

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBIN TONAGEL-ANDERSEN, Appellant

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0467

Case Type: PA

DECISION NO. 39283

Appearances:

Robin Tonagel-Andersen, 554 Chestnut Street, Neenah, Wisconsin, appearing on her own behalf.

Anfin Jaw, Attorney, 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 June 15, 2021, Robin Tonagel-Andersen filed an appeal with the Wisconsin Employment Relations Commission against her Employer, the State of Wisconsin Department of Corrections (DOC). In her appeal, Tonagel-Andersen grieved DOC's decision regarding her use of leave after being admitted to a hospital and denying her the opportunity to work remotely from the hospital. On September 21, 2021, DOC filed a motion to dismiss the appeal asserting that the Commission lacks subject matter jurisdiction to hear the appeal. On October 1, 2021, Tonagel-Andersen filed a response opposing the motion, whereupon the matter became ripe for Commission consideration.

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 19th day of November, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

In May of 2020, Tonagel-Andersen had complications with her pregnancy and was hospitalized for a month. While hospitalized, she asked to work remotely from the hospital and DOC denied her request. As a result of that decision, she had to use her accumulated vacation and leave time while hospitalized. Her grievance challenges DOC's denial of her request to work remotely at the hospital and her use of leave time during her hospital stay.

Although the appeal does not explicitly say so, we read Tonagel-Andersen's appeal to ask the Commission to exercise its jurisdiction under Wis. Stat. § 230.45(1)(c) to act in this instance as the "final step arbiter" in the state employee grievance procedure. That section 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) provides 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) then goes on to identify 13 situations where the "employee may not use this chapter to grieve." Two of the 13 sections referenced in ER 46.03 (2) apply here and preclude the Commission from asserting jurisdiction and reviewing Tonagel-Andersen's grievance. The following shows this.

First, the last item on that list is "(k) Any matter related to wages, hours of work, and **fringe benefits**." Emphasis added. Although the term "fringe benefits" is not defined in that section, in the labor relations field the term "fringe benefits" typically includes such things as health insurance, retirement, paid sick leave, paid vacation, paid time off, family and medical leave, etc. In this case, Tonagel-Andersen is clearly grieving a matter related to "fringe benefits" within the meaning of subsection (k) because she seeks reimbursement of the vacation and sick leave she used during her pregnancy hospital stay after she was denied the ability to work remotely at the hospital. Thus, what Tonagel-Andersen is appealing here does not involve a "condition of employment" within the meaning of ER 46.03 (1) but instead is expressly prohibited by ER 46.03 (2)(k).

Second, the next to last item on that list is "(j) A condition of employment which is a right of the employer as defined in ER 46.04." Wisconsin Admin. Code § ER 46.04 (2) specifies 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.

...

(c) Managing and directing the employees of the agency.

In this case, Tonagel-Andersen is grieving DOC's decision to deny her the ability to work remotely at the hospital. It is management's discretion to approve or deny an employee's request to work remotely. That discretion plainly falls under management's rights in utilizing personnel and managing and directing employees of the agency. Thus, what Tonagel-Andersen is appealing here is a management right expressly prohibited by Wis. Admin. Code § ER 46.03 (2)(j).

Given our findings above, we do not have jurisdiction to review her grievance and the appeal has therefore been dismissed.

Issued at the City of Madison, Wisconsin, this 19th day of November, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman