

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JAMES KLOEHN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION, Respondent.

Case ID: 315.0023

Case Type: PA

DECISION NO. 40362

Appearances:

James Kloehn, 3940 Oregon Street #2, Oshkosh, Wisconsin, appearing on his own behalf.

Peter C. Flood, Wisconsin Department of Administration, 101 E. Wilson Street, 4th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Administration.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On December 6, 2023, James Kloehn filed an appeal with the Wisconsin Employment Relations Commission disputing his new base pay and compensation following the salary adjustments as part of the State's 2023-2025 Compensation Plan. On February 15, 2024, DHS/DOA filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. On March 6, 2024, Kloehn filed a reply.

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 16th day of April 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

James Kloehn is a Psychiatric Care Supervisor (PCS) at the Wisconsin Resource Center. Effective October 22, 2023, after receiving the General Wage Adjustment (GWA) for all eligible state employees, Kloehn received a market adjustment increase of \$4.00/hour (\$36.95/hour to \$40.95/hour), in accordance with Section L, 2.09 of the 2023-2025 State Compensation Plan. Additionally, on that same date, Kloehn received a parity adjustment increase of \$5.00/hour (\$40.95/hour to \$45.95/hour), in accordance with Section L, 2.01 of the 2023-2025 State Compensation Plan. Also effective October 22, 2023, Kloehn's classification pay range was reallocated from Psychiatric Care Supervisor (Pay Range 81-04) to Psychiatric Care Supervisor (Pay Range 81-33), in accordance with Wis. Admin. Code § ER 3.01(2)(d).

In his appeal, Kloehn is concerned about the pay compression between his position and the position he directly supervises, Psychiatric Care Technician-Advanced (PCT-A). In his 21½ years of state service, Kloehn has witnessed a significant reduction in the pay gap between a PCS and a PCT-A. The implementation of the 2023-2025 State Compensation Plan has exacerbated the pay compression issue. Accordingly, he requests a review of his base pay. 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.¹

Wis. Stat. § 230.44 also gives the Commission the authority to review actions of the Administrator of the Division of Personnel Management, however the list of appealable actions under § 230.44, Wis. Stats., does not include the assignment of classifications to pay ranges, the pay of an incumbent following the reallocation of a position into a different pay range, or market and parity adjustments implemented as part of the State's Compensation Plan.

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

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:

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

Issued at the City of Madison, Wisconsin, this 16th day of April 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman