



DISTRICT I  
Office of the Clerk  
**COURT OF APPEALS**  
OF WISCONSIN

*Appeal of Rucker v. HEAB*  
77-33, 1/10/83  
(Interim decision  
and order)

X

Marilyn L. Graves  
Clerk

Madison, April 7, 1983

Roger Pettit Higher Educational Aids Board

To: Kurt M. Stege, Attorney State of Wis. Personnel Comm. Asst. Attorney General  
James D. Jeffries

Hon. Marvin C. Holz  
Circuit Court Judge

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APR 11 1983

You are hereby notified that the Court entered the following opinion and order:

Personnel  
Commission

83-427 Carl Rucker v. Personnel Commission and Higher  
Educational Aids Board

Before Moser, P.J., Decker and Wedemeyer, JJ.

The circuit court dismissed Carl Rucker's ch. 227 petition for review on the basis that it had no jurisdiction. Rucker filed a notice of appeal directed to that order and has filed a motion to stay proceedings before the Personnel Commission pending disposition of the appeal. We conclude on our own motion that the appeal is appropriate for summary disposition. See Rule 809.21, Stats.

The order of the Personnel Commission which Rucker sought to review in the circuit court interpreted a stipulation entered by the parties. The order does not satisfy any of the criteria for reviewability set forth in Pasch v. Department of Revenue, 58 Wis.2d 346, 206 N.W.2d 157 (1973). The circuit court properly concluded that it had no jurisdiction to review the order.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed.

IT IS FURTHER ORDERED that the motion to stay proceedings is dismissed as moot.

Marilyn L. Graves  
Clerk of Court of Appeals

X

CARL RUCKER,

Petitioner,

-vs-

Case No. 603-419

HIGHER EDUCATIONAL AIDS BOARD,

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Respondent.

FEB 7 1983

MEMORANDUM DECISION

Personnel  
Commission

This matter is before the Court upon a petition for review of an interim decision and order of the Personnel Commission concerning a dispute over the discharge of the petitioner and to stay further proceedings in the matter until the issues raised by the petition for review have been resolved.

The challenged order concerns the state of the evidentiary record before that body and resolves a dispute concerning the extent of additional evidence to be introduced pursuant to an alleged stipulation of the parties.

Petitioner claims to be adversely affected by the ruling and entitled to this review pursuant to section 227.15 Stats. The respondents challenge this Court's jurisdiction to review the decision of the Commission.

The right to a judicial review of an administrative decision is statutory and administrative orders are not

appealable unless made so by the statutes. When there is an attempt to appeal a non appealable order a Court only has jurisdiction to dismiss the appeal. State v. WERC, 65 Wis. 2d 624 (1974). Section 227.15 Stats. provides, "Administrative decisions which adversely affect the substantial interests of any person, . . . shall be subject to judicial review as provided by law."

The broad term "decision" is not to be read in its literal sense but to be read in accord with the legislative intent. Judicial review is limited to final orders, however the label of "final" or "interlocutory" does not necessarily determine whether an order is reviewable.

The ultimate test of reviewability is the need of review to protect from irreparable injury threatened which attaches legal consequences to action taken in advance of other hearings and adjudications. Pasch v. Dept. of Revenue, 58 Wis. 2d 346 (1972).

In Pasch the petitioner urged that the Commission's jurisdiction should be finally determined before he was put to the expense and inconvenience of a lengthy proceeding before the Commission to determine the controversy. The Court is mindful of the fact that much time and expense might be saved if the Courts were to first decide that issue, but stated that this consideration was outweighed by the


resultant delay that would accompany review of the administrative determinations and the disruption of the agency's orderly process of adjudication in reaching its ultimate determination. It further stated that a separate hearing and appeal on each of a petitioner's potential challenges would cause inordinate delay and disrupt the order and efficiency of the administrative agency.

Consequently the Court concludes that non final administrative orders are not reviewable because of policy considerations of delay and destruction unless the order would result in irreparable injury or was laden with legal consequences and implications, it was not part of a proceeding from which an appeal would ultimately be available.

Applying this test the Court concludes that the matter before the Court is not appealable and that it has no jurisdiction to review the order. For these reasons the petition shall be dismissed. The Court will sign an order to that effect submitted by respondents.

Dated at Milwaukee, Wisconsin, this 3 day of February, 1983.

BY THE COURT:

  
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Marvin C. Holz-Circuit Judge