

STATE OF WISCONSIN

PERSONNEL COMMISSION

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JACK BARKER,

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN SYSTEM (Madison),  
and Secretary, DEPARTMENT  
OF EMPLOYMENT RELATIONS,

Respondents.

Case No. 88-0024-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This appeal arises from a letter received by the Personnel Commission on March 4, 1988. That letter, signed by a steward for AFSCME Local 171, stated:

On October 11, 1987, a worker at the memorial Union kitchen (Kathy Strand) was reclassified from a FSW2 to a FSW3. While there is no argument that Ms. Strand was qualified for this reclassification, the fact is that at the time the decision was first made to reclassify her, there were 2 other FSW 2s (June Wagner and Katherine Butler) working in the same building who were just as qualified, if not more so. There was absolutely no competition for this position. These other 2 FSWs were simply excluded from the process. An obviously arbitrary decision by management made for the sole purpose of putting the person they wanted into this position.

Both of these other 2 FSWs have expressed concerns to me over the process used and also have informed me that they would have been interested in the now filled position. They both feel they were qualified. I feel that by not opening this FSW 3 position up for competition, possibly some rule or law may have been violated or broken. I am requesting that someone from your office look this matter and determine whether or not this reclassification was properly handled and granted.

Pursuant to s. 230.44(3), Stats., appeals of such matters as reclassification decisions must be 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." The 30 day time limit is jurisdictional in nature, in that if the time limit is not met, the statute provides that the Commission may not hear the matter.

During a telephone conversation on March 7, 1988, a member of the Commission's staff informed the appellant of the potential timeliness problem and by letter dated March 11, 1988, the appellant was provided an opportunity to file written arguments relating to the timeliness issue.

The letter of appeal indicates the appeal was filed far more than 30 days after the disputed reclassification action occurred in October of 1987. There is also no indication that the appellant did not become aware of the reclassification at the time it occurred.

In Piotrowski v. DER, 84-0010-PC, 3/16/84, the Commission held that pursuant to §ER-Pers 3.04, Wis. Adm. Code, the time limit for filing an appeal of a reclassification or reallocation decision did not commence until the appellant had received written notification. However, the Piotrowski decision must be limited to an appeal filed by the position incumbent because §ER-Pers 3.04, Wis. Adm. Code, refers only to written notification of the incumbent. There is no written notice requirement for co-workers of the incumbent. In the absence of any indication to the contrary, the Commission concludes that the appellant became aware of the transaction no later than the effective date of the transaction. Even if the appellant did not have actual notice at the time of the effective date of the transaction, and did not learn of the transaction until March 3, 1988, his appeal would be untimely. The respondent simply had no responsibility for notifying the appellant of the transaction given the appellant's lack of involvement in the transaction.


Because the appeal was not filed within the 30 day time limit, the Commission issues the following

ORDER

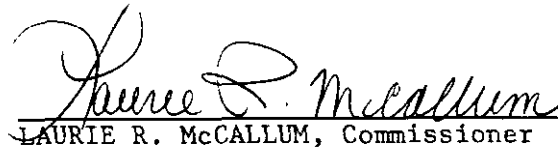
This matter is dismissed as untimely filed.

Dated: April 20, 1988 STATE PERSONNEL COMMISSION

  
DENNIS P. MCGILLIGAN, Chairperson

  
DONALD R. MURPHY, Commissioner

KMS:rcr  
RCR01/1

  
LAURIE R. McCALLUM, Commissioner

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