STATE OF WISCONSIN PERSONNEL COMMISSION

DAVID D. EMMONS,

Complainant,

v.

Secretary, DEPARTMENT OF HEALTH AND SOCIAL SERVICES,

Respondent.

Case Nos. 93-0097-PC-ER
93-0112-PC-ER

DECISION AND ORDER

Oral arguments were presented to the Commission on November 22, 1995. After consultation with the examiner, the Commission adopted the examiner's decision as the final decision.

## NATURE OF THE CASE

These cases were heard on a consolidated basis on the following stipulated issues:

Case No. 93-0097-PC-ER
Whether respondent discriminated against complainant in violation of the FMLA in connection with the termination of his project employment effective May 13, 1993.

Case No. 93-0112-PC-ER
Whether respondent discriminated against complainant on the basis of retaliation in violation of the FEA in connection with the termination of his project employment effective May 13, 1993.

## FINDINGS OF FACT

1. At the time of the termination of his employment, effective May 13, 1993, complainant had been employed at the Lincoln Hills School (LHS) as a teacher in a "project" position since February 23, 1992.

2. As a project appointee, complainant had no tenure rights, and in essence served as an "at will" employe, subject to termination at any time without the recourse available to permanent classified employes. See §230.27(2m), Wis. Stats.; §ER-MRS 34.08, Wis. Adm. Code.

3. On April 23, 1993, a Friday, complainant was scheduled to work until 3:30 p.m., but left work at about 1:30 p.m.

4. Prior to leaving the institution, complainant informed Ken Pickett that he would be leaving. Ken Pickett was a coworker whose work assignment that day included Chief Joseph Cottage, where complainant also would have been working for part of the period in question.

5. Prior to leaving the institution, complainant neither notified nor attempted to notify either management or anyone else at the institution besides Mr. Pickett that he would be leaving.

6. At approximately 1:50 p.m. on April 23, 1993, management tried unsuccessfully to page complainant, and ascertained that he was not present at the institution.

7. On April 27, 1993, complainant returned to work. In response to questioning by teacher supervisor Kim Koeck concerning his whereabouts on April 23, 1993, complainant stated that he had had a family emergency, that he had tried but been unable to contact Mr. Koeck before he had left the institution, and that he had left an emergency leave slip in Koeck's mailbox. When Koeck said he had not received the leave slip, complainant said he must have put it in his own mailbox by mistake. He and Koeck proceeded to the office area, where complainant pulled from his own mailbox a leave request form (Respondent's Exhibit 11) which requested leave for the period of 1:30 - 3:30 p.m. on April 23, 1993, and on the bottom of which complainant had written "family emergency."

8. An investigatory hearing was held on April 29, 1993, concerning complainant's April 23, 1993, departure from work without having notified management he was leaving. Complainant's statement at that meeting is essentially accurately reflected in the shorthand notes taken by LHS personnel manager Vi Herman, which includes the following:

> He got an emergency call at 1:25 or 1:30 PM on Friday afternoon, April 23, 1993. Mr. Koeck was in security; and Emmons was in a hurry. Emmons filled out a "leave of absence form"; he stated he was instructed to do this by Mr. Steckel a long time ago.[1] He then "threw the form in my (Emmons) mailbox instead of Mr. Koeck's." Mr. Emmons did not want to go into details and chose not to discuss details of emergency. He stated

[1] Mr. Steckel never told complainant that leaving such a form in a supervisor's mailbox was an appropriate way to inform management of an early departure from LHS.

> it had to do with physical and emotional condition of wife and needed in home as quickly as he could get there. He did not make any attempt to contact Mr. Koeck but [sic] Patti or Diane (school clerical) asked them where Koeck was. (Respondent's Exhibit 12)

9. A disciplinary hearing was held on May 5, 1993, at which complainant was represented by coworker Ken Pickett. They added nothing of substance to the statement set forth in the preceding finding. They did not advise that complainant had told Mr. Pickett he was leaving on April 23, 1993.

10. Subsequently, Mr. Koeck recommended that complainant be given a written reprimand. This would have been consistent with respondent's typical progressive discipline approach for employes (unlike complainant) with permanent status in class.

11. By letter dated May 13, 1993 (Respondent's Exhibit 13), Superintendent Schneider notified complainant of his discharge effective May 13, 1993, for the reason that: "On Friday, April 23, 1993, you left the institution without notifying anyone that you were leaving."

12. Complainant previously had been disciplined with a verbal reprimand for having left a mandatory staff meeting without permission on February 25, 1993.

13. When complainant filled out his time sheet on April 30, 1993, he requested the use of compensatory time for the two hours he was absent from work on April 23, 1993. This was approved by Mr. Koeck on April 30, 1993, and ultimately finalized by respondent.

14. Complainant in the past had been allowed without incident to use various kinds of leave in order to be away from work to care for his wife.

15. Complainant's wife was an alcoholic during the time period material to this case.

16. As of April 23, 1993, complainant's wife had been participating in an outpatient psychotherapy regimen for her alcoholism at the Family and Children's Center, La Crosse. She had been seen by a professional psychotherapist with a master of science degree. This outpatient therapy had been advised by a physician at St. Francis Medical Center, La Crosse, upon complainant's wife's discharge on January 13, 1993, following her admission for treatment of alcohol dependency/incapacitation.

17. Complainant's wife was treated by the psychotherapist at the Family and Children's Center in January, February, and March, 1993, but complainant's wife cancelled an April 19, 1993, appointment.

18. Complainant did not receive a phone call from his wife on April 23, 1993, to the effect that he should come home soon because of her condition.

19. Complainant did not leave LHS early on April 23, 1993, in order to care for his wife.

## CONCLUSIONS OF LAW

Case No. 93-0097-PC-ER

1. This matter is properly before the Commission pursuant to §103.10(12)(a)1., Wis. Stats.

2. Complainant has the burden of proof to establish that respondent discriminated against him in violation of the FMLA in connection with the termination of his project employment effective May 13, 1993.

3. Complainant did not satisfy this burden.

4. Complainant's wife had a serious health condition as of April 23, 1993.

5. Respondent did not terminate complainant's project employment effective May 13, 1993, either because of his use of family leave or because of his failure to have given advance notice with respect to his absence on April 23, 1993. Rather, respondent's reason for discharging complainant was for leaving LHS before the end of his shift on April 23, 1993, without notification that he was leaving, in the context of his prior discipline for absence from a meeting.

6. Respondent did not discriminate against complainant in violation of the FMLA in connection with the termination of his project employment effective May 13, 1993.

Case No. 93-0112-PC-ER

7. This matter is properly before the Commission pursuant to §230.45(1)(b), Wis. Stats.

8. Complainant has the burden of proof to establish that respondent discriminated against him in violation of the FEA in connection with the termination of his project employment effective May 13, 1993.

9. Complainant has not satisfied this burden.

10. Respondent did not discriminate against complainant on the basis of retaliation in violation of the FEA in connection with the termination of his project employment effective May 13, 1993.

## OPINION

Case No. 93-0097-PC-ER

Section 103.10(3)(b), Wis. Stats., provides that an employe is entitled to a certain amount of family leave "[t]o care for the employe's child, spouse or parent, if the child, spouse or parent has a serious health condition." An employer is prohibited from denying an employe any rights provided by the FMLA, or from discriminating against an employe for exercising the employe's FMLA rights. §103.10(11), Wis. Stats.

A necessary element to the establishment of a FMLA claim by complainant is to demonstrate at the hearing before the Personnel Commission that his wife had a "serious health condition" as defined by §103.10(1)(g): "a disabling physical or mental illness, injury, impairment or condition involving any of the following ... 2. Outpatient care that requires continuing treatment or supervision by a health care provider." (emphasis added) See Sieger v. Wisconsin Personnel Commission, 181 Wis. 2d 845, 860-61, 512 N.W. 2d 220 (Ct. App. 1994).

A condition is "disabling" if it involves "incapacitation, or the inability to pursue an occupation or perform services for wages because of physical or mental impairment," MPI Wis. Machining Div. v. DILHR, 159 Wis. 2d 358, 370, 464 N.W. 2d 79 (Ct. App. 1990), or "[i]n the case of an unemployed parent, spouse, or children, the incapacitation could take the form of interference with normal daily functions." id., at n. 6. Complainant has satisfied his burden of proof with respect to this criterion.

