STATE OF WISCONSIN

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BEVERLY ADKINS,	*
	*
Appellant,	*
••	*
v.	* . INTERIM
	* DECISION
Administrator, DIVISION OF	* AND
PERSONNEL,	* ORDER
	*
Respondent.	*
-	*
Case No. 79-PC-CS-23	*
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The respondent filed on September 23, 1980, a motion to dismiss dated September 18, 1980. That motion asserts, in pertinent part, the following grounds:

"1. Becuase the Commission does not have subject matter jurisdiction over the appeal because the allocation was not properly appealed. The facts surrounding this assertion are as follows:

a. Effective August 26, 1979 Respondent reallocated Appellant's position from Typist 3 to Typist. (Exhibit A)

b. On September 14, 1979 Appellant appealed the reallocation stating 'It is incorrect and request is made that it be changed.' (Exhibit B)

c. On December 26, 1979 Appellant requested reallocation to Secretary 2 or to the Program Assistant series. (Exhibit C)

d. On May 30,1980, effective August 26, 1979, Respondent reallocated Appellant's position to the Program Assistant series, as requested. (Exhibit D)

e. Appellant did not appeal the second reallocation even though the corrected allocation form notified her of the right to appeal. Therefore the Appellant accepted without objection the corrected reallocation and is estopped from asserting now that she should have been reallocated as a Secretary 1 or 2 or a Program Assistant 2 or 3.

2. Because the Respondent has complied in full with Appellant's requested relief, that is retroactive reallocation to the Program Assistant series, the Appellant no longer suffers any harm and the appeal is moot." Adkins v. DP Case No. 79-PC-CS-23 Page 2

The Commission notes that at the prehearing conference held April 7, 1980, the appellant proposed the following issue for hearing:

"Should the appellant have been reallocated to Typist, or Program Assistant 1, 2, or 3, or Secretary 1 or 2, effective 8/26/79."

It is not argued that the appellant did not properly perfect her appeal of the original reallocation. In the Commission's opinion, it does not follow that the appellant's failure to appeal a subsequent, apparently unilateral, reallocation would have the effect of somehow estopping her from pursuing her original appeal with respect to Secretary 1 or 2 or Program Assistant 2 or 3.¹

The respondent's argument that the appeal is moot apparently is premised on the theory that since the appellant indicated on a form solicited by the Commission that the "relief sought" was "reallocation to Secretary II or to the Program Assistant series," (Exhibit C), this bound the appellant to accept any level of classification in the Program Assistant series. In the Commission's opinion this approach is not in keeping with the informal nature of the administrative proceedings, and the result does not follow.

¹The Commission notes that in any event there is a letter in the file from the appellant, received July 7, 1980, stating that "Based upon the attached (notice of reallocation to PA 1), I wish to continue my appeal on the Clerical Survey." Adkins v. DP Case No. 79-PC-CS-23 Page 3

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ORDER

The respondent's motion to dismiss dated September 18, 1980, and

filed September 23, 1980, is denied.

Dated Sept. 25, 1980

STATE PERSONNEL COMMISSION

Liglie Charlotte M. Higbee

Chairperson

Brenn Gordon H. Brehm

Commissioner

AJT:mgd

<u>Note</u>: Commissioner Murphy abstained from voting on this case because of his employment with the University at the time the appeal was filed.