STATE OF WISCONSIN PERSONNEL COMMISSION

SANDRA S. CHALMERS,
Appellant,

v.

Secretary, DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION,
Respondent.

Case No. 02-0032-PC

FINAL DECISION AND ORDER

This matter is before the Commission as an appeal from a layoff decision. The Commission established the following statement of the issue for hearing:

> Whether there was just cause for appellant's layoff.
> Sub-issue (1): Whether respondent acted in accordance with the relevant administrative and statutory guidelines regarding layoffs.
> Sub-issue (2): Whether the exercise of that authority was arbitrary and capricious.

FINDINGS OF FACT

1. Respondent Department of Agriculture, Trade and Consumer Protection (DATCP) employed the appellant as an Administrative Manager. Appellant served as the head of what was initially known as the Office of Information and Education and was later named the Office of Outreach and Policy. From February of 1997 until September of 2001, appellant was responsible for the promotion of Wisconsin's agricultural interests through the development and distribution of educational and advertising material to both domestic and foreign audiences. Appellant was the chief spokesperson for the department, directed website development and oversaw certain planning and policy development responsibilities. Appellant supervised a staff of up to 16 employees, including communication specialists and planning and policy analysts. (Resp. Exh. 5, 7)

2. In August of 2001, appellant was asked to assist in the formation of the Department of Electronic Government (DEG), a new cabinet-level department.

3. Appellant agreed to a Temporary Interchange Agreement (App. Exh. 1) with DATCP and DEG for the period from September 17, 2001, until March 18, 2002, unless terminated by any party or extended, up to 18 months, by agreement of the parties. The Temporary Interchange Agreement was developed under the authority of §230.047, Stats., and ch. ER 47, Wis. Adm. Code. It provided that appellant would be "on detail" to the DEG to assume the role of public information officer for that agency. It also provided, in part:

> Sandy Chalmers will remain an employee of the sending agency [DATCP] and will receive the salary and benefits to which she is entitled. The sending agency will provide for the payment of her salary, including any subsequent increases resulting from servicewide economic adjustments, within range pay increases, performance recognition awards, and for all employee benefit costs . . . .
>
> The receiving agency [DEG] will reimburse the sending agency for training and maintenance expenses paid by the sending agency. The receiving agency will reimburse the sending agency for all salary and employee benefit expenditures made in connection with this agreement. The receiving agency will reimburse the sending agency by transfer of expenditures on a quarterly basis.

4. The parties to the agreement extended it in March of 2002 until June 30, 2002, "unless terminated in writing by any party to this interchange prior to that date." (App. Exh. 2)

5. While working within DEG, appellant was responsible for shaping public perception of DEG, developing the agency's legislative agenda and writing speeches for the department secretary.

6. During the pendency of the Temporary Interchange Agreement, at least some of the duties of the appellant's position at DATCP had been assumed by the respondent's third-ranking employee, Executive Assistant Lisa Hull. Ms. Hull served as the supervisor to the remaining positions that had been subordinate to the appellant's position.

7. Four of the employees who filled positions that had reported to the appellant's position were laid off in February of 2002.

8. On Thursday, May 2, 2002, appellant chose to unilaterally terminate the Temporary Interchange Agreement.

9. Between May 2, 2002, and her layoff, which was effective May 24, 2002, the appellant was in pay status with respondent.

10. Respondent was subjected to multiple and severe fiscal reductions during the period commencing in July of 2001. These fiscal reductions included permanent budget reductions as well as requirements that respondent "lapse" (not spend) moneys that had been previously budgeted.

11. During the period that appellant was at DEG, respondent used the appellant's position as an element of the funds it was required to lapse. When respondent calculated the amount of funds it would lapse that would be attributable to appellant's position, it assumed that appellant would remain at DEG through June 30, 2002.

12. At some point during the same period, and prior to the beginning of May of 2002, respondent also had identified the appellant's position as a potential candidate for a permanent budget reduction.

13. Prior to and at the time of the appellant's layoff, there was a statewide hiring freeze that was in effect for all positions funded by general purpose revenues (GPR). The Department of Administration had to expressly approve any exceptions to this hiring freeze. (T34, T46, T63) In order to fill any position funded by program revenues (rather than GPR), the division in which the position was located had to be able to establish to the DATCP secretary that it had the funding that was necessary in order to support filling the position. (T143) As a consequence of these restrictions, the only positions at DATCP that were routinely being filled during the time in question were for meat inspectors. (T35)

14. On Monday, May 6, Georgia Pedracine, the director of respondent's Bureau of Human Resources, was directed to finalize a layoff plan identifying the Administrative Manager classification as a layoff group. (T57)

15. Ms. Pedracine submitted a layoff plan (App. Exh. 9) to the Division of Merit Recruitment and Selection (DMRS) in the Department of Employment Relations

(DER) during the morning of May 6, 2002. The plan called for the elimination of one non-represented position and identified the layoff group as the Administrative Manager classification, which included 7 employees, all of whom were listed on the plan along with their seniority dates. Appellant had the least seniority of the 7 employees in the layoff group. The plan proposed that the appellant would be laid off effective May 24, 2002.

16. DER/DMRS approved respondent's layoff plan later in the day on May 6, 2002.

17. Respondent issued a layoff letter (App. Exh. 11) to the appellant on May 9, 2002. The letter stated, in part:

> State agency budget reductions have made it necessary for us to closely evaluate our agency's staffing level. As a result of this evaluation, we have determined that one Administrative Manager position in the Department of Agriculture, Trade and Consumer Protection must be vacated effective May 24, 2002.
>
> As a result of layoff instituted in the Administrative Manager classification, it has been determined that you will be laid off. This letter is your official notification of layoff from the Department of Agriculture, Trade and Consumer Protection with your last day on our payroll being May 24, 2002.

The letter went on to indicate there were no alternatives to layoff available to the appellant. Specifically, the letter included the following language:

> Transfer in Lieu of Layoff
> Within the Department
> A review of the vacant positions authorized to be filled within the department indicated that there are no full-time positions available in a counterpart pay range at this time. . . .
>
> Demotion in Lieu of Layoff
> At this time, there are no vacancies into which you would demote which would constitute a reasonable offer of employment according to s. ER-MRS 22.09, Wis. Adm. Code. Therefore, this alternative is not available to you.

Displacement
In reviewing your employment history, this is not an option available to you.

18. When Ms. Pedracine considered appellant's transfer and demotion options, she only considered the 3 positions at DATCP where recruitment had been authorized. These three positions (listed on App. Exh. 13) were at a lower pay range (T59) than the Administrative Manager classification and were 1) Agriculture Auditor Supervisor, 2) Veterinary Program Manager, and 3) Budget and Policy Supervisor Advanced. The appellant was not qualified for any of these three positions because she was not a veterinarian, did not have an accounting degree and lacked significant experience with the state's budget.

19. While other vacancies existed at DATCP at the time of the appellant's layoff, the duties of those positions are not of record and they were subject to the hiring freeze or to the requirement that there be sufficient Program Revenue funds for filling the vacancy.

20. There was no vacant Administrative Manager position at the time the appellant was laid off.

CONCLUSIONS OF LAW

1. This case is properly before the Personnel Commission pursuant to §230.44(1)(c), Stats.

2. Respondent has the burden of proving that the layoff was conducted in accordance with the applicable statutes and administrative code provisions and that the layoff was not the result of arbitrary or capricious action.

