

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

DAVID E. GALLOPS, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0087

Case Type: PA

DECISION NO. 36104

---

**Appearances:**

David E. Gallops, 758 Prairie Place, Green Lake, Wisconsin, appearing on behalf of himself.

Karalyn Downing, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin Department of Corrections.

David E. Gallops, an employee of the State of Wisconsin Department of Corrections, was placed on leave without pay on April 27, 2015, from his position as an electrician at the Fox Lake Correctional Institution. He filed a timely grievance which was denied. The matter was appealed to the Wisconsin Employment Relations Commission and the Department of Corrections has filed a motion to dismiss for lack of subject matter jurisdiction. Both sides submitted written argument and the matter is ripe for resolution.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

On a motion to dismiss we review all facts in light most favorable to the non-moving party. Our recitation is drawn from both side's submissions. Apparently, at some point in time after April 1, 2014, the Building and Construction Trades Council of South Central Wisconsin (a labor organization) advised the State of Wisconsin that a master electrician license was required for all state electrician positions and that "only licensed electricians may install electrical wiring and equipment." The Council's view of a recent legislative change was apparently accepted by the DOC.

Appellant David E. Gallops was employed as an electrician by the DOC and had held that position since 2002. Gallops did not hold a master electrician certificate during his thirteen years of performing electrical work at the Fox Lake Correctional Institution. The warden placed him on unpaid administrative leave on April 24, 2015. The warden states that the position description requires that to perform electrical work other than that specified in § 101.852, Stats., one needs to be licensed as a master electrician. Gallops was on leave status from April 27 until June 11, 2015, when he obtained the requisite license. Gallops appealed the decision to place him on administrative leave and the DOC moves to dismiss asserting that we lack subject matter jurisdiction.

The DOC's first argument is that it has the management right to place employees on administrative leave for any reason they choose and that such action is not subject to challenge. That argument is specious and runs contrary to our decision in *Shallock v. DOC*, Dec. No. 35432 (WERC, 10/2014), in which we held that the label attached to the leave is not dispositive of our jurisdiction. In fact, here, the leave could just as easily be viewed as a suspension. Gallops was involuntarily removed from his position and placed on unpaid status for several months.

DOC also argues that the departure from work was voluntary because Gallops had the option to take action to obtain the requisite licensure. Gallops argues that there was confusion over whether the law applied to him and that DOC failed to provide him with notice of the change. The question whether Gallops' failure to act was voluntary is left to the development of a full record before the examiner.

Additionally, we read § 101.862(4)(b), Stats., as providing that Gallops can maintain and repair electrical wiring without the license.

In our view, the DOC must establish just cause for the decision to place Gallops on an unpaid administrative leave. "Just cause" for such action requires different proof than the burden applicable to disciplinary action. *See Walsh v. DOC*, Dec. No. 35041 (WERC, 06/2014). Generally, the proof would involve evidence that the DOC had no reasonable alternative to placing the employee on unpaid administrative leave. Evidence that a regional labor organization opined that all state employed electricians need the certificate is insufficient to meet the burden.

Gallops argues that the DOC had a duty to provide him notice of the change and with notice he could have obtained the licensure without loss of work time. He also asserts that he was not doing installations of wiring, only maintenance and repairs, and was therefore exempt. Those issues will be resolved at the hearing in this matter. We are not at this stage of the proceedings resolving those issues. The situation is however somewhat unique and, accordingly, we have been more expansive than usual in our discussion.

**ORDER**

The motion to dismiss is denied.

Signed at the City of Madison, Wisconsin, this 2nd day of November 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

James R. Scott, Chairman

---

Rodney G. Pasch, Commissioner

---

James J. Daley, Commissioner