

2/29/84 (Interim decision and order)

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 5
COUNTY OF DANE
DANE COUNTY
This document is a full, true and correct copy of the original on file and of record in my office. It has been compared by me.
Attest
4-5-84
CYNTHIA FORAKIS
Clerk of Courts
By *Bi*
Deputy Clerk

FRANK W. NOVAK,

Petitioner,

vs.

STATE PERSONNEL COMMISSION,

Respondent.

MEMORANDUM DECISION

Case No. 83 CV 4926

The Petitioner asks this Court to review an "Interim Decision and Order" of the Personnel Commission sustaining the objection of the Department of Employment Relations to one of the issues proposed by the Petitioner in his appeal to the Commission of the reallocation of his position in the classified civil service. The Respondent Commission has moved to dismiss the petition for lack of subject matter jurisdiction. For the reasons stated below, the petition for judicial review is dismissed without prejudice.

FACTS

At all material times, Petitioner held a position in the classified civil service in the Department of Transportation. In 1983, the Administrator of the Division of Personnel in the Department of Employee Relations conducted a Research Analyst and Planning Survey. As a result of this survey, the Administrator, with the approval of the State Personnel Board, established, modified, and abolished certain classifications. On July 5, 1983, the Adminis-

trator notified Petitioner that Petitioner's position was to be reallocated. Petitioner appealed this decision to the Personnel Commission.

At the prehearing conference before the Commission, Petitioner proposed certain issues to be decided. The first of these issues was as follows:

Whether or not the Research, Analyst and Planning Survey was properly and legally consistent with sec. 230.09(1) of the statutes, which states in part: Each classification so established shall include all positions which are comparable with respect to authority, responsibility and nature of work.

The Administrator objected to the Commission's authority to consider this issue and briefs were filed on this objection. By a decision entitled "Interim Decision and Order" the Commission struck the issue from consideration, on various grounds.

Petitioner seeks judicial review of the decision of the Commission striking the issue. The Commission has moved to dismiss the petition on the ground that it is not a final order and therefore not appealable under sec. 227.15, Wis. Stats.

DECISION

"The right to appeal from an administrative agency's determination is statutory and does not exist except where expressly given and cannot be extended to cases not within the statute . . . When an attempt is made to appeal from a non-appealable order, the . . . court does not have jurisdiction for any purpose, except to dismiss the appeal." Pasch v. Department

of Revenue, 58 Wis. 2d 346 (1973).

Section 227.15, Wis. Stats. provides as follows:

Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125 and decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, and the state board of vocational, technical and adult education acting under s. 38.29, and except as otherwise provided by law.

On its face, this section makes no mention of "final" orders. However, this section has been interpreted by our Supreme Court to provide for appeals from final orders only. See, Pasch, supra. This requirement was further refined in Wisconsin Environmental Decade v. PSC, 93 Wis. 2d 650 (1980): "The legislative declaration that decisions of administrative agencies be reviewed under sec. 227.15, Stats., envisions a review of a decision which must be supported by a record and be based upon findings of fact and conclusions of law as required by sec. 227.10." Based upon these authorities, I find that the order of the Commission striking Petitioner's first issue is not a final order so as to be appealable under sec. 227.15, Wis. Stats.

The order is not based on findings of fact and conclusions of law. Nor has Petitioner's case been completely disposed of


by the Commission's decision. It appears from the rec rd that the gist of Petitioner's claim is that he was incorrectly classified to a position in a lower pay range than employees who have less responsibility than Petitioner. This ultimate issue has not yet been decided by the Commission and, based on the issues which the Commission will consider, the ultimate issue could yet be decided in Petitioner's favor. If it is not decided in Petitioner's favor, he may appeal from the final decision of the Commission and raise, at that time, the question of the Interim Decision and Order.

CONCLUSION AND ORDER

For the reasons stated above and based on the record herein, the petition for judicial review is dismissed without prejudice.

Dated this 11th day of January, 1984.

BY THE COURT:


Angela B. Bartell, Judge
Circuit Court, Branch 10
Dane County, Wisconsin

cc: Mr. Frank W. Novak
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