

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LACEY DICKMAN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0564

Case Type: PA

DECISION NO. 39898

Appearances:

James Finnell, P.O. Box 1000, Boscobel, Wisconsin, appearing on behalf of Lacey Dickman.

Nicole M. Porter, 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 December 15, 2022, Lacey Dickman filed an appeal with the Wisconsin Employment Relations Commission disputing matters involving leave without pay (LWOP) for hours she was prohibited from working due to failing to pass a metal detector by the State of Wisconsin Department of Corrections (DOC). On January 23, 2023, DOC filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Dickman filed a reply on February 7, 2023. Dickman also submitted video exhibits, the last of which was received on March 8, 2023.

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 12th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Dickman is a Social Worker at the Wisconsin Secure Program Facility (WSPF), located in Boscobel, Wisconsin. WSPF is a correctional institution operated by the Division of Adult Institutions (DAI), within the DOC. In September 2022, DAI establish updated entrance procedures for all facilities, including WSPF. For facilities that have metal detectors installed, staff are allowed three opportunities to pass through the metal detector in order to enter the institution. After a third unsuccessful attempt, the employee would be considered unfit for duty, would not be allowed to work, and would be in LWOP for the day. On October 28, 2022, WSPF Security Director Jacob Cirian sent an email to all staff, including Dickman, reminding everyone that there would be no exceptions to the requirement that staff pass through the metal detector within three attempts, and only staff that have documented medical exemptions with human resources, would be allowed to be screened with a hand wand, in place of going through the metal detector.

On October 31, 2022, Dickman failed to pass through a metal detector three separate times. Based on the three unsuccessful attempts, she was prohibited from entering the facility, placed in LWOP status, and was not allowed to return to work until the following day. In accordance with the determination made by DOC that all staff who failed to pass the metal detectors would be required to use LWOP, Dickman was also denied the ability to work from home. There was no evidence presented that Dickman had a documented medical exemption with human resources. Dickman disputes the LWOP for hours she was prohibited from working due to failing to pass the metal detector, the entrance policy, and the decision to deny her request to work remotely or from home. The appeal does not specify what statute might give the Commission jurisdiction over the matters.

Wis. 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 the content of written agency rules and policies, matters 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.¹ Management rights include utilizing personnel to carry out the goals of the agency, and managing and directing employees.

¹ 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:

- ...
- (i) The content of written agency rules and policies;
- (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.

Here, management has the authority to determine the procedures for staff entering their secure facilities and to manage and provide direction to staff who fail to follow the procedures. Furthermore, the Commission has previously held that the discretion to approve or deny an employee to work remotely “plainly falls under management’s rights in utilizing personnel and managing and directing employees of the agency.” *Tonagel-Andersen v. DOC*, Dec. No. 39283 (WERC, 11/21).

Given all of the foregoing, the Commission concludes that it does not have jurisdiction to review the merits of the claims² Dickman has raised in her appeal. Therefore, the motion to dismiss has been granted and the appeal dismissed.

Issued at the City of Madison, Wisconsin, this 12th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

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.

...

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

² The Appellant’s appeal also claims there was a reduction in her base pay due to being sent home LWOP. However, leave without pay for hours not worked by an employee does not constitute a reduction in base pay. Therefore, Wis. Stat. § 230.44(1)(c) also does not grant the Commission jurisdiction to hear the appeal.