

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MELISSA WESTENDORF, Appellant,

v.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0240

Case Type: PA

DECISION NO. 37787

Appearances:

Sean Daley, Field Representative, AFSCME Council 32, N600 Rusk Road, Watertown, Wisconsin, appearing on behalf of Melissa Westendorf.

Cara J. Larson, Attorney, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

DECISION AND ORDER DENYING MOTION TO DISMISS

On March 23, 2018, Melissa Westendorf filed an appeal with the Wisconsin Employment Relations Commission pursuant to § 230.45(1)(c), Stats., asserting that the State of Wisconsin Department of Corrections abused its discretion by the manner in which it applied the terms of a rule/policy to Westendorf.

On October 9, 2018, the State filed a motion to dismiss arguing that the content of written agency rules cannot be grieved and thus that the Commission does not have authority to rule on the merits of the appeal in its role as the final step arbiter in the State employee grievance procedure. On October 25, 2018, Westendorf filed a response to the motion. On November 5, 2018, the State was given an opportunity to comment on the applicability of a prior Personnel Commission decision, and the matter became ripe for Commission action on November 13, 2018.

In *Larson v. Department of Revenue*, Case. No. 94-0114-PC (12/94), the Personnel Commission denied a motion to dismiss based on its conclusion that it had jurisdiction under § 230.45(1)(c), Stats., to determine if the State abused its discretion when applying a policy. This Commission finds that holding to be applicable and persuasive here.

NOW, THEREFORE, it is

ORDERED

The motion to dismiss is denied.

Dated at Madison, Wisconsin, this 21st day of November, 2018.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman