STATE OF WISCONSIN PERSONNEL COMMISSION

HENRY G. LINDEMAN,
Complainant,

v.

Chancellor, UNIVERSITY OF WISCONSIN-MADISON,
Respondent.

Case No. 98-0221-PC-ER

RULING ON
MOTION TO DISMISS

Respondent filed a motion to dismiss by cover letter dated April 24, 2001. Complainant's reply brief was due on May 21, 2001. Complainant did not file a reply brief.

This case is scheduled for hearing on June 14-15, 2001. The issue for hearing is shown below (see Conference Report dated 12/1/00):

> Whether respondent discriminated against complainant on the basis of race or color or retaliated against complainant for engaging in protected fair employment activities, in violation of the WFEA (Wisconsin Fair Employment Act; Chapter 111, Subchapter II, Wis. Stats.), or retaliated against complainant for engaging in activities protected under the Employe Protection Act (whistleblower law; Chapter 230, Subchapter III, Wis. Stats.), in violation of the whistleblower law, with regard to the following allegations:
>
> 1 Complainant alleges that Jim Long "has or had a fix in with the Health Department."
> 2. Complainant alleges that respondent hired Tim Delaney with no or little experience after Mr. Long "shuffled the hiring procedures so [complainant] and Cliff" would not apply and compete against Mr. Delaney.
> 3. Complainant alleges that he was a Limited Term Employee with the Wisconsin Union for four years and that Jim Long encouraged complainant to apply for the position formerly held by Donna Braun.
> 4. Complainant alleges that he was required to adhere to safety standards, but that Mr. Long, who is Vietnamese, did not enforce the same rules and regulations against complainant's co-workers.
> 5. Complainant alleges that Jerry Berteaume threatened to have complainant fired if complainant reported Mr. Berteaume placing his hand in the food served to customers.

6. Complainant alleges that he was blamed for starting a rumor that Jerry Berteaume was trying to fire an employee named "Nate" and that complainant was subsequently "written up" and not allowed to go to Einstein's or talk to other employees.
7. Complainant alleges that Mr Long and Mr. Delaney gave him poor evaluations and eventually terminated complainant only after an incident involving complainant and two other employees on July 21, 1998.
8. Complainant alleges that Mr Long prohibited complainant from applying for and being considered for another job.
9. Complainant alleges that Mr Long, Mr. Delaney and Mr. Bertheaume "conspired" to convince Ms. Braun to leave her position because she had complained about safety issues.

The following findings of fact are made solely to resolve this motion. They are undisputed unless specifically noted to the contrary.

FINDINGS OF FACT

1. Complainant is white. He was employed by respondent in various limited term employment (LTE) food service and custodial positions between November 17, 1994, and May 19, 1998. His work performance in these positions was consistently rated as satisfactory or better.

2. The Restaurant Division of respondent's Memorial Union food service operation consisted of four separate venues: Rathskeller, Lakefront Cafe, Red Oak Grill, and Einstein's. The Red Oak Grill was directed by a Food Service Supervisor 1 (FSS 1) position and Einstein's by a FSS 2 position. Both these supervisory positions supervised a Food Service Worker 3 (FSW 3) position which served as lead worker to student and LTE staff.

3. Between January 22, 1996, and May 15, 1998, complainant was employed as an LTE Food Service Worker 2 (FSW 2) in Einstein's; and during part of 1997 and between March 9 and May 11, 1998, as an FSW 2 in the Red Oak Grill. As an FSW 2, complainant's duties consisted of the following:

> May include any or all of the following routine work activities under close supervision: open or close work area; set up steam tables; set food out on the serving line (such as hot or cold foods, food plates, or salad bar items); serve hot food; grill food (such as hamburgers, brats, hot dogs, cheese, etc.); serve beer, popcorn or snacks; operate cash register; fill ice and beverage dispensers;

restock stations; truck food from the kitchen; pick up and/or deliver food or supplies; bus tables; clean serving areas; and related work.

4. At all times relevant to this matter, Jim Long was the incumbent of the FSS 2 position in Einstein's. Mr. Long is part Asian. Mr. Long hired Asians for some of the student and LTE positions in Einstein's.

5. On or around January 10, 1998, a notice was posted near the time clocks in the food venues and appeared in the Current Opportunities Bulletin, announcing that an exam for the FSS 1 and FSS 2 classifications would be administered on January 10, 1998. At the time, there were FSS 1 vacancies in the Rathskeller and in the Memorial Union. Complainant did not take this exam.

6. Some time during 1998, Mary Ann Masino vacated the FSW 3 position in Einstein's. This vacancy was filled effective January 18, 1998, through the contractual transfer of Jerry Bertheaume. Complainant was not eligible to be appointed to this position through a contractual transfer.

7 In January of 1998, Donna Braun contractually transferred from the FSW 3 position at the Red Oak Grill to a position at the Memorial Union. Complainant, as well as other LTE's in the Restaurant Division, were advised by Mr Long to take the exam for Ms. Braun's former position if they wanted to be considered for it or any other FSW 3 vacancy occurring within the following six months. Mr Long encouraged complainant to compete for this position. Complainant took and passed the exam, was certified for the position, and was appointed to the position effective June 15, 1998. Complainant was required to serve a six-month probationary period in this position.

8. In this FSW 3 position, complainant served as a lead worker to LTE FSW positions as well as student hourly employees; was responsible for ensuring that food was properly and efficiently served to customers; performed financial activities, including assisting in attaining budget goals and objectives, ensuring cash receipts were properly handled and deposited, and monitoring security procedures to reduce shrinkage of inventory; and was responsible for maintaining proper sanitation standards, including continually monitoring food temperatures as well as evaluating the cleanliness of the premises.

9. Effective May 14, 1998, Angel Panure resigned from the FSS 1 position at the Red Oak Grill. Ms. Panure did not announce her plans to resign until April 6, 1998. The list of candidates certified as eligible for this vacancy was derived from the active FSS 1 register. This register did not include complainant's name because he had not taken the FSS 1-2 exam in January of 1998. Tim Delaney, who had worked as an LTE FSW in Einstein's, was the successful candidate for the FSS 1 position and his appointment was effective June 8, 1998.

8. Complainant was never disciplined or subjected to any other adverse employment action by Mr. Long for violating any food safety requirements. Complainant may have told Mr. Long that he felt that Mr Long was not holding Asian employees to the same performance standards for food safety to which he was holding other employees, including complainant. Complainant reported certain potential food contamination incidents to his superiors. Mr Long and Mr Delaney were aware of this.

9. Some time during 1998, while complainant was employed as an FSW 3 at the Red Oak Grill, a rumor started to the effect that Mr. Berteaume intended to terminate an employee named Nate. Complainant understood that Mr. Berteaume believed that complainant had related this rumor to Nate and to an employee named Cliff who worked in Einstein's. Complainant contended he did not relate this rumor to Nate and Cliff and became determined to prove it. To achieve this end, complainant, on several occasions, took his break time to discuss the matter with Cliff while Cliff was supposed to be working. Complainant was never disciplined or subjected to any other adverse employment action in regard either to the rumor or to his visits to Cliff but he was counseled not to spend his break or other time interrupting the work of other employees.

10. On July 21, 1998, complainant complained to Mr. Long that two of his LTE employees, Lena and Jeff, had yelled at him and questioned his authority. Mr. Long discussed the matter with complainant and subsequently spoke to Lena and Jeff about it. Lena and Jeff denied yelling at complainant. Mr. Long decided that, rather than spending time trying to resolve the factual dispute, he would use this time to review with complainant and the two LTE's the division of authority in the Restaurant Division and in the Red Oak Grill. Mr. Long did this and advised complainant and the two LTE's that he considered the matter resolved and

at an end. Complainant, however, continued to be upset about the incident of July 21 and continued to discuss it at length with others in the workplace, including the two LTE's, and with Mr. Delaney and Mr. Long. This upset other employees, including Jeff and Lena, and disrupted the workplace. Mr. Delaney and Mr. Long counseled complainant about it on several occasions but complainant continued to raise the issue with them and other employees up until the date of his termination.

11. Mr Delaney completed a three-month written review of complainant's probationary performance on or before September 30, 1998. This written review stated as follows, in pertinent part:

> Stocking. Needs improvement. More warning if we are running low on something. During down times need to restock better Do omelette fixings in advance.
>
> Grill area. Needs improvement. Keep area cleaner during busy times. Will speed you up and reduce mistakes.
>
> Better control of waste. Needs improvement. Watch clock better in a.m. Do not make as much extra sausage and hash browns. Should finish most days with none left.
>
> Less grilling mistakes. Needs improvement. Pay better attention to orders and calls. Throw out too much toast and bagels, extra french toast or orders extra specials.
>
> Sanitation. Satisfactory. Good job. Keep scrambled egg pan cold.
>
> Cashier. Needs improvement. Henry will continue training with Lena in the Morning on the shifts I can grill.
>
> Clean up after self. Needs improvement. If it is slow take items all the way to the trash room or dirty dish cart. No empty boxes in cooler, any unbroken boxes under sink or in hallway.
>
> Lunch specials. Satisfactory. Product looks good and served in good time. Take more control of the calling of specials.
>
> Einstein employees. Needs improvement. Do not discuss personal issues with other employees, unless you are directly involved. This disrupts the work environment.

> Limited term employees in ROG. Needs Improvement. If there is a problem I will call all parties involved into the office separately and listen to all sides. I will then make a decision. That decision will stand unless new evidence is brought to light. After I make my decision I do not want to hear any more about it. This can disrupt the workflow if it continually brought up.
>
> Staying out of Einsteins. Needs improvement. This disrupts the work they are trying to do. They do not have time to talk unless they are on break.
>
> Black mats out by 8 am. Needs improvement. This is a safety issue and needs to be done every day.
>
> A.M. down times. Needs improvement. You can always be cooking bacon or sandwiches. This will help keep you from falling behind in the rush times.
>
> Rush times. Needs improvement. Need to watch product. There is a drop off in appearance and quality.

12. Mr Long met with complainant on October 16. Mr Long told complainant that, in his opinion, complainant's failure to take responsibility for his performance shortcomings, his apparent inability to get over the July 21 incident, and his continuing disruption of the work of other employees, rendered his work performance unsatisfactory and he was being terminated. Complainant refused to listen and attributed his termination to the incident of July 21.

13. On October 19, 1998, Mr Delaney completed a final review of complainant's performance. This review was identical to the September 30 review except as follows:

> Cashier Needs improvement. Henry was learning how to cashier for breakfast, he still needed to learn how to cashier lunch.
>
> Clean up after self. Needs improvement. Items were still being left in areas other than the Trash room or dirty dish cart.
>
> Lunch specials. Needs improvement. Henry needed to take more control of the calling of specials, still losing track of the number of specials being cooked.
>
> Einstein employees. Not satisfactory. Henry continued to discuss personal issues with other employees to the point it disrupted work in Einsteins.

> Limited term employees in ROG. Not satisfactory. Henry continued to bring up incidents with other employees that had been settled at the time of the incident by Jim Long and myself. This leads to a disruption of work.
>
> Staying out of Einsteins. Needs improvement. Henry physically stayed out of Einsteins, but continued to have discussions with Einsteins employees in the kitchen which disrupted their work.
>
> A.M. down times. Needs improvement. Still was low on sandwiches at times. Needs to learn to cook both orders and sandwiches at same time.

14. Complainant has not disputed these evaluations of his performance by Mr. Delaney except to the extent they relate to the incident of July 21, 1998, and his interactions with staff of Einsteins and ROG resulting from this incident.

15. In a letter dated October 21, 1998, complainant was notified of the termination of his probationary appointment to the FSW 3 position at the Red Oak Grill.

OPINION

Fair Employment Act (FEA) Discrimination/Retaliation

Complainant alleges here that he has been discriminated against on the basis of race or color, and retaliated against for engaging in protected fair employment activities.

