

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DAVID ESSER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES
and DEPARTMENT OF ADMINISTRATION, Respondents.

Case ID: 2.0139

Case Type: PA

DECISION NO. 40361

Appearances:

David Esser, 509 Skyview Drive, Waunakee, Wisconsin, appearing on his own behalf.

Peter C. Flood, Wisconsin Department of Administration, 101 E. Wilson Street, 4th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Health Services and Department of Administration.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On December 1, 2023, David Esser filed an appeal with the Wisconsin Employment Relations Commission disputing his new base pay and compensation following the salary adjustments as part of the State's 2023-2025 Compensation Plan. On February 15, 2024, DHS/DOA filed a motion to dismiss asserting that the Commission does not have jurisdiction over the appeal. Esser did not file a reply to the motion by the given deadline of March 15, 2024.

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 16th day of April 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Esser is an Institution Unit Supervisor at Mendota Mental Health Institute. Effective October 22, 2023, after receiving the General Wage Adjustment (GWA) for all eligible state employees, Esser received a market adjustment increase of \$4.00/hour (\$41.33/hour to \$45.33/hour), in accordance with Section L, 2.09 of the 2023-2025 State Compensation Plan. Additionally, on that same date, Esser received a parity adjustment increase of \$5.00/hour (\$45.33/hour to \$50.33/hour), in accordance with Section L, 2.01 of the 2023-2025 State Compensation Plan. Effective November 5, 2023, Esser's classification pay range was reallocated from Institution Unit Supervisor (Pay Range 81-03) to Institution Unit Supervisor (Pay Range 81-34), in accordance with Wis. Admin. Code § ER 3.01(2)(d).

In his appeal, Esser asserts that, based on his 16½ years of service, his base pay rate should be at minimum, \$53.29/hour. Accordingly, he requests an adjustment of his base pay. 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 wages, hours of work, and fringe benefits.¹

Wis. Stat. § 230.44 also gives the Commission the authority to review actions of the Administrator of the Division of Personnel Management, however the list of appealable actions under § 230.44, Wis. Stats., does not include the assignment of classifications to pay ranges, the pay of an incumbent following the reallocation of a position into a different pay range, or market and parity adjustments implemented as part of the State's Compensation Plan.

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

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:

...
(k) Any matter related to wages, hours of work, and fringe benefits.

Issued at the City of Madison, Wisconsin, this 16th day of April 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman