

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BRIAN L. WACKETT, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0345

Case Type: PA

DECISION NO. 38434

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**Appearances:**

George Kraemer, 1 W. Lincoln, Waupun, Wisconsin, appearing on behalf of Brian L. Wackett.

Cara J. Larson, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Corrections.

**ORDER DENYING MOTION TO DISMISS**

On February 27, 2020, Brian L. Wackett filed an appeal with the Wisconsin Employment Relations Commission requesting that the Commission exercise its jurisdiction under § 230.45(1)(c), Wis. Stats. as the “final step arbiter” in the State employee grievance procedure. The appeal asserts that the State of Wisconsin Department of Corrections (DOC) overtime policy is not being followed at the Dodge Correctional Institution.

On March 2, 2020, the DOC filed a motion to dismiss asserting that the issue raised by the appeal cannot be grieved. More specifically, DOC contends that Wackett is grieving the content of a written DOC policy—a matter that is excluded from the scope of the employee grievance procedure by Wis. Admin. Code § ER 46.03(2)(i). Wackett responded to the motion on March 11, 2020 arguing that he is grieving the failure to follow an existing policy. He cites *Larson v DOR*, 94-0114-PC (12/94) for the proposition that the Commission has jurisdiction to consider an allegation that an abuse of discretion is occurring in the application of an existing policy.

The matter became ripe for Commission consideration after Wackett paid the filing fee required by Wis. Admin. Code § ERC 92.02 on April 10, 2020.

In *Woody v DOC*, Dec. No. 37786 (WERC, 11/18), the Commission followed the *Larson* precedent and concluded that it had jurisdiction over an appeal alleging an abuse of discretion relating to an agency policy. See also, Wis. Admin. Code § ER 46.07(1). Read broadly, the Wackett appeal asserts an abuse of discretion as to the application of the DOC overtime policy.

Having considered the matter, the Commission makes and issues the following:

**ORDER**

The motion to dismiss is denied.

Issued at Madison, Wisconsin, this 15th day of May, 2020.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley