

STATE OF WISCONSIN

PERSONNEL COMMISSION

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LYNNE PIOTROWSKI,

Appellant,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 84-0010-PC

\* \* \* \* \*

INTERIM  
DECISION  
AND  
ORDER

This matter was filed as an appeal from the denial of the appellant's reallocation request. The respondent filed a jurisdictional objection, arguing that the appeal was not timely filed. The parties filed briefs in support of their positions.

In September of 1983, the appellant's employing unit, the Division of Employment and Training Services in the Department of Industry, Labor and Human Relations, submitted a reallocation request for the position she occupied. On October 4, 1983, a personnel specialist sent a memo to DILHR Personnel stating that the appellant's position should remain at her current classification. On October 5, 1983, DILHR Personnel sent a memo to DETS Personnel reporting the reallocation denial. The appellant does not deny the respondent's allegation that sometime in October of 1983 she was "at least verbally advised" of the reallocation decision. However, the appellant states that she did not receive written notice of the denial until on or after December 27, 1983 when she received a memo bearing that date from a DETS employe. In light of the absence of any conflicting allegations by the respondent, the Commission shall accept the appellant's

statement as accurate. The appellant filed a letter appealing the reallocation decision on January 11, 1984.

The time limit for filing an appeal of a personnel transaction to the Commission is set forth in §230.44(3), Stats., which provides:

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later...

In addition, the Secretary of the Department of Employment Relations has adopted the following administrative rule:

ER-Pers. 3.04 Notice of reallocation or reclassification.  
Approvals or denials of reallocations or reclassifications shall be made to the appointing authority in writing. The appointing authority shall immediately notify the incumbent in writing.

In the absence of the specific requirements set forth in the administrative rules, the Commission would be inclined to define the term "notify," as it is used in §230.44(3), Stats., to include written or verbal notice. This result would be consistent with the general definition of the term as found in Black's Law Dictionary, Revised Fourth Edition:

To give notice to; to inform by words or in writing, in person or by message, or by any signs which are understood; to make known; to "notify" one of a fact is to make it known to him; to inform him by notice. (citation omitted)

However, as applied to reclassification and reallocation decisions, the Secretary has adopted a more stringent definition of "notify" that requires written notice to both the appointing authority and to the position incumbent. In order to comport with the requirements set forth in §ER-Pers. 3.04, Wis. Adm. Code, the thirty day period for filing an appeal under §230.44, Stats., does not commence until an appellant has received written notice of a reclassification or reallocation decision. In the present case, notice was given the appellant on or after December 27, 1983. Her appeal was filed within 30 days thereafter and was, therefore, timely.

To rule otherwise would permit the respondent to ignore his own administrative rule that establishes an important protection for civil service employees.

ORDER

The respondent's motion to dismiss is denied.

Dated: 3/16, 1984 STATE PERSONNEL COMMISSION

  
DONALD R. MURPHY, Chairperson

  
LAURIE R. McCALLUM, Commissioner

KMS:jat

  
DENNIS P. MCGILLIGAN, Commissioner

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