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BOB ENGHAGEN,

Appellant,

v.

Secretary, DEPARTMENT OF PUBLIC INSTRUCTION and Secretary, DEPARTMENT OF EMPLOYMENT RELATIONS,

Respondent.

Case No. 95-0097-PC [95-0123-PC]

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RULING ON PETITION FOR REHEARING

A final decision and order was issued by the Commission on February 16, 1996. On March 6, 1996, the Commission received a Petition for Rehearing filed on behalf of Mr. Enghagen.¹ Respondents filed a response on March 15, 1996.

DISCUSSION

Petitions for rehearing are governed by s. 227.49 (3), Stats., the text of which is shown below.

Rehearing will be granted only on the basis of:

- (a) Some material error of law.
(b) Some material error of fact.
(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Mr. Enghagen presented new evidence with his petition for rehearing in the form of his own affidavit, and an affidavit from Ms. Bethke. The Commission is unable to consider the new information because it is of a nature which Mr. Enghagen knew previously, yet did not include in the fact

1 The Petition for Rehearing was filed by Chris Galinat, an attorney for the Wisconsin Education Association Counsel (WEAC), but no notice of representation was filed. Accordingly, the Commission will send a courtesy copy of this decision to Attorney Galinat, as well as a separate copy to Mr. Enghagen.

stipulation upon which this appeal was resolved. He has not shown that such information could not have been previously discovered by due diligence, within the meaning of s. 227.49 (3)(c), Stats.

Mr. Enghagen also argued that the final decision and order contained a material error of law. Specifically, he contended that the final decision was contrary to prior Commission precedent as noted in Carlin v. DHSS & DER, 94-0207-PC (6/22/95) and Spilde v. DER, 86-0040-PC (10/9/86). The Commission disagrees.

In Carlin, the employing agency laid out its procedures for employee-initiated reclassification requests in both its employee manual and in its supervisory manual. Both of these manuals provided that the operative date for determining the effective date of a reclassification would be the date that a complete reclassification request was received in the agency's central personnel office. However, the provisions of the employee manual and the supervisory manual differed as to what constituted a complete request for reclassification. The Commission held that Ms. Carlin could only reasonably be held to the requirements of the employee manual. In the instant case, the appellant is being held to the same standard, i.e., to compliance with his employing agency's requirements relating to the processing of employee-initiated reclassification requests, and there has been no showing that the employing agency's requirements were inconsistent or ambiguous in any relevant respect. It should also be noted that, in Carlin, as here, the appellant failed to seek out information about the requirements for processing an employee-initiated reclassification request and, as here, was held to the employing agency's written requirements as to what constituted a complete reclassification request.

In Spilde, the record did not show that the employing agency had any written requirements governing the processing of employee-initiated reclassification requests. In its decision, the Commission held as a result that the appellant could not be held to the employing agency's apparently informal requirements relating to what constituted a complete reclassification request. This contrasts with the situation here where the record shows that the employing agency did have such written requirements and the Commission has held that the appellant should be held to such requirements.

Mr. Enghagen misunderstood what triggered the effective date of his 1991 reclassification and, as a result, he made certain incorrect assumptions


regarding what would trigger the effective date of his 1994 reclassification. His confusion was unknown to respondents who utilized the same process for both reclassification transactions. As stated in the Commission's decision, these incorrect assumptions are attributable not to respondents but to appellant, and respondents should not be held accountable for them.


ORDER

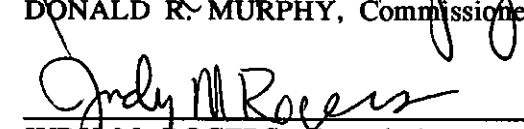
The petition for rehearing is denied.

Dated April 4, 1996.

JMR/LRM


LAURIE R. McCALLUM, Chairperson


DONALD R. MURPHY, Commissioner


JUDY M. ROGERS, Commissioner

Parties:

Bob Enghagen
149 S. Hancock St., #3
Madison, WI 53703

John Benson
Superintendent, DPI
GEF III -5th Floor
125 S. Webster St.
P.O. Box 7841
Madison, WI 53707-7841

Jon E. Litscher
Secretary, DER
137 E. Wilson St.
P.O. Box 7855
Madison, WI 53707-7855

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