

STATE OF WISCONSIN

PERSONNEL COMMISSION

* * * * *

CARL MARTIN,
 Appellant,
 v.
 Chairperson, TRANSPORTATION
 COMMISSION,
 Respondent,
 and
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Intervening Respondent.
 Case No. 80-366-PC

* * * * *

ORDER

This matter is before the Commission on a petition for rehearing filed by the Secretary of the Department of Employment Relations.

A review of the case file shows that Mr. Martin's letter of appeal was filed in October of 1980 in an effort to overturn a layoff decision. The case proceeded through a prehearing conference, a hearing, issuance of a proposed decision and order (and objections thereto) and issuance of a final decision and order, all with the Transportation Commission as the sole respondent. On March 21, 1983, the Personnel Commission served its Decision and Order on counsel for Mr. Martin and for the Transportation Commission as well as on the Administrator of the Division of Personnel, Department of Employment Relations, by placing copies of the Decision and Order in the United States mails. On April 20, 1983, the Personnel Commission was served with a copy of a petition for (judicial) review, which had been filed in Dane County Circuit Court by the Administrator, Division of Personnel and Secretary, Department of Employment Relations as petitioners.

Then, on April 29, 1983, the Personnel Commission received a petition for rehearing filed by the Secretary of DER as an intervening respondent. The petition included the following specified grounds:

5. The Secretary is a person aggrieved by the decision.
6. The Administrator of the Division of Personnel has separate and distinct program responsibilities from the Secretary.
7. The Secretary has no program authority over the Administrator of the Division of Personnel.
8. Notice to the Administrator of the Division of Personnel cannot be considered as notice to the Secretary.
9. The Secretary received notice of the decision in question on April 11, 1983, at which time the Secretary's Office of Legal Counsel received a copy of the Decision from the Personnel Commission.

The parties were provided an opportunity to file arguments as to whether the petition for rehearing should be granted.

The procedure for filing a petition for rehearing is set out in §227.12(1), Stats., which provides in part:

A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities.

In the present case, the intervening respondent filed his petition for rehearing some 36 days after the Commission's decision was mailed to the named parties and to the Administrator. The issue, therefore, is whether the 20 day period specified in §227.12(1), Stats., began, with respect to the Secretary, on the day the decision was mailed to the parties or on the day the Secretary's legal representative first received a copy of the decision.

The phrase "service of the order" is not defined within §227.12, Stats. However, §227.11, Stats., entitled "service of decision" states, in part:

(1) Every decision when made, signed and filed, shall be served forthwith by personal delivery or mailing of a copy to each party to the proceedings or to the party's attorney of record.

The intent of a given section of a statute must be derived from the act as a whole. State v. Tollefson, 85 Wis. 2d 162 (1978).

There are no cases that specifically address the issue of when the 20 day period begins to run for filing a petition for rehearing. However, a reading of §227.12(1), Stats., together with §227.11, Stats., indicates that the 20 days period begins on the date of mailing of the decision or order to each party. To interpret the statutes otherwise would eliminate any concept of finality to an administrative action: rehearing petitions could be filed by an aggrieved non-party at any time as long as it was within 20 days of mailing of the decision to the non-party. In order to reach the conclusion argued by the intervening respondent, additional language would have to be inserted into §227.12(1), Stats.:

Any person aggrieved by a final order may, within 20 days after service of the order on the aggrieved party, file a written petition for rehearing

Given the availability of a clear definition of the term "service" in §227.11, Stats., the Commission is prohibited from supplying an additional filing period not already provided in the statute. See In re Application of Duveneck, 13 Wis. 2d 88 (1961).

In the present case, service was complete for purposes of §227.12(1), Stats., when the Commission served copies of its decision on the attorneys of record for the two named parties. Approximately three weeks later the

Commission followed its standard practice of mailing approximately sixty copies of recent noteworthy decisions to various personnel managers, attorneys, department secretaries and journalists who had asked to be placed on the Commission's mailing list. Because it was not a named party, the Secretary of DER apparently first became aware of the decision as a result of the general mailing. Even though it was not a named party, the requirements of §227.12 (1), Stats., still apply to the Secretary and preclude him from petitioning for rehearing more than twenty days after service was complete.

This result is also consistent with the statutory requirements for filing a petition for judicial review. The latter requirements are set out in §227.16(1)(a), Stats., which provides, in part:

Unless a rehearing is requested under §227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under §227.11. If a rehearing is requested under §227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

This provision was interpreted in Wis. Environmental Decade v. Public Service Comm., 84 Wis. 2d 504, 518 (1978):

The purpose of the requirement that the petition be served within 30 days "after the service of the decision" is twofold: First, it makes clear that a petitioner is afforded a full thirty days in which to seek review, and that any delay between the making of a decision and the time of service thereof is not counted in the calculation of this period; second, the provision fixes a strict cutoff date for the filing of a petition for review.

When read together, §§227.12 and 227.16, Stats., establish a systematic procedure for contesting an administrative decision. Any aggrieved person has twenty days to file a petition for rehearing and thirty days to file a petition for review. The specific language is §227.16(1)(a), Stats., indicates that the filing of a petition for rehearing will delay the running of the period for filing a petition for review until the rehearing request is finally disposed of. These provisions show that two petitions are not to be filed within the same time period so that a choice is to be made between filing a petition for rehearing and a petition for review^{FN}.

Because the Commission concludes that the petition for rehearing was not timely filed, it lacks the authority to address the merits of the petition, including whether or not the intervening respondent is actually an aggrieved party:

Where the [rehearing] statute does contain a time limitation such limitations have been regarded as restricting the power of the agency, and after the expiration of such time administrative agencies have been held without power to alter their determinations. 2 Am. Jn. 2d 341.

Even if the Commission would find that the petition for rehearing was timely filed, the pendency of the petition for review may act to suspend the Commission's authority to reconsider its determination. See 165 ALR 26.

FN

Several cases from outside of Wisconsin hold that where no statutory time period for filing a petition for rehearing is established, the period runs only as long as the time allowed for an appeal. See 73 C.J.S. 490.

ORDER

The intervening respondent's petition for rehearing is dismissed for lack of jurisdiction.

Dated: May 25, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson


LAURIE R. McCALLUM, Commissioner

KMS:lmr

James W. Phillips, Commissioner, did not participate in the decision on this matter.

Parties:

Carl Martin
c/o Lawrence E. Bechler
Jenswold, Studt, Hanson,
Clark & Kaufmann
Suite 900
16 N. Carroll Street
Madison, WI 53703

Joseph Sweda
Chairperson, TC
4802 Sheboygan Avenue
Madison, WI 53707

Howard Fuller
Secretary, DER
P.O. Box 7855
Madison, WI 53707