

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KIMBERLY STRIKE, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, Respondent.

Case ID: 291.0007

Case Type: PA

DECISION NO. 39302

Appearances:

Kimberly Strike, 39231 92nd Street, Genoa City, Wisconsin, appearing on her own behalf.

Heather Curnutt, Attorney, Office of Legal Services, Department of Public Instruction, 125 S. Webster Street, P.O. Box 7841, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Public Instruction.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On December 3, 2021, Kimberly Strike filed an appeal with the Wisconsin Employment Relations Commission challenging the decision by the State of Wisconsin Department of Public Instruction (DPI) that her application materials did not meet the required qualifications for the position of Assistant Director – Licensing, Educator Advancement and Development Team. The appeal also alleged that DPI improperly fails to promote internal candidates in other recruitments. On December 22, 2021, DPI filed a motion to dismiss the appeal. DPI asserts that the first part of the appeal is moot because DPI has decided not to fill the position in question and that Strike lacks standing to pursue the second part of her appeal which is also untimely. Strike filed a reply to the motion on December 28, 2021.

Having reviewed the matter, the Commission concludes that the first part of the appeal is moot and that Strike lacks standing to pursue the second part of the appeal.

NOW, THEREFORE, it is:

ORDERED

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

Issued at the City of Madison, Wisconsin, this 3rd day of February, 2022.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Strike's appeal raises (1) an issue as to DPI's determination that she lacked the qualifications to be interviewed for a position and (2) an issue as to DPI's alleged failure to recruit from within.

As to issue (1), it is undisputed that the recruitment at issue has been cancelled by DPI and will not be re-announced. Therefore, this appeal is moot.

"An issue is moot when its resolution will have no practical effect on the underlying controversy. . . . In other words, a moot question is one which circumstances have rendered purely academic." *See deMoya v. DVA*, Dec. No. 32026-8 (WERC, 2/ 07) (quoting *State ex rel. Olson v. Litscher*, 2000 WI App 61); *see also Fabert v. DNR*, Dec. No. 32089-9 (WERC, 5/ 07) ("The specific hiring action that is the subject of Fabert's appeal has now been cancelled, so the question of whether Fabert had a right to be recalled/restored in 2006 is moot, just as the question of whether a disciplinary action had been based on just cause becomes moot once the disciplinary action has been withdrawn.").

Strike sought an interview for a position that will not be filled. Therefore, the outcome of Strike's appeal will have no practical effect. As a result, this portion of the appeal is moot and has been dismissed.

As to issue (2), the Commission agrees with DPI that Strike lacks standing to pursue that issue. She does not assert that she applied for any of the internal positions in question. Further, even if she had standing, the Commission has no basis for concluding that the 30-day statutory time frame for raising such issues has been met.

Given the foregoing, the motion to dismiss has been granted and the appeal dismissed.

Issued at the City of Madison, Wisconsin, this 3rd day of February, 2022

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman