

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RONALD BENISCH, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0414

Case Type: PA

DECISION NO. 38820

Appearances:

Ronald Benisch and Cory Catlin, 508 S. Walker Way, Sun Prairie, Wisconsin, appearing on behalf of Ronald Benisch.

Anfin Jaw, Wisconsin 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 November 27, 2020, Ronald Benisch filed an appeal with the Wisconsin Employment Relations Commission asserting the State of Wisconsin Department of Corrections (DOC), is not following a staffing policy at Oakhill Correctional Institution. On February 8, 2021, DOC filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction to hear the appeal. On February 15, 2021, Benisch filed a response opposing the motion.

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 18th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

The appeal asserts that the DOC staffing policy is not being followed at Oakhill Correctional Institution. Benisch asks the Commission to find DOC in violation of that policy and award him five specific remedies.

The Commission understands Benisch to be asking that the Commission exercise its jurisdiction under Wis. Stat. § 230.45(1)(c) to act as the “final step arbiter” in the state employee grievance procedure. That statutory provision provides that the Commission shall “serve as final step arbiter in the state employee grievance procedure established under s. 230.04(14)”. Wisconsin Stat. § 230.04(14) states that “the administrator [of the Division of Personnel Management] shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment.” The administrative rules promulgated by the administrator, found in Wis. Admin. Code Ch. ER 46, establish limitations on the scope of the grievance procedure.

Wisconsin Admin. Code § ER 46.03(1), provides “an employee may grieve issues which affect his or her conditions of employment” The phrase “conditions of employment” is not defined in this chapter. Wisconsin Admin. Code § ER 46.03(2) goes on to identify 13 situations where the “employee may not use this chapter to grieve.” The next to the last item on that list is “(j) A condition of employment which is a right of the employer as defined in s. ER 46.04.”

Wisconsin Admin Code § ER 46.04(2) provides that the management rights of the employer include:

- a) Utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency.
- b) Determining the size and composition of the work force.
- c) Managing and directing the employees of the agency.
- d) Hiring, promoting, transferring, assigning or retaining employees.

In this case, Benisch is attempting to grieve the procedure for utilizing personnel and assigning staff to specific posts. That is clearly a management right of the employer pursuant to Wis. Admin. Code § ER 46.04. Managing and directing employees, assigning employees, and utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency are all explicit management rights outlined under Wis. Admin. Code § ER 46.04.

Since Wis. Admin. Code § ER 46.03(2)(j) precludes grievances related to “a condition of employment which is a right of the employer as defined in s. ER 46.04”, Benisch did not have a right to use the grievance procedure as to the staffing issues in question. As he had no right to file a grievance, it follows that the Commission lacks subject matter jurisdiction under Wis. Stat. §

230.45(1)(c) to consider the merits of Benisch's grievance/appeal. Therefore, the motion to dismiss is granted and the appeal has been dismissed.

Issued at the City of Madison, Wisconsin, this 18th day of March, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman