

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

STACY L. RIEGERT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0118

Case Type: PA

DECISION NO. 39478

Appearances:

Stacy L. Riegert, 802 Lochmoore Drive, Waunakee, Wisconsin, appearing on her own behalf.

David G. Makovec, Attorney, Wisconsin 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 Health Services.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On July 14, 2022, Stacy L. Riegert filed an appeal with the Wisconsin Employment Relations Commission asserting that a temporary add-on pay program for certain nurses at Mendota Mental Health Institute (MMHI) is discriminatory because other nurses performing work that is substantially the same are not eligible. On July 28, 2022, DHS filed a motion to dismiss the appeal. Riegert filed a reply to the motion on August 8, 2022.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

ORDER

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

Issued at the City of Madison, Wisconsin, this 25th day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS**

Wisconsin Stat. § 230.45(1)(c) gives the Commission the power to “[s]erve as final step arbiter in the state employee grievance procedure established under s. 230.04(14).”

Wisconsin Stat. § 230.04(14) states that “[e]xcept as provided in s. 230.445, the administrator shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment.”

The grievance procedure referenced in Wis. Stat. § 230.04(14) is found in Wis. Admin. Code Ch. ER 46, and provides in relevant part:

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:

(a) A personnel action or decision of the director or the administrator that is directly appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(b) An action delegated by the director or by the administrator to an appointing authority that is directly appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(c) A demotion, suspension without pay, discharge, removal, layoff, or reduction in base pay that is grievable under s. 230.445, Stats.;

(d) A personnel action after certification which is related to the hiring process that is appealable to the Wisconsin Employment Relations Commission under s. 230.44, Stats.;

(e) Denial of hazardous employment benefits under s. 230.36 (4), Stats.;

(f) The reassignment of a career executive employee under s. ER-MRS 30.07 (1);

(g) The failure of a supervisor to process a reclassification request;

(h) An oral reprimand;

(hg) A written instruction related to job performance or work conduct;

(hr) The evaluation methodology used by an employer to determine a discretionary pay award or the amount of the award;

(i) The content of written agency rules and policies;

(j) A condition of employment which is a right of the employer as defined in s. ER 46.04; or

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

In her reply to DHS's motion to dismiss, Stacy Riegert argues that Mendota Mental Health nurses classified as "NC3," are doing the same work as nurses classified as "NC2." Riegert says NC3 nurses complete NC2 work on every shift, in addition to their NC3 tasks. Therefore, she argues, NC3 nurses should also be eligible for the temporary add-on pay program for NC2 nurses.

DHS argues that Riegert is not allowed to use the grievance procedure to dispute DHS's temporary add-on pay program. Wis. Admin. Code § ER 46.03 (2)(k) states that an employee "may not use this chapter to grieve . . . any matter related to wages, hours of work, and fringe benefits." DHS argues that the temporary add-on pay program is a wage issue, and therefore Riegert's dispute falls outside the scope of the grievance procedure. Therefore, DHS argues, the Commission lacks jurisdiction to review the matter as the Wis. Stat. § 230.45(1)(c) final step arbiter under Wis. Admin. Code § ER 46.07(1).

The Commission is satisfied that the temporary add-on pay program is a wage issue which the Commission does not have jurisdiction to review. Therefore, the motion to dismiss has been granted and the appeal has been dismissed.

Issued at the City of Madison, Wisconsin, this 25th day of August, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman