

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ANDREW DRYJA, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES, Respondent.

Case ID: 306.0023

Case Type: PA

DECISION NO. 41466

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 challenging a January 6 personnel action by the Wisconsin Department of Natural Resources, which reassigned Dryja from a sworn Conservation Warden position into a Natural Resources Program Specialist 2 position. On April 17, 2026, the State filed a motion to dismiss the appeal for lack of subject matter jurisdiction. Dryja filed a reply on April 24, 2026.

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

NOW, THEREFORE, it is:

ORDERED

The motion to dismiss is granted and the appeal is dismissed.

Issued at Madison, Wisconsin, this 22nd day of May 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman

MEMORANDUM ACCOMPANYING DECISION AND ORDER
GRANTING MOTION TO DISMISS

Wisconsin Stat. § 230.45(1)(c), gives the Commission authority to serve as the final step arbiter in the state employee grievance procedure relating to conditions of employment, established under Wis. Stat. § 230.04(14).

Wisconsin Admin. Code § ER 46.03 establishes the grievance process, but it also identifies specific matters that are not grievable. Under § ER 46.03(2), an employee may not grieve:

- (c) A demotion, suspension without pay, discharge, removal, layoff, or reduction in base pay that is grievable under s. 230.445, Stats.,
- (j) a condition of employment which is a right of the employer as defined in s. ER 46.04, and
- (k) Any matter related to wages, hours of work, and fringe benefits.

Management rights include the authority to assign, transfer, and direct employees. Wis. Admin. Code § ER 46.04(2)(c) and (d). The Commission has consistently held that transfers and reassignments fall within management rights and are not grievable under ER 46. *Thiel v. DOT*, Dec. Nos. 31725-A, 31726-A (WERC, 12/09).

Here, Dryja argues that the January 6 action was not a routine reassignment and instead resulted in removal from sworn law enforcement duties, a change in classification and pay range, altered overtime treatment, and loss of protective retirement status. The Appellant further contends that the action functions as a de facto demotion and that dismissal is premature because the nature of the action requires factual development and may be properly characterized under a different procedural avenue.

For purposes of this motion, even accepting all of Appellant's allegations as true, the Commission lacks subject matter jurisdiction under ER 46.

First, the challenged action is an involuntary transfer and reassignment. Under Wis. Admin. Code § ER 46.04(2)(d), such assignment decisions are reserved to management discretion and are excluded from the ER 46 grievance process under § ER 46.03(2)(j).

Second, to the extent the action resulted in changes to pay structure, overtime eligibility, or retirement classification, those matters relate to wages or fringe benefits and are independently excluded from ER 46 jurisdiction under § ER 46.03(2)(k).

Third, Appellant's assertion that the action constitutes a "de facto demotion" does not confer jurisdiction under ER 46. To the extent Appellant is alleging a demotion or other adverse personnel action, such claims must be pursued, if at all, under the separate statutory appeal procedures in Wis. Stat. §§ 230.44 or 230.45, not under the ER 46 grievance process.¹

¹ The Commission has already dismissed the action filed pursuant to that particular statute. *See Dryja v. DNR*, Dec. No. 41333 (WERC, 04/26).

Finally, although Dryja argues that dismissal is premature due to uncertainty about the nature of the action, even under his characterizations, the dispute falls within categories expressly excluded from the ER 46 grievance procedure.

Because the issues raised fall within categories expressly excluded from the ER 46 grievance procedure, the Commission does not have subject matter jurisdiction over this appeal. The appeal is therefore dismissed.

Issued at Madison, Wisconsin, this 22nd day of May 2026.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Electronically signed by Peter G. Davis

Peter G. Davis, Chairman