The initial burden of proof under the FEA is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of articulating a non-discriminatory reason for the actions taken which the complainant, in turn, may attempt to show was a pretext for discrimination. *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973), *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

A prima facie case of race or color discrimination may be established if complainant shows that 1) he is a member of a group protected under the FEA, 2) he was subject to a cognizable adverse employment action and 3) circumstances exist giving rise to an inference that the adverse action was based on his race or color

A prima facie case of retaliation under the FEA may be established if complainant shows that 1) he participated in an activity protected under the FEA, 2) he was subject to a

cognizable adverse employment action and 3) there is a causal connection between the first two elements. *McCartney v. UWHCA*, 96-0165-PC-ER, 3/24/99

Respondent moves to dismiss **allegations 1, 4, 5, 6, and 9** for failure to state a claim for relief. Specifically, respondent contends these allegations do not qualify as cognizable adverse employment actions under the FEA

The general rules for deciding a motion to dismiss for failure to state a claim are:

> [T]he pleadings are to be liberally construed, [and] a claim should be dismissed only if "it is quite clear that under no circumstances can the plaintiff recover " The facts pleaded and all reasonable inferences from the pleadings must be taken as true, but legal conclusions and unreasonable inferences need not be accepted.
>
> . A claim should not be dismissed . unless it appears to a certainty that no relief can be granted under any set of facts that plaintiff can prove in support of his allegations.

Phillips v. DHSS & DETF, 87-0128-PC-ER, 3/15/89 (quoting *Morgan v. Pa. Gen. Ins. Co.*, 87 Wis. 2d 723, 731-32, 275 N.W.2d 660 (1979) (citations omitted)); affirmed, *Phillips v. Wis. Pers. Comm.*, 167 Wis. 2d 205, 482 N.W.2d 121 (Ct. App. 1992).

The Commission discussed the concept of a viable adverse action under the FEA in *Dewane v. UW*, 99-0018-PC-ER, 12/3/99, as shown below:

> In order to prevail on a claim of discrimination or retaliation under the FEA, a complainant is required to show that he or she was subject to a cognizable adverse employment action. *Klein v. DATCP*, 95-0014-PC-ER, 5/21/97 In the context of a retaliation claim, §111.322(3), Stats., makes it an act of employment discrimination "[t]o discharge or otherwise discriminate against any individual because he or she has made a complaint, testified or assisted in any proceeding under this subchapter " In the context of a discrimination claim, §111.322(1), Stats., makes it an act of employment discrimination to "refuse to hire, employ, admit or license any individual, to bar or terminate from employment . or to discriminate against any individual in promotion, compensation or in term, conditions or privileges of employment.
>
> The applicable standard, if the subject action is not one of those specified in these statutory sections, is whether the action had any concrete, tangible effect on the complainant's employment status. *Klein, supra*, at 6. In determining whether such an effect is present, it is helpful to review case law developed

> under Title VII, which includes language parallel to the statutory language under consideration here. 42 USC §2000e-2

Generally, the Seventh Circuit Court of Appeals has not required that an action be an easily quantifiable one such as a termination or reduction in pay in order to be considered adverse (*Collins v. State of Illinois,* 830 F.2d 692, 703, 44 FEP Cases 1549 (7th Cir. 1987), but has concluded that not everything that makes an employee unhappy is an actionable adverse action (*Smart v. Ball State University*, 89 F.3d 437, 71 FEP Cases 495 (7th Cir 1996). In *Crady v. Liberty Nat'l Bank & Trust Co.,* 993 F.2d 132, 136 (7th Cir. 1993), the court, in requiring that an actionable employment consequence be "materially adverse," stated:

> A material adverse change in the terms and conditions of employment must be more disruptive than a mere inconvenience or an alteration of job responsibilities. A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation.

See, Rabinowitz v. Pena, 89 F.3d 482 (7th Cir 1996) (plaintiff failed to establish prima facie case of retaliation under Title VII – lower performance rating and work restrictions were, at most, mere inconveniences, not adverse employment actions); *Flaherty v. Gas Research Institute*, 31 F.3d 451 (7th Cir 1994) (lateral transfer resulting in title change and employee reporting to former subordinate may have caused "bruised ego" but did not constitute adverse employment action); *Spring v. Sheboygan Area School District*, 865 F.2d 883 (7th Cir 1989) ("humiliation" claimed by school principal to result from transfer to another school did not constitute adverse employment action because "public perceptions were not a term or condition" of plaintiff's employment).

Allegation 1: Complainant alleges that Jim Long "has or had a fix in with the Health Department."

Allegation 1, as stated, does not refer, either explicitly or implicitly, to an employment action taken against complainant.

Allegation 4: Complainant alleges that he was required to adhere to safety standards, but that Mr. Long, who is Vietnamese, did not enforce the same rules and regulations against complainant's co-workers.

The available information does not show, as it relates to **Allegation 4**, that complainant was disciplined for failure to abide by the referenced safety and sanitary standards or that he suffered any other materially adverse change in the terms and conditions of his employment, consistent with the above analysis, in this regard.

Allegation 5: Complainant alleges that Jerry Berteaume threatened to have complainant fired if complainant reported Mr. Berteaume for placing his hand in the food served to customers.

Complainant does not dispute, in regard to **Allegation 5,** that Mr. Berteaume was not in a position to have input into the decision to terminate complainant's probationary employment, or that the incident which forms the basis of this allegation was not a factor in complainant's termination. It is concluded that this conflict between co-workers did not constitute an adverse employment action *per se,* or serve as a catalyst for a subsequent adverse employment action.

Allegation 6: Complainant alleges that he was blamed for starting a rumor that Jerry Berteaume was trying to fire an employee named "Nate" and that complainant was subsequently "written up" and not allowed to go to Einstein's or talk to other employees.

Allegation 6 relates not to discipline but instead to respondent's reliance on complainant's reaction to the incident of June 21, 1998, to impose restrictions on complainant's non-work-related contacts with certain employees, and to note his failure to abide by these restrictions in support of 3 of 12 "needs improvement" categories in complainant's September 30, 1998, performance evaluation, and 1 of 11 "needs improvement" and 2 of 2 "not satisfactory" categories in complainant's October 19, 1998, performance evaluation. Restrictions on non-work-related contacts would not constitute a cognizable adverse employment action. Generally, all or part of an unsatisfactory or unfavorable performance evaluation do not constitute an adverse employment action. *See, Smart v. Ball State University*, 89 F.3d 437, 71 FEP Cases 495 (7th Cir 1996). However, if this evaluation has a direct impact on pay or on continuing employment, as here, such an adverse impact is

present. **Allegation** 6 will be discussed further below in the section relating to the motion for summary judgment.

Allegation 9: Complainant alleges that Mr. Long, Mr. Delaney and Mr. Bertheaume "conspired" to convince Ms. Braun to leave her position because she had complained about food safety issues.

Allegation **9** relates to the departure of another employee for whose position complainant successfully competed. This scenario fails to include any adverse action against complainant.

Complainant has failed to show that the actions which form the basis of **allegations 1, 4, 5,** and **9**, and so much of **allegation 6** as relates to restrictions on non-work-related contacts, constitute adverse employment actions as required to maintain an FEA action.

Respondent also offers a motion for summary judgment in regard to **allegations 2, 3, 6, 7,** and **8.**

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See, Balele v. Wis. Pers. Comm. et al.*, Court of Appeals, 98-1432, 12/23/98.

Allegation 2: Complainant alleges that respondent hired Tim Delaney with no or little experience after Mr. Long "shuffled the hiring procedures so [complainant] and Cliff" would not apply and compete against Mr. Delaney.

Allegation 3: Complainant alleges that he was a Limited Term Employee with the Wisconsin Union for four years and that Jim Long encouraged complainant to apply for the position formerly held by Donna Braun.

Allegation 8: Complainant alleges that Mr. Long prohibited complainant from applying for and being considered for another job.

It is undisputed that **allegations 2, 3,** and **8** relate to the same hiring process/decision. It is also undisputed that complainant independently made the decision not to take the FSS exam in January of 1998 which prevented him from being considered for the position at issue here, i.e., the position vacated by Angel Panure; and that Mr. Long could not have been aware

of Ms. Panure's plans to resign from this position when he encouraged complainant and other LTE's to compete for the FSW 3 position vacated by Donna Braun in January of 1998. The fact situation here would not support a finding of discrimination or retaliation and, as a result, summary judgment would be appropriate.

Allegation 7: Complainant alleges that Mr. Long and Mr. Delaney gave him poor evaluations and eventually terminated complainant only after an incident involving complainant and two other employees on July 21, 1998.

What complainant is actually alleging here is not entirely clear. What is clear is that he is not alleging that he was treated differently because of his race and color when respondent made the decision to terminate him. Complainant has not alleged nor is it fairly implied from his complaint that similarly situated non-white employees with comparable employment records were given more favorable treatment when their probationary performances were evaluated and acted upon. Moreover, the circumstances here, as detailed in the undisputed facts, do not give rise to an inference of race or color discrimination as required for a prima facie case of race/color discrimination. Summary judgment for respondent in regard to the race/color discrimination aspect of this allegation is appropriate.

Complainant also alleges fair employment retaliation in regard to this allegation. However, although complainant implies in regard to certain of his other allegations of retaliation that his protected activity was his complaint to Mr. Long that he was treating Asian employees more favorably in regard to satisfaction of food safety standards (See finding 8, above), he makes it clear in setting forth this allegation that his protected activity was the incident of July 21, 1998, and that it was this incident alone which resulted in his termination. The incident of July 21, 1998, however, does not qualify as a protected fair employment activity within the meaning of §111.322(2m), Stats.

The aspect of **allegation 6** not resolved above in the discussion of respondent's motion to dismiss for failure to state a claim for relief relates to the same subject matter as **allegation 7** and the same result would apply.

Summary judgment for respondent in regard to **allegation 7** and the relevant portion of **allegation 6** is appropriate.

Whistleblower retaliation

Complainant has also stated a claim of whistleblower retaliation in regard to each of the allegations specified above. To establish a prima facie case in the whistleblower retaliation context, there must be evidence: 1) that the complainant participated in a protected activity and the alleged retaliator was aware of that participation, 2) that there was a disciplinary action, and 3) that there is a causal connection between the first two elements. *Sadlier v. DHSS*, 87-0046, 0055-PC-ER, 3/30/89.

The first element is comprised of three components: a) whether the complainant disclosed information using a procedure described in §230.81, Stats., b) whether the disclosed information was of the type defined in §230.80(5), Stats., and c) whether the alleged retaliator was aware of the disclosure. The definition of "disciplinary action" identified in the second element is found at §230.80(2), Stats. In the third element, a "causal connection" is shown if there is evidence that a retaliatory motive played a part in the disciplinary action.

A review of the information provided by complainant and of §230.81, Stats., reveals that complainant has failed to identify any activity on his part which satisfies the relevant whistleblower disclosure requirements. The activities which complainant is apparently relying upon are his oral complaints to his supervisors relating to food safety issues. However, in order to be protected, these complaints would have had to be in writing.

Even if complainant had satisfied these disclosure requirements, the analysis of each of the allegations in the context of this whistleblower claim would parallel that set forth above in relation to complainant's Fair Employment Act claims.

Finally, it should be noted here that complainant has expressed many concerns about the food handling procedures in the relevant food service operations. However, it is not the Commission's role here to investigate these procedures. There are other entities at the UW-Madison and in state and local government which have this authority.

CONCLUSIONS OF LAW

1. This matter is appropriately before the Commission pursuant to §§230.45(1)(b) and (gm), Stats.

2. Complainant's charge fails to state a claim for relief in regard to **allegations 1, 4, 5,** and **9**, and so much of **allegation 6** as relates to restrictions on non-work-related contacts.

3. Respondent is entitled to summary judgment in regard to **allegations 2, 3, 7,** and **8,** and so much of **allegation 6** as relates to complainant's termination.

ORDER

Respondent's motion to dismiss is granted.

Dated: May 31, 2001

STATE PERSONNEL COMMISSION

Laurie R McCallum /jms
LAURIE R. McCALLUM, Chairperson

LRM:980221Crul1

Judy M Rogers
JUDY M. ROGERS, Commissioner

Parties:

Henry Lindeman
648 E. Johnson #4
Madison WI 53703

John Wiley
Chancellor, UW-Madison
500 Lincoln Dr., 158 Bascom Hall
Madison, WI 53706

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