

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JACOB MASKE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0521

Case Type: PA

DECISION NO. 39432

Appearances:

Jacob Maske, W7409 Mink Springs Road, Phillips, Wisconsin, appearing on his own behalf.

William Ramsey, Deputy Chief Legal Counsel, 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 GRANTING MOTION TO DISMISS

On April 25, 2022, Jacob Maske filed an appeal with the Wisconsin Employment Relations Commission disputing an oral job instruction or directive he received from the State of Wisconsin Department of Corrections (DOC). The Commission understood his appeal as having been filed under Wis. Stat. § 230.45(1)(c) which gives the Commission jurisdiction to “[s]erve as final step arbiter in the state employee grievance procedure established under s. 230.04(14).” Thus, Maske was required to and did pay the applicable \$50 filing fee. On May 25, 2022, DOC filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Maske filed a reply on May 27, 2022.

Having reviewed the matter, the Commission concludes that it does not have jurisdiction over the appeal.

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is granted and the appeal is dismissed.

Issued at the City of Madison, Wisconsin, this 23rd day of June, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Maske is a Correctional Sergeant at the DOC's Flambeau Correctional Center (FCC). He received an oral job instruction prohibiting him from working overtime at other institutions for a period of 90 days for failing to cooperate during FCC's fingerprinting update required by the Prison Rape Elimination Act (PREA). Working overtime at other institutions is at the wardens' approval and discretion. Maske's appeal contends that he should not have received the job instruction or "punishment".

Wisconsin Stat. § 230.45(1)(c) does give the Commission the power to "[s]erve as final step arbiter in the state employee grievance procedure established under s. 230.04(14)." However, the grievance procedure referenced in Wis. Stat. § 230.04(14) and found in Wis. Admin. Code ch. ER 46 specifically excludes any "matter related to wages, hours of work, and fringe benefits" from matters that can be pursued before the Commission.¹ The Commission concludes that the prohibition from working overtime is a "matter related to wages" and thus is excluded from the scope of matters the Commission can consider as a "final step arbiter."

Given all of the foregoing, the Commission concludes that it does not have jurisdiction to review the merits of the claims Maske has raised in his appeal. Therefore, the motion to dismiss has been granted and the appeal dismissed.

Issued at the City of Madison, Wisconsin, this 23rd day of June 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ Wisconsin Admin. Code § ER 46.03 Scope.

(1) Under this chapter, an employee may grieve issues which affect his or her conditions of employment, including any matter on which the employee alleges that coercion or retaliation has been practiced against the employee except as provided in sub. (2).

(2) An employee may not use this chapter to grieve:

...
(k) Any matter related to wages, hours of work, and fringe benefits.