

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 JOHN N. PETERS,
 Appellant,
 v.
 Secretary, DEPARTMENT OF
 EMPLOYMENT RELATIONS,
 Respondent.
 Case No. 84-0148-PC
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ORDER

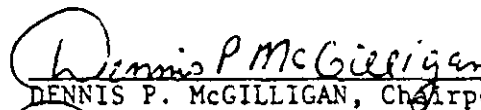
The appellant has filed a petition for rehearing. The Commission entered an order dated February 13, 1985 and mailed the following day. The order dismissed this matter for lack of prosecution. Appellant's petition for rehearing was filed October 1, 1985. Pursuant to §227.12, Stats:

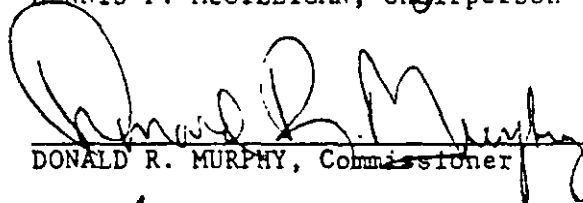
Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing, which shall specify in detail the grounds for the relief sought and supporting authorities.

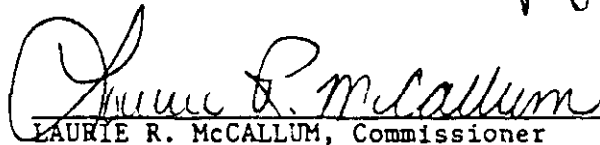
Here the appellant's petition was filed well after the 20 day statutory period had run. Therefore, the Commission lacks the authority to consider the petition and the February 14th order shall stand as previously issued.^{FN}

Dated: October 31, 1985

STATE PERSONNEL COMMISSION


DENNIS P. MCGILLIGAN, Chairperson


DONALD R. MURPHY, Commissioner


LAURIE R. MCCALLUM, Commissioner

KMS:jgf
JGF002/2

FN Even if the Commission had the authority to entertain the appellant's petition, the appellant has failed to show that the dismissal for lack of prosecution was in error. In an interim order dated January 16, 1985, the appellant was granted 20 days in which to "list those class specifications that better identify his position than the Plan Industry Inspector 2 classification". A note in the case file describing a February 11th call to the appellant indicates that he had decided not to pursue the case after carefully reviewing comparable positions and that he preferred dismissal for lack of prosecution. The February 13th order recited that the "twenty day period has run and appellant has failed to submit a list of alternative classifications."

The appellant's appeal was initially filed with the goal of having the Commission review the respondent's decision to assign the Plant Industry Inspector 2 classification to pay range 5-11 instead of 5-12, 5-13 or 5-14. In orders dated December 6, 1984 and January 16, 1985, the Commission explained that it could review reallocation, reclassification and regrade decisions, but that a decision to assign a classification to a particular pay range was a decision made under §230.09(2)(b), Stats., which is not reviewable under §230.44(1)(b), Stats. In his petition for rehearing, the appellant argues that §ER-Pers 3.01(2), Wis. Adm. Code, defines "reallocation" in such a way

that a "change in the pay range of the class" constitutes a reallocation and therefore is appealable. The actual language of the rule reads:

(2) Reallocation. Reallocation means the assignment of a position to a different class by the administrator as provided in §230.09(2), Stats., based upon:

- (a) A change in concept of the class or series;
- (b) The creation of new classes;
- (c) The abolishment of existing classes;
- (d) A change in the pay range of the class;

This language does not define reallocation as a change in the pay range of a class or the creating of a new class, etc. It states that reallocations are the assignment of positions to a different class based upon such events. Using §ER-Pers. 3.01(2), Wis. Adm. Code, as a means for permitting appeals of decision to create new classes, or change pay ranges of a class would not only be inconsistent with the language of the rule, it would directly contravene the provisions of §§230.09(2)(a), (b) and .44(1)(b), Stats.

Finally, it should be pointed out that the appellant may file a request with his supervisor to have appellant's position reclassified from Plant Industry Inspector 2 to Regulation Compliance Investigator 4. If the appellant is turned down at each step in the reclassification process and if he is dissatisfied with the final decision, he may appeal the final reclassification decision to the Commission pursuant to §230.44(1)(b) and .09(2)(a), Stats. If the appellant has questions as to how to commence the reclassification process, he may wish to contact the personnel office in his employing agency.

Parties

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