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KEITH F. HUTCHISON,  
 Appellant,

v.

Secretary, DEPARTMENT OF  
 EMPLOYMENT RELATIONS,  
 Respondent.

Case No. 92-0577-PC

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RULING  
 ON  
 PETITION FOR  
 REHEARING

This matter is before the Commission on a petition for rehearing filed November 14, 1994. This petition relates to the Commission's final decision entered on October 24, 1994, and served by mail on October 26, 1994. In that decision, the Commission adopted a proposed decision which affirmed respondent DER's action reallocating appellant's position to Water Supply Specialist - Senior rather than Advanced.

In that decision, the Commission declined to overrule its interpretation in Fitzgerald v. DER, 92-0308-PC (1/11/94), of the definition of the Advanced level in the Water Supply Specialist class specification. In Fitzgerald, the Commission held that the following language in the Advanced definition clearly requires statewide elements for classification at that level:

These positions are responsible for developing, implementing, monitoring and evaluating statewide policies and programs ... and are considered to be the statewide expert in their assigned program area. (emphasis added)

In his petition for rehearing, appellant contends that the Fitzgerald decision was based on "an erroneous belief that: 'when the specifications were developed, there were no district positions which met [the] Advanced specification. Only central office positions are allocated to that level, currently.'" Appellant contends further that subsequent to the Fitzgerald and his hearings, "the results of a survey revealed that thirteen Advanced positions were allocated to positions outside of the central office," and that appellant had not introduced this evidence at the time of his hearing because "the results of the survey were not compiled at that time."

The hearing in this matter was held on August 29, 1994. The proposed decision was served on September 1, 1994. The document which appellant seeks to have considered in connection with the petition for rehearing is a September 27, 1994, memo from Sue Steinmetz of DNR Personnel responding to appellant's September 8, 1994, request for information. There has been no showing that this information would not have been available for the hearing if it had been requested earlier. Appellant asserts in his petition that he "could not have anticipated the incredible testimony of personnel specialists from DNR and DER that they were unaware of any positions having been approved at the Advanced level with knowledge that they did not contain statewide elements." This assertion is inconsistent with the fact that at the hearing appellant identified a number of positions at the Advanced level without any apparent statewide elements. At this point in the proceeding, he is attempting to reopen the record to add additional evidence of the same nature.

In its decision of this matter, the Commission also denied appellant's request to hold this case in abeyance while respondent conducted its classification review of the Advanced positions, to determine whether respondent will follow through on its intention stated at hearing to reallocate to the Senior level any Advanced positions found not to have statewide elements. Appellant has not presented any new arguments on this issue in support of his petition for rehearing, except to point out that if respondent does not follow through on its stated intention, and he seeks a classification change as a result -- i.e., presumably on the theory that by leaving positions without statewide elements at the Advanced level, respondent will be signaling a change in its interpretation of the class specification -- it is possible he would not receive an effective date retroactive to the survey implementation date.<sup>1</sup> For basically the same reasons as set forth in its final decision, the Commission does not perceive that the possibility that appellant might not obtain the effective date he has sought in the event that all of the indicated eventualities occur is not a sufficient basis to hold this record open.


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<sup>1</sup> In its response to the petition, respondent DER states that it "recognizes that if it departs from its stated interpretation of the classification specifications, any subsequent appeal by Mr. Hutchison would relate back to the effective date of the survey, as would any other appeal filed."

ORDER

Since appellant has not identified a material error of law or fact or the "discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence," §227.49(3), Stats., the petition for rehearing is denied. On its own motion, the Commission corrects an error in the proposed decision and order, which the Commission adopted on October 24, 1994, by changing the word "Advanced" in the ORDER on page 4 of the proposed decision and order to "Senior."

Dated: December 13, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:rcr

  
JUDY M. ROGERS, Commissioner

Parties:

Keith Hutchison  
2551 Carmel Lane  
Green Bay, WI 54311

Jon Litscher  
Secretary, DER  
P.O. Box 7855  
Madison, WI 53707

**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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)