

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH I

BROWN COUNTY

JOHN N. PETERS,

Petitioner,

vs.

Case No. 85-CV-3056

WISCONSIN PERSONNEL COMMISSION,

Respondent.

DECISION ON REVIEW OF STATE PERSONNEL COMMISSION DECISION

This case arises from a request for judicial review of a decision of the State Personnel Commission (the "Commission"). The petitioner, John N. Peters, works for the Department of Agriculture, Trade and Consumer Protection. By letter dated June 29, 1984, Peters was notified that his position had been "reallocated" from "Plant Industry Inspector 2, PR5-10" to "Plant Industry Inspector 2, 5-11" with a concomitant increase in pay. The change was apparently the result of a comprehensive survey conducted by the Department of Employment Relations (the "DER"). The letter also advised Peters that he could appeal the decision to the Commission.

Peters was dissatisfied with the DER's action and began an appeal to the Commission. At a prehearing conference, the DER argued that the Commission lacked subject matter jurisdiction under its decision in Smetana, et al., v. DER, 84-0099, etc.-PC (8/31/84). By order dated December 6, 1984, the Commission held that it had no jurisdiction, but noted that direct judicial review of the substantive issue was available.

Peters, however, chose to concentrate on the Commission's jurisdictional decision. He requested a rehearing before the Commission which was granted on January 16, 1985. Under the terms of the order granting rehearing, Peters was given "20 days from the date of this order in which to list those class specifications that better identify his position than the Plant Industry Inspector 2 classification." He failed to meet the 20-day deadline and, by order dated February 13, 1985, the Commission dismissed the matter for lack of diligent prosecution.

On October 1, 1985, Peters filed a second petition for rehearing with the Commission. The Commission refused to consider the second petition because it was untimely under sec. 227.12, Stats., but by footnote reiterated its reasoning on jurisdiction set out in its December 6, 1984, decision.

On November 22, 1985, Peters filed a lengthy document styled "Petition: Review of State Personnel Commission Order dated Oct. 31, 1985" The petition concludes:

"I therefore request: That the Court set aside the original preconference order and all subsequent orders as they all have basis in the original order and hereby request the Court to remand the Commission to hold a rehearing on my original appeal. The original appeal being the results of the Department of Employment Relations Survey."

On behalf of the Commission, the Attorney General argues that Peters' petition is untimely with respect to all but the Commission's final order and that Peters failed to follow statutory service requirements. The Attorney General therefore concludes that I lack subject matter jurisdiction in this matter.

DECISION

Because the Commission properly dismissed the second petition for rehearing and because its original legal conclusion on jurisdiction is rational, I shall affirm the Commission's decision to deny a rehearing.

Peters' second petition for rehearing was filed on October 1, 1985, more than half a year after the Commission's February 13, 1985, order dismissing the matter for lack of diligent prosecution. The Commission's decision to refuse to consider the second petition for rehearing was correct

under sec. 227.12(1), Stats. Although the Attorney General argues that I need not address the Commission's original decision that it lacks jurisdiction over the dispute between Peters and the DER, I shall do so with the hope that such a discussion will lead to a final resolution of this matter.

The Commission set out its position regarding its jurisdiction to hear the underlying substantive claim in both its December 6, 1984, and October 31, 1985, decisions. Basically, the Commission construes the DER's action concerning Peters' job as a decision assigning a job classification to a particular pay range. The Commission believes that such a decision falls under secs. 230.19(2)(am) and (b), Stats., and therefore not within its jurisdiction which is limited to decisions made under secs. 230.19(2)(a) and (d), Stats. See sec. 230.44(1)(b), Stats.¹

Because the issue of the Commission's jurisdiction is a question of law, I am not bound by the Commission's decision on the point. Miller Brewing Co. v. IHLR Department, 103 Wis. 2d 496, 501 (Ct. App., 1981).

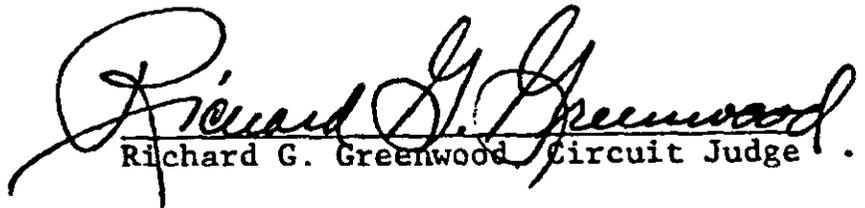
1. I note that in a footnote to its October 31, 1985, decision the Commission has suggested a course which it believes would ultimately allow Peters to obtain Commission review of his dispute with the DER.

However, trial courts generally defer to an agency's expertise when construing statutes the agency administers, Nigbor v. DIHLR, 115 Wis. 2d 606, 611 (Ct. App., 1983), aff'd 120 Wis. 2d 375 (1984), and will uphold an agency's legal conclusions, if rational, even if an equally rational view exists. Id. Although reviewing courts defer somewhat less to an agency's legal conclusions regarding the scope of its own powers, Board of Regents v. Wis. Pers. Comm., 103 Wis. 2d 545, 551 (Ct. App., 1981), I am persuaded that the Commission's interpretation of the statute conferring its jurisdiction is rational and I shall not disturb it on review.

Upon the foregoing, the Commission's orders of December 6, 1984, January 16, 1985, February 13, 1985, and October 31, 1985, shall be and the same are now affirmed. Counsel for the Commission shall forthwith submit a draft of an order consistent with this Decision.

Dated at Green Bay, Wisconsin, this 14 day of April, 1986.

BY THE COURT:


Richard G. Greenwood, Circuit Judge.