

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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BRANDI MAXWELL, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0556

Case Type: PA

DECISION NO. 39774

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**Appearances:**

Brandi Maxwell, N3447 South End Road, Merrill, Wisconsin, appearing on her own behalf.

David G. Makovec, Attorney, 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 October 7, 2022, Brandi Maxwell filed an appeal with the Wisconsin Employment Relations Commission disputing an order to work additional hours and a denial to flex hours by the State of Wisconsin Department of Corrections (DOC). On November 4, 2022, DOC filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Maxwell filed a reply on November 15, 2022. DOC submitted an additional exhibit on December 6, 2022.

Having reviewed the matter, the Commission concludes that it does not have jurisdiction over 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 22<sup>nd</sup> day of December, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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

Maxwell is a Corrections Program Supervisor at Lincoln Hills/Copper Lakes School and an exempt employee. Her regular scheduled hours of work are Monday through Friday 8:00AM – 4:30PM. On August 11, 2022, Maxwell was ordered to work additional hours, 5:30PM – 8:00PM, due to staffing shortages. Maxwell is not being compensated for hours worked over 40 hours a week. Based on working additional hours beyond her 40 hours a week, Maxwell requested to flex her hours. That request was denied. The appeal does not specify what statute might give the Commission jurisdiction over the matters.

Wisconsin Stat. § 230.45(1)(c) does give the Commission the power to “[s]erve as final step arbiter in the state employee grievance procedure established under s. 230.04(14).” However, the grievance procedure referenced in Wis. Stat. § 230.04(14) and found in Wis. Admin. Code ch. ER 46 specifically excludes any matter related to wages, hours of work, and fringe benefits, and conditions of employment which are management rights of the employer as defined in § ER 46.04, from matters that can be pursued before the Commission.<sup>1</sup> Management rights include utilizing personnel to carry out the goals of the agency, determining the size of the workforce, managing and directing employees, and assigning specific duties and responsibilities to employees.

Given all of the foregoing, the Commission concludes that it does not have jurisdiction to review the merits of the claims Maxwell has raised in her appeal. Therefore, the motion to dismiss has been granted and the appeal dismissed.

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<sup>1</sup> Wis. Admin. Code § ER 46.03 Scope.

(1) Under this chapter, an employee may grieve issues which affect his or her conditions of employment, including any matter on which the employee alleges that coercion or retaliation has been practiced against the employee except as provided in sub. (2).

(2) An employee may not use this chapter to grieve:

...

- (j) A condition of employment which is a right of the employer as defined in s. ER 46.04;
- (k) Any matter related to wages, hours of work, and fringe benefits.

Section ER 46.04 Management rights.

(2) For the purpose of this chapter, the management rights of the employer include, but are not limited to, the following:

- (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 workforce.
- (c) Managing and directing the employees of the agency.
- (d) Hiring, promoting, transferring, assigning or retaining employees.

Issued at the City of Madison, Wisconsin, this 22<sup>nd</sup> day of December, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman