.

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

CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this matter as an appeal filed under Secs. 230.44(1)(c) and 230.45(1)(a), Stats.

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

ORDER¹

This matter is dismissed for lack of subject matter jurisdiction as an appeal filed under Secs. 230.44(1)(c) and 230.45(1)(a), Stats.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of December, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Judith Neumann /s/

Judith Neumann, Commissioner

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

¹ Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference.

Department of Corrections (Decker)

MEMORANDUM ACCOMPANYING ORDER DISMISSING APPEAL

Appellant filed this appeal pursuant to Sec. 230.44(1)(c), Stats., which provides:

(C) *Demotion, layoff, suspension or discharge.* If an employee has permanent status in class . . . the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

These are the distinct acts which are directly appealable to the Commission under this subsection. In *ANAND V. DHSS*, CASE NO. 81-438-PC (PERS. COMM., 1/8/1982), the Personnel Commission concluded that a written reprimand is not included in that list:

The absence of 'reprimand' from the list of disciplinary actions expressly subject to the Commission's jurisdiction indicates that the legislature intended appeals from such transactions to be excluded as to that provision. The expression of one thing is the exclusion of another.

(Citations omitted.)

The Commission does have jurisdiction over a letter of reprimand which has the practical effect of a suspension, *RODGERS V. DEPARTMENT OF CORRECTIONS*, CASE NO. 98-0094-PC (PERS. COMM., 1/27/1999), including over a reprimand in lieu of a suspension. Thus, we did have jurisdiction over Appellant's original discipline, a written reprimand in lieu of a one-day suspension. But we do not have jurisdiction over a letter of reprimand which is neither in lieu of a suspension, nor with the practical effect of a suspension, as has been the case here since the letter of August 20, 2010 was withdrawn and replaced with the letter of October 4, 2011. In his written response to the Respondent's motion, Appellant's representative acknowledges the jurisdictional problem confronting the Appellant, but does not join in the motion to dismiss.

We note that the Appellant has exercised her right to file a non-contractual grievance under Ch. ER 46, Wisconsin Administrative Code and Chapter 402, Section 2, of the DOC Supervisors Manual. This order does not affect that proceeding in any way.

Dated at Madison, Wisconsin, this 1st day of December, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Judith Neumann /s/

Judith Neumann, Commissioner

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner