

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES OHM, Appellant,

vs.

DEPARTMENT OF JUSTICE, Respondent.

Case 8
No. 72128
PA(grp)-27

DECISION NO. 34198-B

Appearances:

James Ohm, P.O. Box 64, Solon Springs, Wisconsin, 54873, appearing on behalf of himself.

Douglas Thayer, Labor Relations Chief, Wisconsin Office of State Employment Relations, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, 53707-7855, appearing on behalf of Respondent Department of Justice.

ORDER GRANTING MOTION TO DISMISS

On June 4, 2013, James Ohm filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.44(1)(c), Stats., asserting that the Department of Justice abused its discretion in applying written rules, policies or procedures without just cause. Respondent Department of Justice filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction over Ohm's appeals. Ohm being given the opportunity to but having filed no written argument, 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 29th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

On June 4, 2013, James Ohm sought to appeal the dismissal of grievances he filed with the Office of State Employment Relations (OSER) concerning his then former employer, the Wisconsin Department of Justice. Ohm's complaints concerned his employer's failure to follow administrative regulations related to his performance evaluation and concerns regarding language used by his supervisors.

The Department of Justice moves to dismiss the appeals asserting that we lack subject matter jurisdiction over the underlying grievances for a variety of reasons. Section 230.44(1), Stats., describes our limited statutory scope of review. Other than our primary role of reviewing demotions, suspensions and discharges, we have minimal additional jurisdiction. None of the enumerated bases includes the type of allegations Ohm has made.

We also have the statutory responsibility of serving as the final arbiter in the State employee grievance procedure as set forth in § 230.45(1)(c), Stats. As the Department of Justice points out, the State grievance procedure does not permit appeal beyond the second step of the procedure for "grievances alleging the Employer abused its discretion in applying written agency rules." Sec. 430.070, Wisconsin Human Resources Handbook.

This is clearly a case which we lack any arguable jurisdiction and, accordingly, we grant the motion and dismiss this matter.

Dated at Madison, Wisconsin, this 29th day of April 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner