

STATE OF WISCONSIN

PERSONNEL COMMISSION

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ROBERT A. KNUEPPEL,  
Appellant,

v.

Secretary, DEPARTMENT OF  
TRANSPORTATION,

Respondent.

Case No. 92-0194-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. The parties have filed briefs.

This case involves an appeal of a noncontractual grievance. The grievance asserts that appellant worked a number of hours of overtime for which he was paid time and one half, but, unlike rank and file troopers, he did not receive additional sick leave benefits for these hours. The "relief sought" is to credit appellant's sick leave balance with the additional sick leave. It appears to be undisputed that the parties agreed on February 10, 1992, to waive the first and second steps of the grievance process, and that respondent had not rendered an answer to the third step either within the 21 day time period provided for answering at the third step, §ER 46.06(2)(c)2., Wis. Adm. Code, or by the time this appeal was filed with this Commission on April 2, 1992.

The Commission's jurisdiction over non-contractual grievances is based on §230.45(1)(c), Stats., which provides that the Commission shall: "Serve as final step arbiter in the state employe grievance procedure established under s. 230.04(14)." According to §230.04(14), Stats., the Secretary of the Department of Employment Relations "shall establish, by rule, the scope and minimum requirements of a state employe grievance procedure relating to conditions of employment."

The Secretary of DER has established the scope of the grievance procedure in §ER 46.03, Wis. Adm. Code:

- (1) Under this chapter, an employe may grieve issues which affect his or her conditions of employment, including any

matter on which the employe alleges that coercion or retaliation has been practiced against the employe except as provided in sub. (2).

(2) An employe may not use this chapter to grieve:

...

(k) Any matter related to wages, hours of work, and fringe benefits. (emphasis added)

The appellant's grievance involves sick leave which clearly is a fringe benefit. Therefore, the topic of this grievance falls within the scope of §ER 46.03(32)(k) and must be dismissed for lack of jurisdiction.

Respondent also contends in its reply brief that this appeal was not timely filed, since the grievance was waived to the third step on February 10, 1992, under §ER 46.06(2)(c) 2., Wis. Adm. Code, respondent had 21 days (i.e., until March 2, 1992), to respond at the third step, and appellant then had 30 days to file and appeal with this Commission pursuant to §ER 46.07(2), Wis. Adm. Code:


Grievances to the Commission must be filed within 30 calendar days after service of a decision issued at the third step of the grievance procedure under s. ER 46.06(2)(c)2., or within 30 calendar days after the last day on which the employer could have served a timely decision, whichever is sooner.

Since the Commission clearly lacks subject matter jurisdiction over this appeal, and the timeliness issue was not raised until the reply brief, the Commission will not address this contention.

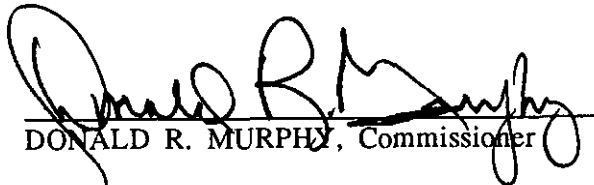
ORDER

This appeal is dismissed for lack of subject matter jurisdiction.

Dated: July 22, 1992 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT/gdt/2

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

Parties:

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Eau Claire WI 54701-8846

Charles Thompson  
Secretary DOT Rm 120B  
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NOTICE  
OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW  
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

**Petition for Rehearing.** Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

**Petition for Judicial Review.** Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to

§227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.