

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORGIE MONTES DE OCA-METZINGER, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION, Respondent.

Case ID: 291.0009

Case Type: PA

DECISION NO. 40418

Appearances:

Norgie Montes De Oca-Metzinger, 1227 Arthur Ave., Racine, Wisconsin, appearing on his own behalf.

David Makovec, Attorney, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Public Instruction.

DECISION AND ORDER DISMISSING APPEAL

On July 11, 2024, Norgie Montes De Oca-Metzinger filed an appeal with the Wisconsin Employment Relations Commission regarding his discharge by the State of Wisconsin Department of Public Instruction (DPI). The appeal was assigned to Commission Examiner Katherine Scott Lisiecki.

On August 14, 2024, the DPI made a motion to dismiss the appeal pursuant to Wis. Admin. Code § ERC 91.08(1)-(3). Montes De Oca-Metzinger replied on August 23, 2024.

Having considered the matter, the Commission is satisfied that the motion to dismiss should be granted.

NOW, THEREFORE, it is:

ORDERED

The appeal is dismissed.

Issued at Madison, Wisconsin, this 26th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING DECISION
AND ORDER DISMISSING APPEAL

Section 230.34(1)(a), Stats., provides in pertinent part the following as to certain employees of the State of Wisconsin:

“An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.”

Employees who are on probation do not have permanent status in class. *Board of Regents v. Personnel Commission*, 103 Wis. 2d 545 (Ct. App. 1981).

Montes De Oca-Metzinger was hired as a Human Resources Specialist at the Wisconsin Department of Public Instruction. His appointment date was April 21, 2024, and his position required a one-year probationary period, which was scheduled to end on April 20, 2025. Montes De Oca-Metzinger was discharged from that position on May 6, 2024. It is uncontested that Montes De Oca-Metzinger was a probationary employee at the time of his discharge. Therefore, Montes De Oca-Metzinger did not have permanent status in class and the Commission lacks subject matter jurisdiction over this appeal.

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

Issued at the City of Madison, Wisconsin, this 26th day of September 2024.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Commissioner