

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DUSTIN ROHWER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0349

Case Type: PA

DECISION NO. 38421

Appearances:

Dustin Rohwer, W7120 W. South Shore Drive, Pardeeville, Wisconsin, appearing on his own behalf.

Cara J. Larson, 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 June 23, 2019, Dustin Rohwer was promoted from Correctional Officer (CO) to Sergeant at Columbia Correctional Institution (CCI) and required to serve a twelve-month probationary period. On February 4, 2020, while he was still on probation in that position, DOC terminated him from his probationary Sergeant position and reinstated him to his prior CO position. On March 16, 2020, Rohwer filed an appeal with the Wisconsin Employment Relations Commission seeking Commission review of the termination of his promotional probation. That same day, the Wisconsin Department of Corrections (DOC) filed a motion to dismiss based upon an asserted lack of jurisdiction. Rohwer filed a response to the motion on March 17, 2020, whereupon the matter became ripe for Commission consideration.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

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

Issued at the City of Madison, Wisconsin, this 1st day of April, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Prior to June 23, 2019, Rohwer was a CO at CCI. Effective June 23, 2019, he was promoted to Sergeant and required to serve a twelve-month probationary period ending June 23, 2020. On February 4, 2020, while he was still on probation, DOC terminated him from the probationary Sergeant position and reinstated him to his prior position of CO.

Rohwer asks the Commission to review DOC's decision to end his promotional probation. We lack jurisdiction to do so.

In *DH&SS v State Personnel Board*, 84 Wis. 2d 675 (1978), the Wisconsin Supreme Court held that the agency then administering Wisconsin's civil service law did not have jurisdiction to review the termination of a promotional probationary period because the affected employee did not have "permanent status in class" in the promoted position. The probation of the employee at issue in that matter was terminated due to alleged job performance issues. However, the Court nonetheless ruled that jurisdiction was lacking.

Like the employee in *DH&SS*, Rohwer claims his probation was ended for alleged performance issues. However, like the employee in *DH&SS*, Rohwer did not have "permanent status in class" in his position as Sergeant. The applicable civil service statutes at issue in *DH&SS* have not changed. Thus, consistent with the Court's ruling in *DH&SS*, we have dismissed the appeal.

Issued at the City of Madison, Wisconsin, this 1st day of April, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman