

STATE OF WISCONSIN

PERSONNEL COMMISSION

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BILLIE JOHNSON,

Appellant,

v.

Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0064-PC

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DECISION
AND
ORDER

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

The appeal arises from the decision of respondent to assign the Motor Vehicle Supervisor 8 classification from pay schedule 01, for the general non-represented pay plan, to the pay grid for "Fiscal and Staff Services-related Supervisory Classes" (pay schedule 27) rather than "Clerical-Related Supervisory Classes." Appellant's position is classified at the Motor Vehicle Supervisory 8 level. Appellant contends that his duties are more closely analogous to other positions in the pay schedule for Clerical-Related Supervisory Classes.

The Commission's authority under §230.44(1)(b), Stats., to review decisions of the Secretary of DER includes decisions under §230.09(2)(a), to "allocate each position in the classified service to an appropriate class" or to "reclassify or reallocate on the same basis." The allocation, reclassification, and reallocation decisions described in this paragraph are decisions to assign a position to a particular existing classification, rather than a decision to assign a classification to a particular pay range.

The Secretary's responsibility to "establish, modify or abolish classifications" is described in §230.09(2)(am), and the responsibility to assign a classification to "appropriate pay rate or range ... [or to] reassign classes to different pay rates or ranges" is described in §230.09(2)(b). Decisions made in

these areas are not subject to review by the Personnel Commission. Showsh et al. v. DER, 94-0003, etc.-PC, 5/16/94.

The decision that is the subject of the instant appeal is not a decision to reallocate the appellant's position. It amounts to a decision to assign the Motor Vehicle Supervisor 8 classification to a pay range in pay schedule 27 (for "Fiscal and Staff Services-related Supervisory Classes") rather than to a pay range in the pay schedule for the "Clerical-Related Supervisory Classes." This decision does not fall within the scope of §230.09(2)(a), and it is not reviewable by the Commission.

ORDER

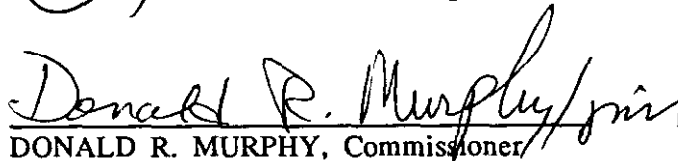
This matter is dismissed for lack of subject matter jurisdiction.

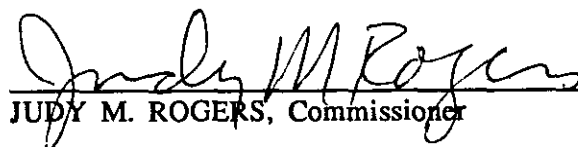
Dated: July 25, 1994

STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:temp-8/94 Johnson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

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HF SOB
Madison, WI 53707-7911

Jon Litscher
Secretary, DER
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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.

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.)