

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KEN FLESHNER, ET AL., Appellants,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0047

Case Type: PA

DECISION NO. 35751

Appearances:

Jim Parrett, Field Representative, AFSCME Council 24, N14436 - 17th Avenue, Necedah, Wisconsin, appearing on behalf of Appellants Ken Fleshner, et al.

Karl R. Hanson, Office of State Employment Relations, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of Respondent Department of Corrections.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On December 29, 2014, Kenneth Fleshner on behalf of himself and other coworkers at the Department of Corrections filed a grievance asserting that a staffing rotation plan violated ch. 230, Stats., and various other administrative code provisions. The grievance was dismissed on January 30, 2015 as raising a non-grievable issue. Subsequently, the matter was appealed to the Wisconsin Employment Relations Commission. On May 27, 2015, the DOC moved to dismiss based upon a lack of subject matter jurisdiction. Briefs were submitted by both sides and reviewed by the Commission.

DECISION

This is a class grievance on behalf of a number of employees working as correctional officers at the Prairie du Chien Correctional Institution. On November 17, 2014, the Administrator of the Division of Adult Institutions issued a directive that all officers and sergeants working in Restrictive Status Housing (segregation unit) will be rotated in and out of those positions every fourteen weeks. The rationale underlying the plan is to minimize stress

that purportedly arises from working in the segregation unit. Twenty-two officers and sergeants at the Prairie du Chien facility take issue with the rotation plan and characterize it as a demotion (at least for them). DOC counters that it is not a demotion, as no loss of pay or overtime opportunity occurs, and that it is in reality a work reassignment designation over which the Commission has no jurisdiction.

Our jurisdiction over appeals is limited to those matters set forth in §§ 230.44(1)(a) – (i), Stats. We do have jurisdiction over demotions and reductions in base pay “if the appeal alleges that the decision was not based on just cause.” Here the class grievants allege that the rotation plan is unwise, dangerous and that it fails to accomplish the intended purpose. Furthermore, we are told that the incumbent employees chose their positions (whether in or out of segregation units) and would prefer to remain where they are.

Obviously, the decision by the DOC is not a demotion intended to punish a particular employee. It is of course a work assignment matter. We do not sit as a super-personnel department deciding how the DOC will operate its various penal institutions. The employees have suffered no loss in pay, overtime opportunity, status or other indicia of a demotion. We understand that they have an unfavorable view of the DOC’s system-wide reassignment plan, however, neither they nor the Commission has the responsibility for operations of the DOC prison system. Accordingly, we enter the following:

ORDER

The class grievance in this matter is dismissed.

Signed at the City of Madison, Wisconsin, this 1st day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner