

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREW DRYJA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES, Respondent.

Case ID: 306.0022

Case Type: PA

DECISION NO. 41440

Appearances:

Sean Daley, Business Agent, AFSCME Council 32 AFL-CIO, N1463 Second Street Road, Watertown, Wisconsin, appearing on behalf of Appellant.

Nicole Porter, Legal Counsel, Department of Administration, 101 E. Wilson St., 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Natural Resources.

DECISION AND ORDER GRANTING MOTION TO DISMISS

On February 24, 2026, Andrew Dryja filed an appeal to the Wisconsin Employment Relations Commission pursuant to Wis. Stats. 230.44(1)(c) asserting he had been constructively demoted without just cause by the State of Wisconsin Department of Natural Resources. On March 16, 2026, the State filed a motion to dismiss the appeal for lack of subject matter jurisdiction. Dryja filed a reply on March 19, 2026.

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 24th day of April 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis
Peter G. Davis, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Under Wis. Stat. § 230.44(1)(c), the Commission's jurisdiction in civil service personnel appeals is limited to adverse employment decisions, defined to include demotion, layoff, suspension, discharge, or reduction in base pay. Under Wis. Stat. § 230.44(1)(c) an employee having permanent status in class may appeal a demotion to the Commission, if the appeal alleges that the demotion was without just cause.

The Appellant contends that his reassignment from a Conservation Warden position to a Natural Resources Program Specialist 2 position constituted a constructive demotion, and that the Commission therefore has jurisdiction under Wis. Stat. § 230.44(1)(c). The State asserts that the reassignment was a transfer, not a demotion, and that the Commission lacks jurisdiction.

The State correctly notes that the personnel transaction at issue is, on its face, a transfer between positions assigned to counterpart pay ranges. Under the definitions set forth in Wis. Admin. Code §§ ER 1.02 and ER-MRS 1.02, such a transaction is a transfer and not a demotion. However, the Commission has long recognized that the label attached to a personnel action is not dispositive. Thus, in *Thiel v. DOT*, Dec. Nos. 31725-A and 31726-A (WERC, 12/09), the Commission held:

If an agency modifies an employee's duties so they are better described 27/ in a lower class and is motivated in doing so by an intent to discipline the employee, the agency may not avoid a just cause review of the action by calling it a mere reassignment of duties. However, in WARREN the Commission also made it clear that only those changes in duties that are of a certain nature will be considered a demotion in the context of a constructive demotion claim, irrespective of the employing agency's motivation. The Commission held that for the purpose of pursuing a constructive demotion claim, the degree of the change in duties must still satisfy the standard set forth in the applicable administrative rule i.e. the change must be sufficient to classify the new duties in a lower class. A change in duties that does not reach the threshold of justifying placement of the position into a lower class is not sufficient to support a constructive demotion claim

27/ In a constructive demotion claim, there will only rarely have been a formally recognized change in the civil service classification of the employee's position. Typically, the change in duties is alleged to be such that if the new set of duties would be analyzed for classification purposes, they would be found to be better described in a class other than the one actually assigned to the position

Here, the Commission understands the Appellant to correctly concede that the change in duties would not place him in a lower class. Instead, Appellant asserts that the Commission should expand its analysis beyond *Thiel* and consider a variety of additional factors such as loss of law enforcement duties and protective status. The Commission declines to do so. Thus, the change in

Appellant's duties does not meet one of the two applicable criteria¹ as to a constructive demotion. Therefore, the Commission lacks jurisdiction over the appeal and the motion to dismiss has been granted

Issued at Madison, Wisconsin, this 24th day of April 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman

¹ While it is not explicit in the appeal, it can reasonably be inferred that Appellant contends the change in duties is disciplinary despite his placement on a *Brady/Giglio* disclosure list.