The medical records in this case (Respondent's Exhibit 22) clearly reflect that complainant's wife was suffering from acute alcohol dependence. These records included hospital records from detoxification admissions in 1990, 1991, 1992, and 1993. Also included are three physicians' diagnoses of alcohol dependence. In addition, the record includes a copy of a court order dated March 17, 1992 (Complainant's Exhibit 1) committing complainant's wife for 90 days involuntary treatment for alcoholism. Attached to this order is a copy of a March 9, 1992 psychiatrist's report which includes the following: "My diagnostic impression at this time is of alcohol dependence. I do believe that

Cathy's drinking is out-of-control. I do believe that she represents a risk of herself through her uncontrolled drinking. I believe she is a proper subject for commitment." While the record does not reflect whether complainant's wife was unable to work at the specific time in question (April 23, 1993), it is reasonable to conclude that her overall condition of alcohol dependency would have caused her to have been unable to pursue employment during at least part of the period leading up to that date, due to acute intoxication and related matters reflected in the medical records. These matters obviously also interfered with her normal daily functions, to the extent she was unemployed. In a situation involving an acute, chronic condition such as that suffered by Ms. Emmons, it would be misleading to focus on a snapshot of time, such as a specific day when an individual might be capable of working or might be able to carry out his or her normal functions, to the exclusion of the overall condition of the person during a more substantial period of time. Having established his wife's status or condition for the period in question, complainant satisfied his burden of proceeding on this issue, and in the absence of a showing of some sort by respondent that complainant's wife's condition had changed for the better as of April 23, 1993, he was not required to have shown specifically that all the elements of her serious health condition were extant on April 23, 1993.

The second element of a "serious health condition" in this case is "[o]utpatient care that requires continuing treatment or supervision by a health care provider." §103.10(1)(g), Wis. Stats. Respondent contends that complainant's wife's condition does not satisfy this test because she did not receive any treatment between March 11, 1993, and April 23, 1993, and her specific condition on the latter date, with respect to which there had been no expert opinion, may not have been the same as it had been earlier. Again, this contention places too much emphasis on the documentation of an individual's condition at a particular moment in time. As discussed above, the medical records clearly establish that Ms. Emmons' condition of alcohol dependence was both severe and chronic for a substantial period prior to the date in question. When she was discharged from the St. Francis Medical Center on January 13, 1993, her physician's plan of treatment was: "Discharge to outpatient follow up with Colin Ward at Family and Children's Center under patient's HMO insurance status. If she fails outpatient treatment, consider more aggressive inpatient treatment process." She subsequently was seen by a

psychotherapist at the Family and Children's Center in January, February, and March, 1993, and then missed her April session. From the circumstances presented by this record, it can be inferred that the status quo had not changed since January 13, 1993, when she had been discharged from the hospital and her doctor had advised outpatient therapy. This conclusion is reinforced by MPI Wis. Machining Div. v. DILHR, 159 Wis. 2d 358, 464 N.W. 2d 75 (Ct. App. 1990). The Court rejected the contention that the phrase "continuing treatment or supervision by a health care provider," §103.10(1)(g)2., Wis. Stats., includes situations where "a doctor instruct[s] a patient capable of self-care or another care-taking adult how to do follow-up care and remains available to respond to expected and unexpected problems." 159 Wis. 2d at 371, as opposed to "outpatient care that requires followup care by a health care provider." id. When Ms. Emmons was discharged from the hospital, the plan of treatment prescribed by the physician required ongoing professional outpatient treatment. This regimen involved "direct, continuous and first hand contact by a health care provider subsequent to the initial outpatient contact," id., at 372, as the Court held was contemplated by the FMLA requirement of "[o]utpatient care that requires continuing treatment or supervision by a health care provider." 103.10(1)(g)2., Wis. Stats. (emphasis added) Such a required treatment regimen for an alcoholic such as Ms. Emmons is not somehow negated for purposes of FMLA coverage because she missed her appointment in the fourth month of the program.

While complainant established that his wife had a serious medical condition, he failed to establish that he left work two hours early on April 23, 1993, in order to care for her. Complainant's case on this point rests primarily on his testimony that his wife called him on April 23, 1993, and asked him to come home as soon as possible to care for her in connection with a relapse or possible relapse. However, complainant's account of this phone call lacks credibility because of conflicting circumstantial evidence and inconsistencies in his statements.

Shortly after the incident in question, complainant stated at the investigatory hearing that he had received an emergency phone call from his wife about 1:25 or 1:30 p.m., shortly before he had left the institution. Rushing out of the institution in response to such a call would, of course, have provided an excuse, or at least mitigating circumstances, for his failure to have

contacted management[2] (or someone such as the population monitor or a communications center employe who could have been expected to have informed management of complainant's departure) as he was leaving. However, when he subsequently was asked to provide the telephone company's record of this call as part of the prehearing discovery process, he provided the following statement:

> My wife called me while I was on lunch break at the McDonalds in Merrill, WI I had attempted to contact her the night before as well as during my break. I finally reached our daughter who relayed the information to my wife that I was at McDonalds, the phone number, and how long I would be there. My wife visited our daughter immediately after I had left the message.
>
> My wife left our daughters home with the intention of buying more alcohol but phoned me [at McDonalds] from a pay phone nearby.[3] Respondent's Exhibit 22.

Due to the distance from the McDonalds in Merrill to LHS, it would have been impossible for complainant to have gotten this call at 1:25-1:30 p.m., as he earlier had stated. Rather, based on his testimony at the hearing, the time of the call would have been about an hour earlier. Complainant's only explanation for this discrepancy is his testimony that "[E]verybody has been wrong on that time since this whole thing started." T., 514. However, this time (1:25-1:30 p.m.) is supported by Ms. Herman's shorthand notes of the investigatory hearing, and she would have had no incentive to have recorded this information inaccurately at the time the notes were taken.

Another of the discrepancies undermining the credibility of complainant's account of having received an emergency phone call from his wife at the Merrill McDonalds is his testimony that, while he realized he could have simply called LHS from McDonalds and then gone home without having returned to the institution, he drove back because he was still trying to decide what to do, and because he wanted to bring a GED study sheet to a student in a security cottage. It is inconsistent with having received a phone call of an urgent or emergency nature for complainant to have driven back to the

---

[2] While a showing of an emergency call would have been a mitigating factor, the presence of emergency or exigent circumstances is not a pre-requisite for taking family leave without advance notice. MPI Wis. Machining Div. v. DILHR, 159 Wis. 2d 358, 376-77, 464 N.W. 2d 79 (Ct. App. 1979).

[3] The pay phones in question do not generate records of individual calls.

institution, which added about 30 minutes to the time it ultimately would take complainant to return home,[4] in order to decide what to do, and to take care of a task for which no particular urgency has been identified. However, according to complainant, once he had made up his mind to leave early, he then was in a hurry because of the urgency of the situation. When asked at the hearing whether he had talked to the population monitor as he was leaving, he testified: "No, I don't remember exactly. I may have said something with my back turned, 'Do you know where Koeck is?' or something like that, but I didn't talk face to face, eyeball to eyeball to anybody.[5] I was in a hurry." T., 463.

Even if complainant had established that he had left work two hours early on April 23, 1993, to care for his wife, he would not have established that respondent either violated the FMLA or discriminated against him in violation of the FMLA (or FEA) in connection with his actions.

Since management was not aware of his early departure on April 23, 1993, until after he had left, and it subsequently allowed him to use the leave time he requested for these hours, it did not deny him FMLA family leave per se. However, if management discharged him because he used FMLA leave, this obviously would be a prohibited act under §103.10(11)(a), Wis. Stats.: "No person may interfere with, restrain or deny the exercise of any right provided under this section." The record does not support a conclusion that respondent discharged complainant because of his use of leave on April 23, 1993.

Complainant apparently has two potential theories which would support a claim that complainant's discharge was motivated by his use of leave on the date in question. One relates to the manner in which he took two hours of leave on April 23, 1993 -- complainant seems to be contending his employment was terminated because he failed to give advance notice of his use of leave.

---

[4] Complainant commuted on weekends to his residence in Galesville.

[5] In earlier accounts of his departure, complainant asserted that he had asked the population monitor where his supervisor was (investigatory hearing), that he had "informed a population monitor that I was leaving" (charge of discrimination), and that he had "informed an unknown member of the clerical staff that he needed to leave for home for a family emergency and that he was unable to find Kim Koeck to advise him of the same." (Answer to interrogatory, Respondent's Exhibit 21). At the hearing, the population monitors testified that complainant did not make such statements and that if he had advised he was leaving early, this would have been reflected in a log entry. Complainant then testified as set forth above.

While the Commission agrees with complainant that the FMLA does not require an employe taking leave under §103.10(3)(b)3., Wis. Stats., to give advance notice to the employer, it does not agree that there has been a showing that respondent discharged complainant because of failure to have given advance notice.

Section 103.10(6), Wis. Stats., provides:

> (6) Notice to employer. (a) If an employe intends to take family leave for the reasons in sub. (3)(b)1 or 2, the employe shall, in a reasonable and practicable manner, give the employer advance notice of the expected birth or placement.
>
> (b) If an employe intends to take family leave because of the planned medical treatment or supervision of a child, spouse or parent or intends to take medical leave because of the planned medical treatment or supervision of the employe, the employes shall do all of the following:
>
> 1. Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider of the child, spouse, parent or employe.
>
> 2. Give the employer advance notice of the medical treatment or supervision in a reasonable and practicable manner.

Since complainant's use of leave on April 23, 1993, did not involve the birth or adoption of a child (§§103.10(3)(b)1., 2., Wis. Stats.), the advance notice requirement of §103.10(6)(a), did not come into play. Pursuant to complainant's theory of the case, he took leave pursuant to §103.10(3)(b)3. in order "[t]o care for [his] spouse." The only advance notice requirement for this type of family leave is when the "employe intends to take family leave because of the planned medical treatment or supervision of a ... spouse." §103.10(6)(b) (emphasis added). Since the leave was not taken for the purpose of "planned medical treatment or supervision," the requirement of advance notice does not pertain. See MPI Wis. Machining Div. of DILHR, 159 Wis. 2d 358, 376, 464 N.W. 2d 79 (Ct. App. 1990) (("if an employe can establish that he or she took leave in order to care for a child, spouse or parent with a serious health condition ... there is no statutory requirement of advance notice when such leave is unplanned or unintended.") However, the record does not support a finding that respondent terminated complainant's employment because he did not provide advance notice.

To begin with, respondent's stated reason for its action was that complainant "left the institution without notifying anyone[6] that you were leaving." (emphasis added) (letter of termination dated May 13, 1993, Respondent's Exhibit 13). There is no basis for a finding that this was not the real reason for the termination, and that respondent really was motivated by the fact that complainant did not give advance notice of his intent to take leave. Respondent adduced considerable uncontradicted testimony that employes, including complainant, routinely were permitted to leave LHS during their shifts when an unexpected family health problem arose at home. Also uncontradicted was testimony that if complainant merely had notified the population monitor or the communication center as he had been leaving, he would not have been disciplined.

For similar reasons, there is no basis for a conclusion that respondent was motivated in disciplining complainant by his use of family leave per se as opposed to his act of leaving the institution without providing notice.

Related to the foregoing, to the extent complainant has attempted to establish that respondent's stated rationale for the discharge was pretextual, such an endeavor has not been successful. There was credible evidence that, notwithstanding that complainant left the institution without providing proper notice as he left, a discharge was a relatively severe penalty. However, complainant had engaged in somewhat similar conduct a few months before. As a project appointment employe, he was subject to discharge without the channels of recourse available to a regular employe. Even if the discharge is viewed as extreme, there is no reason to infer from this that management's stated concerns about complainant failing to inform management of his departure was a pretext for a desire to discipline him because he had used family leave. As discussed above, the use of family leave had never been an issue at LHS, even when employes had to leave the institution in the middle of their shifts. Furthermore, both complainant and Mr. Pickett attributed the degree of punishment to the superintendent's interest in asserting himself

---

[6] Neither complainant nor Mr. Pickett mentioned during either the investigative or the predisciplinary hearing that complainant had told Mr. Pickett, a coworker, he was leaving.

against rank and file employes in the context of the overall climate of labor-management relations at LHS.[7]

In light of the conclusion that the sole reason for respondent's termination of complainant's employment was complainant's failure to have provided notice of his departure as he was leaving the institution, this scenario could give rise to liability under the FMLA only if the statute were interpreted to prohibit the employer from requiring contemporaneous notice by an employe when he or she leaves the workplace for unplanned leave. In the Commission's opinion, such an interpretation is untenable.

Section §103.10(6), Wis. Stats., provides for an employe to give advance notice to the employer under certain relatively specific circumstances. While it is reasonable to infer that these are the only circumstances under which advance notice is required, the FMLA simply does not address the matter of simultaneous notice -- i.e., the act of the employe informing the employer that he or she is leaving work to take FMLA leave. Because of this, because it clearly is a management right for an employer to require employes to let management know when he or she is leaving work, and because there is no reason to believe that the imposition of such a requirement either would be inconsistent with the legislative intent of the FMLA or would tend to "interfere with, restrain or deny the exercise of any right provided under this section," §103.10(11)(a), Wis. Stats., there is no basis for an interpretation of the FMLA that would prohibit the employer from imposing this reasonable requirement. Furthermore, such an interpretation would lead to manifestly absurd results. It would mean an employe, even in a secure institution such as LHS, would be free to abandon his or her position and leave the institution to take family leave without informing management of his or her action.

---

[7] Complainant stated in answer to an interrogatory: 'It is my positive belief that I was discriminated against throughout this entire matter simply because I was not protected by a union at a time administration at Lincoln Hills wanted to make an example out of someone." (Respondent's Exhibit 22). Mr. Pickett, the union president, testified: "I thought he did it to -- as I might quote I think would have been to 'Slap the teachers or to put the sheep in line or back in the pen' or whatever. I thought it was dumb [sic] to show them who was boss and he had a good victim ... Mr. Emmons is a project employe, he didn't have the rights of a union employe would have. It's a perfect scapegoat. Slap one, scare the rest. That was Mr. Schneider's style of leadership here." T., 304-05.

Complainant also contends that respondent violated the FMLA by failing to demand certification of his wife's serious medical condition in the manner required by §103.10(7), Wis. Stats. However, since respondent did not deny complainant the use of leave on April 23, 1993, but rather discharged him because he failed to inform management that he was leaving the institution, there was no reason to have requested certification under §103.10(7). The issue only arose due to a conversation between complainant and Mr. Habeck, the school principal, which occurred after the investigatory and predisciplinary hearings, but before complainant's discharge.[8] Mr. Habeck testified as follows:

> Well, he [complainant] states to me, when I discussed it with him, that there were extenuating circumstances and I said on the surface of the investigatory notes, the [due] pr[oc]ess disciplinary notes and so on, that I didn't see any extenuating circumstances and there was no proof. And so I did say to him, "If you have proof I think it would be in your best interest to bring it in". T., 253.

Since Ms. Emmons' condition only came up as a potential mitigating circumstance in the disciplinary process, and respondent neither denied complainant the use of leave nor considered his situation to be an FMLA matter, there was no reason to have requested certification under §103.10(7), and there was no FMLA violation in this regard.

Case No. 93-0112-PC-ER

The stipulated issue in this case is: "Whether respondent discriminated against complainant in violation of the FEA in connection with the termination of his project employment effective May 13, 1993." Complainant has not presented any arguments relating specifically to this case. The Commission assumes that the only potential FEA retaliation would be under the aegis of §111.322(2m)(a), Wis. Stats., which prohibits discharge or discrimination because an employe "attempts to enforce any right under § ... 103.10." While it is questionable whether the mere use of FMLA leave would be considered an attempt to enforce a right under §103.10, complainant has failed to establish a claim because, as discussed above, he did not take two hours leave to care for his wife on April 23, 1993, and thus his leave was not covered by the

---

[8] Mr. Habeck had been on vacation and had not been present for these proceedings.

FMLA. Furthermore, he was not discharged for his use of leave, but rather because he left the institution without informing management of his departure.

ORDER

These complaints are dismissed.

Dated: November 27, 1995 STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

AJT:rcr

JUDY M. ROGERS, Commissioner

Parties:

David Emmons
Route 2, Box 423
Galesville, WI 54630

Joe Leann
Secretary, DHSS
P.O. Box 7850
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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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. 2/3/95