STATE OF WISCONSIN

BERNARD F. MAY,

*

Appellant,

v.

*

Secretary, DEPARTMENT OF *
INDUSTRY, LABOR AND HUMAN *
RELATIONS, and Administrator, *
DIVISION OF PERSONNEL, *

* *

Respondent.

*

Case No. 82-23-PC

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INTERIM DECISION AND ORDER

This matter is before the Commission on respondent DILHR's objection to appellant's standing.

In his appeal letter, the appellant stated that it had come to his attention that the "supervisor of the Janesville Job Service has been reclassified to a Job Service Supervisor 5," and that " I do not feel that this should have happened; the least that should have happened would have been a competitive test for the position." He further indicated that he was the supervisor of the Elkhorn Job Service.

The respondent argues that the appellant does not meet the standing test of <u>Wisconsin's Environmental Decade</u>, Inc. v. PSC, 69 Wis. 2d1, 230 N.W. 2d 243 (1975), in that there is neither "injury-in-fact" nor the assertion of an interest recognized by law.

With respect to the first point, the respondent argues, in part, as follows:

"...if the Commission decides that the Job Service Supervisor 5 position should have been filled by competition, May would not necessarily derive any personal benefit as a result of such decision since it cannot be assured that he would pass the examination, be among those certified or actually be chosen by the appointing authority for the position."

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However, the injury to the appellant's interests occurred when he was denied the opportunity to have competed for the Janesville job as a result of the decision to reclassify. He need not demonstrate that he actually would have received the appointment but for the decision to reclassify to establish standing.

As to the second point, the respondent argues that no ... "statute or rule, express or implied, provides for appeals of classification of one employe by a fellow employe." However, the statute, \$230.45(1), provides that decisions of the administrator are appealable, without limitation on the status of the appellant. An employe in the classified civil service has an interest in being permitted to compete for positions when indicated by the civil service code, Subchapter II of Chapter 230, and the rules of the administrator. Whether the statutes or rules were violated by the decision to reclassify the position instead of opening it for competition will be determined by the decision of this appeal on the merits.

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ORDER

The respondent's motion to dismiss for lack of standing is denied.

Dated:

,1982

STATE PERSONNEL COMMISSION

DONALD R. MURPHY, Chairperson

Marie R. McCallum

MIRIE R. MCCALLUM, Commissioner

AJT:jmf

Parties:

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DILHR

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