

STATE OF WISCONSIN

PERSONNEL COMMISSION

\* \* \* \* \*  
 \*  
 RHONDA LARSON & TODD TIMM, \*  
 \*  
                   Appellants, \*  
 \*  
 v. \*  
 \*  
 Secretary, DEPARTMENT OF \*  
 HEALTH AND SOCIAL SERVICES, \*  
 and Secretary, DEPARTMENT OF \*  
 EMPLOYMENT RELATIONS, \*  
 \*  
                   Respondents. \*  
 \*  
 Case No. 89-0046-PC \*  
 \*  
 \* \* \* \* \*

INTERIM  
 DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(b), Stats., of the effective date of a reclassification from Correctional Officer 1 (CO1) to Correctional Officer 2 (CO2). On July 28, 1989, respondent DHSS filed a motion to dismiss the appeal on the ground of untimely filing and both sides have filed briefs. The essential facts relative to timeliness do not appear to be in dispute and are set forth hereafter.

FINDINGS OF FACT

1. Appellants transferred to Oakhill Correctional Institution (OCI) on November 6, 1988, and were placed on permissive probation for six months, to end on May 6, 1989.
2. On or about February 9, 1989, appellant Timm was notified that he would not receive a reclassification to CO2 until he completed his permissive probation - i.e., May 6, 1989.
3. On or about February 22, 1989, appellant Larson was notified that she would not receive reclassification to CO2 until she had completed permissive probation - i.e., May 6, 1989.

4. Both appellants pursued contractual grievance procedures with respect to their reclassification effective dates. Their grievances were waived to the third step by the institution on February 23, 1989.

5. Appellants filed their appeal with this Commission on May 2, 1989. They stated in the appeal that they had been informed at an April 24, 1989 third step grievance hearing that the issue should be presented to the Personnel Commission.

6. Appellants' grievances were denied at the third step by an employer's decision dated May 9, 1989, which stated: "A reclassification effective date neither is bargainable nor grievable."

#### CONCLUSIONS OF LAW

1. This appeal was timely filed pursuant to §230.44(3), Stats.

#### DISCUSSION

Section 230.44(3), Stats., provides as material:

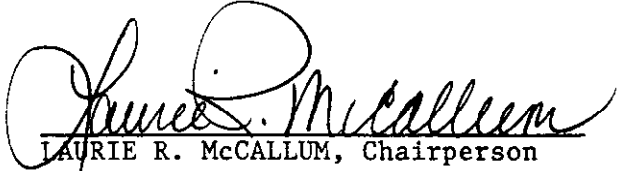
"Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later ...." (emphasis added)

The action which is being appealed in this case is the action establishing the effective date of the reclassification of appellants' positions from CO1 to CO2 as May 6, 1989. This appeal was filed more than 30 days after appellants were notified of this action, but not more than 30 days after the effective date of the action. Therefore, the appeal was timely. Given this conclusion, there is no need to address the question of whether there is an equitable estoppel due to respondent's failure to have informed appellants that the matter was non-grievable when they filed their contractual grievances at OCI.

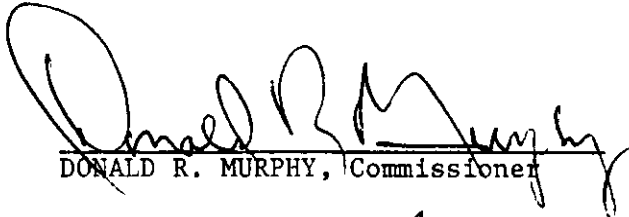
ORDER

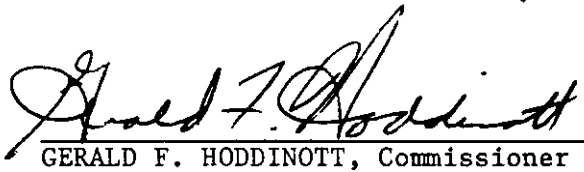
Respondent's motion to dismiss filed July 28, 1989 is denied.

Dated: September 8, 1989 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:gdt  
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DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner