

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JESSICA WAMPOLE, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 202
No. 72040
PA(adv)-303

DECISION NO. 34094-A

Appearances:

Troy Bauch, Field Representative, Wisconsin State Employees Union, 1190 Ruffedt Road, Cornell, Wisconsin 54732, appearing on behalf of Complainant Jessica Wampole.

Paegge Heckel, Labor Relations Specialist – Chief, Bureau of Labor Relations, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of Respondent Department of Corrections.

ORDER GRANTING MOTION TO DISMISS

On March 27, 2013, Jessica Wampole filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that she had been demoted by the Wisconsin Department of Corrections without just cause. Respondent Department of Corrections filed a motion to dismiss the appeal asserting that Wampole was serving a probationary period at the time of her demotion and that the Commission lacks jurisdiction over her appeal. The parties thereafter filed written argument and the motion is now ripe for Commission action.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The appeal is dismissed.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

Section 230.44(1)(c), Stats., provides:

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.

However, the Commission lacks subject matter jurisdiction over appeals of demotions that occur while the employee is serving a probationary period because the employee lacks the “permanent status in class” that is required under § 230.44(1)(c), Stats. *Board of Regents v. Wisconsin Personnel Commission*, 103 Wis.2d 545 (Ct. App. 1981).

Wampole became a Social Worker-Corrections (B) on August 12, 2012, subject to completion of a six-month probationary period. She had previously held that position from March 27, 2011 to June 4, 2011. In September 2012, the Department of Corrections advised her that her 2011 service would count toward the 18 months required before she could move to the Social Worker-Corrections (C) level. At the same time, DOC again confirmed that Wampole must complete the six-month probationary period. Wampole was demoted on November 30, 2012.

Wampole contends that her 2011 service should be credited as part of the six-month probationary period and that she had obtained permanent status in class prior to her demotion. However, the Department of Corrections persuasively argues that time credited for the purpose of obtaining a higher job classification is distinct from time credited for the purpose of completing a probationary period. Thus, it is apparent that Wampole did not have permanent status at the time of her demotion and therefore we lack jurisdiction over the appeal.

Dated at Madison, Wisconsin, this 11th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner