

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**CRAYTON HAUSE, Appellant,**

vs.

**Secretary, WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.**

Case 158  
No. 71736  
PA(adv)-238

**Decision No. 33939-A**

Case 159  
No. 71737  
PA(adv)-239

**Decision No. 33940-A**

Case 160  
No. 71738  
PA(adv)-240

**Decision No. 33941-A**

Case 163  
No. 71781  
PA(adv)-251

**Decision No. 33947-A**

Case 203  
No. 72048  
PA(adv)-304

**Decision No. 34118**

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**ORDER GRANTING MOTIONS TO DISMISS**

These matters are before the Wisconsin Employment Relations Commission (the Commission) on the Department of Corrections' motion to dismiss for lack of subject matter jurisdiction. On April 25, 2013, it first became clear that these matters were ready for decision when the parties declined to submit additional materials.

Dec. No. 33939-A  
Dec. No. 33940-A  
Dec. No. 33941-A  
Dec. No. 33947-A  
Dec. No. 34118

Solely for the purpose of ruling on the motions and as reflected in the Findings of Fact, the Commission has liberally construed any information set forth in the Appellant's submissions. The format of the Commission's decision is prescribed, in part, by Sec. 227.47(1), Stats.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### FINDINGS OF FACT

1. Appellant Crayton Hause is employed by the Department of Corrections (DOC).
2. On March 13 and 17, 2012, DOC asked Hause to sign a form acknowledging that he had "the responsibility to read, understand and abide by" DOC procedures, including two Executive Directives and ten policies that were listed (but otherwise not set forth) on the form.
3. Hause declined to sign the form on those dates.

### No. 71736

4. Approximately 6 minutes before the start of Hause's 10:00 p.m. shift on April 10, 2012, DOC directed Hause to meet with his supervisor at the beginning of his shift to sign the acknowledgement form.
5. Hause reported to his supervisor's office at 10:00 p.m. and asked that: a) he be placed "on the clock" immediately; b) he be paid for the 6 minute period before the start of his shift; and c) he be provided union representation.
6. DOC refused requests b) and c), and on April 22, 2012 Hause grieved these two refusals and sought the following relief:

[T]hat I . . . be put into pay status from the time that I was given the directive . . . and that any and all potential disciplinary action be dismissed. Management will honor employee's request for union representation when requested by the employee.

**No. 71737**

7. DOC directed Hause to appear for an “investigatory meeting” on April 12, 2012.

8. Hause appeared at the meeting with a representative.

9. On April 22, 2012, Hause filed a grievance relating to the April 12 meeting, contending it was not “fair and objective” and was inconsistent with due process. In his grievance, he sought the following:

[T]hat any potential discipline in the matter be dismissed. Management will conduct investigatory interviews in a professional, fair, and objective manner.

**No. 71738**

10. DOC directed Hause to appear for a pre-disciplinary hearing on April 18, 2012.

11. On or before April 18, Hause requested that the hearing be rescheduled to April 20 to accommodate his representative’s schedule.

12. DOC denied the request to reschedule.

13. Hause grieved DOC’s action and sought the following relief:

[T]o be made whole by rescinding this letter of reprimand, and management will abide by the longstanding NLRB v. Weingarten decision when union representation is requested by an employee.

**No. 72048**

14. DOC did not conduct 1<sup>st</sup> step hearings on Hause’s grievances.

15. On May 23, 2012, DOC returned its 1<sup>st</sup> step response for one of the grievances, saying it was not grievable and that policies did not require a 1<sup>st</sup> step hearing on such matters.

16. Hause asserts that DOC's response was inadequate and seeks the following relief:

The relief sought in this case is for the employer to provide employees a clear explanation of why certain issues are not grievable. If a grievance is denied because management determines it "non-grievable", that the employer should at the very least cite which part of the policy they are referring to.

**No. 71781**

17. DOC issued Hause a written reprimand on May 27, 2012, alleging he had been insubordinate by refusing to sign the acknowledgement form.

18. Hause filed a grievance relating to the written reprimand. He seeks the following relief:

The relief sought in this case is for the employer to remove the letter of reprimand from the grievant['s] file and in the future educate employees on policies and policy changes properly before forcing them to sign something that is unclear to all.

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

**CONCLUSION OF LAW**

The Appellant has not sustained his burden of establishing that the Commission has subject matter jurisdiction over his appeals.

Based on the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

**ORDER**<sup>1</sup>

These matters are dismissed for lack of subject matter jurisdiction.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of May, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

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<sup>1</sup> Upon the issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference.

Hause v. Department of Corrections

**MEMORANDUM ACCOMPANYING  
ORDER GRANTING MOTIONS TO DISMISS**

These matters relate to a written reprimand (No. 71781) and events leading up to that reprimand (Nos. 71736, 37, 38, 72048). Hause seeks to invoke the Commission's statutory authority under Sec. 230.44(1)(c), Stats., rather than any other source of Commission jurisdiction. Respondent seeks dismissal of all five cases for lack of subject matter jurisdiction.

"[T]he subject matter jurisdiction of administrative agencies – that is, their authority to hear certain subject matters in general – is conferred and specified by statute." Stern v. Wisconsin Employment Relations Com'n, 2006 WI App 193, ¶24, 296 Wis. 2d 306, 324-325, 722 N.W.2d 594, 603. Section 230.44(1)(c), Stats., grants authority to the Commission to review certain disciplinary actions imposed on State civil service employees with permanent status in class:

If an employee has permanent status in class . . . the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission, if the appeal alleges that the decision was not based on just cause.

The Commission has consistently held that it lacks subject matter jurisdiction over a letter of reprimand "which is neither in lieu of a suspension, nor with the practical effect of a suspension." Decker v. DOC, Dec. No. 33593 (WERC, 12/2011). *See also Anand v. DHSS*, Case No. 81-438-PC (Pers. Comm., 1/8/1982) ("The absence of 'reprimand' from the list of disciplinary actions expressly subject to the Commission's jurisdiction indicates that the legislature intended appeals from such transactions to be excluded as to that provision.") As a consequence, the Commission lacks authority to review No. 71781.

Hause's remaining cases all allege what DOC characterizes as "due process" violations, including assertions that DOC failed to properly process various grievances and failed to comply with NLRB v. J. Weingarten, 420 U.S. 251, 95 S.Ct. 959 (1975). Weingarten found

an unfair labor practice under the National Labor Relations Act when an employer denied an employee's request that union representation be present at an investigatory interview which the employee reasonably believed might result in disciplinary action. However, none of the personnel actions taken by DOC that are the subject of Nos. 71736, 71737, 71738 and 72048 are a "demotion, layoff, suspension, discharge or reduction in base pay." Section 230.44(1)(c), Stats, grants the Commission authority to review certain disciplinary actions alleged to have been imposed without just cause. Paragraph (c) does not grant review of an unfair labor practice. Hause's remaining appeals must also be dismissed.

Dated at Madison, Wisconsin, this 23rd day of May, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner