

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JONAS TROCHINSKI, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS and
STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION,
DIVISION OF PERSONNEL MANAGEMENT, DIRECTOR OF BUREAU OF MERIT
RECRUITMENT AND SELECTION, Respondents.

Case ID: 1.0336

Case Type: PA

DECISION NO. 38424-A

Appearances:

Paul J. Mertz, Representative, P.O. Box 181, Redgranite, Wisconsin, appearing on behalf of Jonas Trochinski.

Anfin Jaw, Attorney, Department of Administration, Division of Legal Services, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections and the Director, Bureau of Merit Recruitment and Selection, Division of Personnel Management, Department of Administration.

DECISION AND ORDER

On January 17, 2020, Jonas Trochinski filed an appeal with the Wisconsin Employment Relations Commission challenging his involuntary transfer pursuant to Wis. Stats. §§ 230.44(1)(a) and (1)(c). On January 30, 2020, the State of Wisconsin Department of Corrections (DOC) filed a motion to dismiss the appeal for lack of subject matter jurisdiction. Trochinski filed a response on February 5, 2020.

On March 6, 2020, Trochinski amended his appeal to include the Director of the Bureau of Merit Recruitment and Selection, Division of Personnel Management, Department of Administration as a Respondent and on March 9, 2020 filed an Offer of Proof as to the impact of the transfer. The parties thereafter filed supplemental arguments and the matter became ripe for Commission consideration on March 20, 2020.

On April 1, 2020, the Commission issued an Order dismissing the alleged violation of Wis. Stat. § 230.44(1)(c) but allowing the alleged violation of Wis. Stat. § 230.44(1)(a) to proceed for the purposes of determining if proper procedures were followed as to the transfer.

The parties thereafter waived their right to a hearing and submitted various exhibits and arguments, the last of which was received by the Commission on December 22, 2020.

On December 30, 2020, Hearing Examiner Peter Davis issued a Proposed Decision dismissing the appeal. On January 6, 2021, Appellant filed objections to the Proposed Decision and the matter became ripe for Commission consideration on January 12, 2021.

Being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. On December 17, 2019, a DOC appointing authority asked that the Director of the Bureau of Merit Recruitment and Selection, Division of Personnel Management, Department of Administration (DPM) approve the involuntary transfer of Jonas Trochinski as part of an effort to resolve ongoing supervisory issues at Redgranite Correctional Institution.

2. On or about January 3, 2020, DPM authorized the involuntary transfer of Jonas Trochinski.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSIONS OF LAW

1. The involuntary transfer of Jonas Trochinski complied with the requirements of Wis. Admin. Code § ER-MRS 15.02.

2. The involuntary transfer of Jonas Trochinski did not violate Wis. Stat. § 230.44(1)(a).

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

ORDER

The appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 11th day of February, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER

Pursuant to the Commission's April 1, 2020 decision, the issue needing disposition is limited to whether DOC followed proper procedure when involuntarily transferring Trochinski and thus did or did not violate Wis. Stat. § 230.44(1)(a).

Wisconsin Admin. Code § ER-MRS 15.02 provides the authority for such transfers to occur and provides in pertinent part:

The director may authorize an involuntary transfer, upon written request by an appointing authority, due to performance, discipline, or operational needs.

The evidence reflects that a written request from an appointing authority was made (albeit by email) and subsequently authorized by DPM. Thus, the proper procedure was followed.

Trochinski continues to assert that the basis for the transfer was disciplinary rather than for operational needs. The evidence suggests that it was a mix of the two. However, as held in the Commission's April 1, 2020 decision, even assuming that the request and authorization were strictly disciplinary, the Commission will only stretch to review an involuntary transfer as a "demotion" if it is both disciplinary and "onerous". As held in the April 1 decision, the transfer did not meet the "onerous" standard.

Given the foregoing, the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 11th day of February, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman