

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AUSTIN WEIDNER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0572

Case Type: PA

DECISION NO. 39813

Appearances:

Austin Weidner, W4044 Alpine Avenue, Merrill, Wisconsin, appearing on his own behalf.

David Makovec, 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 February 16, 2023, Austin Weidner filed an appeal with the Wisconsin Employment Relations Commission disputing a condition of employment imposed by the State of Wisconsin Department of Corrections (DOC). On February 28, 2023, DOC filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Weidner filed a response to the motion on March 13, 2023.

Having considered the matter, the Commission is satisfied 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 14th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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

Austin Weidner is a Youth Counselor Advanced at the Lincoln Hills School. Lincoln Hills scheduled mandatory training on Weidner's off days, forcing him to take overtime. Weidner's request to schedule these trainings on his regular work days was denied. He believes this violates DOC's "Additional Hours of Work" policy.

Weidner filed a Grievance Commencement on January 5, 2023, alleging that Lincoln Hills requiring him to attend trainings on off days violated a condition of employment. DOC Employee Relations Specialist Jolan Schilz denied the grievance on January 23, 2023 because under Wis. Admin. Code § ER 46.03(2), an employee cannot grieve a condition of employment which is a right of the employer as defined in Wis. Admin. Code § ER 46.04, or any matter related to wages, hours of work, and fringe benefits. Schilz wrote: "Requiring employees to attend mandatory trainings on off days has been a past practice for the DJC [sic]."

On January 27, 2023, Weidner filed a Step 2 Grievance alleging that the training policy violated a condition of employment. Employment Relations Specialist Brenda Brewer denied the grievance on February 8, 2023, because, as an issue related to "wages, hours of work and fringe benefits," it was not grievable under Wis. Admin. Code § ER 46.03(2)(k). On February 16, 2023, Weidner filed an appeal with the Commission.

Per Wis. Stat. § 230.44(1)(c), employees with permanent status in class may appeal "a demotion, layoff, suspension, discharge, or reduction in base pay" to the Commission. Per Wis. Admin. Code § ER 46.03(2), an employee may not appeal "(j) a condition of employment which is a right of the employer as defined in Wis. Admin. Code § ER 46.04; or (k) any matter related to wages, hours of work, and fringe benefits." Wisconsin Admin. Code § ER 46.04 defines a condition of employment which is a right of the employer as: "(a) utilizing personnel, methods and means to carry out the statutory mandate and goals of the agency" and "(c) managing and directing the employees of the agency."

Here, Weidner appealed his employer's decision to require him to attend training on days he was scheduled to be off work. The Commission has previously held that overtime is a matter related to wages, as well as a management right. *See Maske v. DOC*, Dec. No. 39432 (WERC, 6/22); *Coaty v. DOC*, Dec. No. 39301 (WERC, 2/22). Since Weidner's appeal alleges a condition of employment which is a management right of the employer, as well as an issue of hours of work, per Wis. Admin. Code § ER 46.03(2), the Commission does not have jurisdiction over his appeal.

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

Issued at the City of Madison, Wisconsin, this 14th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman