

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANTHONY BOVEE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0291

Case Type: PA

DECISION NO. 37970

Appearances:

Brian Schueler, 124 South 3rd Street, Princeton, Wisconsin, appearing on behalf of Anthony Bovee.

Anfin Jaw, 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 DISMISSING APPEAL

On April 23, 2019, Anthony Bovee filed an appeal with the Wisconsin Employment Relations Commission asserting he had been demoted without just cause by the State of Wisconsin Department of Corrections (DOC). On June 14, 2019, DOC advised the Commission that it had rescinded the demotion and was instead terminating Bovee's promotional probation. DOC asserted that the Commission lacks jurisdiction to review the promotional probation and requested that the appeal be dismissed. Bovee filed argument in opposition to the dismissal request and the matter became ripe for Commission action on July 1, 2019.

Having considered the matter, the Commission is satisfied that the appeal should be dismissed.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 23rd day of July, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER DISMISSING APPEAL

Bovee generally concedes that the Commission lacks jurisdiction to review DOC's decision to end his promotional probation. However, Bovee contends that where, as here, there is a contention that DOC's action was based on an alleged work rule violation, there must be an opportunity to contest that allegation before the Commission. However, the Commission's jurisdiction is limited to those matters which the Legislature has identified in §§ 230.44, 230.445, and 230.45(1), Stats. Bovee has not been able to identify any one of those statutory provisions that gives the Commission the authority to review the merits of the work rule issue in the circumstances present here.¹ Therefore, the appeal is dismissed.

Signed at the City of Madison, Wisconsin, this 23rd day of July, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ Bovee does cite *Johnson v. DOC*, Dec. No. 36747 (WERC, 2/17), where the Commission examined an alleged work rule violation. However, that analysis occurred in the context of an appeal of a disciplinary suspension of an employee who had permanent status in class. The Commission does have statutory jurisdiction to review such disciplinary issues under § 230.44(1)(c), Stats. Similarly, if DOC had not rescinded Bovee's demotion, the Commission would have had § 230.44(1)(c), Stats., jurisdiction to determine if there was just cause for DOC's action. However, terminating a promotional probation is not "discipline" within the meaning of the statutes as to which the Commission has jurisdiction.