

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT CHAUSE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0553

Case Type: PA

DECISION NO. 39759

Appearances:

Robert Chause, 220 Liberty Street, Fall Creek, Wisconsin, appearing on his own behalf.

Nicole M. Porter, 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 GRANTING MOTION TO DISMISS

On September 19, 2022, Robert Chause filed an appeal with the Wisconsin Employment Relations Commission disputing a delayed effective date of his internal transfer from Stanley Correctional Institution (SCI) to Chippewa Valley Correctional Treatment Facility (CVCTF) by the State of Wisconsin Department of Corrections (DOC), the probationary period related to the transfer, the assignment of overtime prior to the transfer, and leave selection following the transfer. On October 19, 2022, DOC filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Chause filed a reply on October 20, 2022. DOC submitted a response to Chause's reply on October 20, 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 10th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Chause is a Correctional Sergeant at Stanley Correctional Institution (SCI). Chause requested and was subsequently offered an internal transfer to Chippewa Valley Correctional Treatment Facility (CVCTF) to be effective November 5, 2022. On August 11, 2022, Chause was notified by DOC that the effective date of his transfer from SCI to CVCTF was modified from November 5, 2022, to on or about February 5, 2023. On October 6, 2022, Chause was further notified that transfers are to be done at the beginning of a pay period, and therefore his modified effective date of transfer would be February 12, 2023. No evidence was presented that Chause's classification or pay rate would change. Chause's offer of transfer to CVCTF remains in effect with an appointment begin date of February 12, 2023. Chause's appeal letter to the Commission lists four complaints: (1) the effective date of his transfer appointment, (2) the probationary period related to the transfer, (3) the assignment of overtime prior to the transfer, and (4) leave selection following the transfer. The appeal does not specify what statute might give the Commission jurisdiction over the matters.

Wis. 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, and conditions of employment which are management rights of the employer as defined in § ER 46.04, from matters that can be pursued before the Commission.¹ Fringe benefits include such things as health insurance, retirement, types of paid leave, and leave selection. Management rights include utilizing personnel to carry out the goals of the agency, determining the size of the workforce, managing and directing employees, and transferring or assigning employees specific duties.

¹ Wis. 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:

...

- (j) A condition of employment which is a right of the employer as defined in s. ER 46.04;
- (k) Any matter related to wages, hours of work, and fringe benefits.

Wis. Admin. Code § ER 46.04 Management rights.

(2) For the purpose of this chapter, the management rights of the employer include, but are not limited to, the following:

- (a) Utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency.
- (b) Determining the size and composition of the work force.
- (c) Managing and directing the employees of the agency.
- (d) Hiring, promoting, transferring, assigning or retaining employees.

The Commission has concluded that all of Chause's claims are matters that cannot be grieved. Therefore, the Commission is satisfied that it does not have jurisdiction to review the merits of the claims Chause has raised in his appeal. Thus, the motion to dismiss has been granted and the appeal dismissed.

Issued at the City of Madison, Wisconsin, this 10th day of November, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman