

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TANYA NIEMI, Appellant,

vs.

STATE OF WISCONSIN LEGISLATIVE AUDIT BUREAU, Respondent.

Case ID: 602.0000

Case Type: PA

DECISION NO. 38483

Appearances:

Suzanne Niemi, 202 N. Pinckney St., Apt. 303, Madison, Wisconsin appearing on behalf of Tanya Niemi.

Thomas Crone, von Briesen & Roper, S.C., 10 E. Doty St., Suite 900, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Legislative Audit Bureau.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On August 27, 2020, Tanya Niemi filed an appeal with the Wisconsin Employment Relations Commission (Commission) asserting that the State of Wisconsin Legislative Audit Bureau (LAB) discharged her without just cause. On September 1, 2020 LAB moved to dismiss the appeal on the grounds that the Commission lacks subject matter jurisdiction to hear the appeal. On September 5, 2020, Niemi filed a response opposing LAB's motion to dismiss.

Having considered the matter, the Commission concludes 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 7th day of October, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND
ORDER GRANTING MOTION TO DISMISS**

Niemi was discharged by LAB on July 23, 2020. She did not file a grievance with LAB. Instead, on August 27, 2020, she filed an appeal directly with the Commission.

LAB raises both a jurisdictional and alternatively, a procedural objection to the Commission addressing the merits of Niemi's appeal.

Wisconsin Stats. §§ 230.44(1)(c) and 230.445 give the Commission jurisdiction to review certain disciplinary actions as to certain State employees-including discharge. However, the Commission is not empowered to review the discharge of **all** State employees. Instead, the Commission can only review the discharge of those State employees who work for an "agency". The word "agency" is defined in Wis. Stat. § 230.03(3) as follows:

(3) **"Agency" means any board, commission, committee, council, or department in state government** or a unit thereof created by the constitution or statutes if such board, commission, committee, council, department, unit, or the head thereof, is authorized to appoint subordinate staff by the constitution or statute, **except** the Board of Regents of the University of Wisconsin System, **a legislative or judicial board, commission, committee, council, department, or unit thereof** or an authority created under subch. II of ch. 114 or under ch. 231, 232, 233, 234, 237, 238, or 279. "Agency" does not mean any local unit of government or body within one or more local units of government that is created by law or by action of one or more local units of government.

(Emphasis added).

Wisconsin Stat. § 13.94 provides that LAB is part of the Legislative Branch of State government. Thus, LAB is not an "agency" whose employees are covered by the provisions of Wis. Stats. §§ 230.44(1)(c) and/or 244.445. While Wis. Stat. § 13.94(5) makes a very narrow exception to coverage under Wis. Stat. § 230.44(1)(c) for employees of LAB who were employed by LAB as of July 31, 1981, this exception does not apply to Niemi since she was not employed by LAB as of July 31, 1981; Niemi was hired by LAB in 2019.

Given the foregoing, the Commission does not have jurisdiction over Niemi's appeal and it is dismissed.¹

¹ In light of this conclusion, the Commission need not address LAB's procedural defense.

Issued at the City of Madison, Wisconsin, this 7th day of October, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman