

STATE OF WISCONSIN

PERSONNEL COMMISSION

**ROBERT WAGENER,**  
*Appellant,*

v.

**Secretary, DEPARTMENT OF  
CORRECTIONS,**  
*Respondent.*

**RULING ON MOTION  
TO DISMISS**

Case No. 00-0161-PC

This matter is before the Commission on respondent's motion to dismiss for lack of subject matter jurisdiction. The parties have had an opportunity to file briefs and the schedule for doing so was completed on November 3, 2000. The following facts are based on information provided by the parties, are made solely for the purpose of deciding this motion, and appear to be undisputed.

#### FINDINGS OF FACT

1. At all times relevant here, appellant was employed by respondent at Fox Lake Correctional Institution.
2. Appellant was a Supervising Officer 1 from August 18, 1996, through April 22, 2000. Positions in the Supervising Officer 1 classification are non-represented, i.e., not covered by a collective bargaining agreement.
3. Appellant voluntarily demoted to an Officer 3 position effective April 23, 2000. Positions in the Officer 3 classification are represented positions.
4. The 1999-2001 Department of Employment Relations Compensation Plan for non-represented employees became effective May 21, 2000, and provided that only those employees in certain non-represented positions, including Supervising Officer 1, on July 2, 2000, would be eligible for a parity adjustment. Appellant was not in a Supervising Officer 1 position or any other non-represented position on July 2, 2000.

5. In his letter of appeal, appellant takes issue with his failure to receive the parity adjustment for the period July 3, 1999, through April 22, 2000, when he was employed as a Supervising Officer 1.

#### CONCLUSION OF LAW

The Commission lacks subject matter jurisdiction over this appeal.

#### OPINION

This matter was filed as an appeal relating to appellant's rate of pay. The Commission's statutory authority is set forth in §§230.44 and .45, Stats. This case is not before the Commission as part of the non-contractual grievance procedure<sup>1</sup>, §230.45(1)(c), Stats., nor is it an appeal relating to hazardous duty pay under §230.45(1)(d), Stats. Of the remaining provisions giving the Commission authority to hear appeals of certain personnel transactions, none include the general topic of an employee's rate of pay<sup>2</sup> except §230.44(1)(d), which applies to "a personnel action after certification which is *related to the hiring process*." This language has been construed as providing the Commission with authority to review decisions establishing an appellant's *starting* salary. *Taddey v. DHSS*, 86-0156-PC, 6/11/87. However, the present case relates to back pay rather than appellant's starting salary.

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<sup>1</sup> Even if this matter had been filed as a noncontractual grievance, pay issues are specifically excluded from this grievance process by operation of §ER 46.03(2)(k), Wis. Adm. Code.

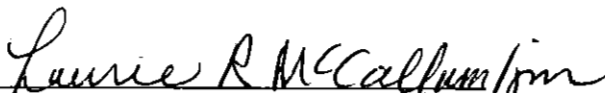
<sup>2</sup> The Commission lacks jurisdiction over an appeal of a decision not to award compensation add-ons to appellant's position. *Olson v. DHSS*, 88-0087-PC, 12/5/88. Per *Bauer v. DATCP & DER*, 91-0128-PC, 4/1/92, there is no jurisdictional basis on which the Commission can review the pay level during a period of an alleged acting assignment where there is no certification associated with filling the acting assignment. The Commission lacks jurisdiction over a decision denying the appellant's application for a salary add-on. *Marquardt v. DHSS & DER*, 89-0106-PC, 10/4/89. The Commission lacks jurisdiction over the denial of fringe benefits. *Buechner & Koberle v. DER & UW*, 85-0089-PC, 11/22/85. The Commission lacks jurisdiction over decisions regarding salary adjustments made in connection with reallocations. *Garr et al. v. DER*, 90-063-PC, etc., 1/11/91.

ORDER

Respondent's motion is granted and this matter is dismissed for lack of subject matter jurisdiction.

Dated: November 15, 2000

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:000161Adec1

  
JUDY M. ROGERS, Commissioner

Parties:

Robert Wagener  
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Markesan WI 53946

Jon Litscher  
Secretary, DOC  
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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 (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