3. Respondent met its burden of proof.

4. The decision to lay off the appellant from her position was for just cause.

OPINION

The standard to be followed by the Commission when analyzing an appeal of a layoff decision was established in *Weaver v. Wis. Personnel Board*, 71 Wis. 2d 46, 237 N.W.2d 183 (1976):

> The circuit judge . . . correctly held that an appointing authority acts with "just cause" in a layoff situation when it demonstrates that it has followed the personnel statutes and administrative standards . . . of the Administrative Code and when the layoff is not the result of arbitrary or capricious action. . . .
>
> We have said that, for administrative action to avoid the label of "capricious or arbitrary," it must have a rational basis. In *Olson v. Rothwell*, 28 Wis. 2d 233, 239, 137 N.W. 2d 86 (1965), this court said:
>
>> "Arbitrary or capricious action on the part of an administrative agency occurs when it can be said that said action is unreasonable or does not have a rational basis. . . . and [is] not the result of the 'winnowing and sifting' process."

The statutory provisions relating to layoff are found in §230.34(2), Stats.:

> Employees with permanent status in class in permanent, sessional and seasonal positions in the classified service . . . may be laid off because of a reduction in force due to a stoppage or lack of work or funds or owing to material changes in duties or organization but only after all original appointment probationary and limited term employees in the classes used for layoff, are terminated.
> (a) The order of layoff of such employees may be determined by seniority or performance or a combination thereof or by other factors.
> (b) The administrator shall promulgate rules governing layoffs and appeals therefrom and alternative procedures in lieu of layoff to include voluntary and involuntary demotion and the exercise of a displacing right to a comparable or lower class, as well as the subsequent employee right of restoration or eligibility for reinstatement.

There is no evidence that the respondent failed to comply with either the provisions of §230.34(2), Stats., or of the rules relating to layoff found in ch. ER-MRS 22, Wis. Adm. Code. There is no evidence that respondent retained any limited term employees, project employees, or employees serving an original probationary period contrary to §ER-MRS 22.04. The evidence established that respondent prepared a layoff plan that was approved by the Administrator of the Division of Merit Recruitment and Selec-

tion. Sec. ER-MRS 22.05. Respondent provided appellant with the 15 day notice required by §ER-MRS 22.07, and properly concluded that there were no alternatives to layoff through transfer, demotion or displacement. Sec. ER-MRS 22.08.

Pursuant to the terms of the Temporary Interchange Agreement, the appellant had been working at DEG rather than DATCP. Respondent was not paying the cost of the appellant's position even though the position was on the books as still being a position within DATCP. Before the appellant decided she wanted to exercise her option of unilaterally terminating the Interchange Agreement, respondent had already used appellant's position for satisfying the requirement that it lapse funds and respondent had also identified the appellant's Administrative Manager position as one that was appropriate for elimination.[A] Before respondent laid off the appellant, respondent had already laid off some of the positions that had been subordinate to the appellant's position. Once the appellant's Administrative Manager *position* had been identified by respondent as being appropriate for elimination due to funding constraints, respondent established the Administrative Manager classification as the appropriate layoff group. The appellant was the least senior of the persons employed by the respondent in the layoff group.

The evidence at hearing established that the layoff decision was due to a lack of funds. Respondent was faced with various budget directives that forced it to reduce its costs. Respondent reasonably concluded that it would satisfy an important segment of the requisite budget reductions by eliminating the position held by the appellant. These facts are comparable to those in *Smalley v. UW*, 86-0128-PC, 4/29/87, where the Commission concluded that the decision to lay appellant off from her Education Services Intern-Supervisor position was the result of a rational process stemming from a decision to computerize a records function and was not arbitrary and capricious.

[A] Upon reviewing the proposed decision and complainant's objections, the Commission notes that it was during this period of time that the respondent went through the "winnowing and sifting" process to identify possible positions for layoff. Respondent considered the responsibilities and functions of the Administrative Manager position in light of the fiscal constraints imposed on the agency and concluded that the position was an appropriate candidate for elimination.

Of the various arguments raised by the appellant, the strongest relates to respondent's decision that there were no positions into which the appellant could either transfer or demote in lieu of layoff. This argument arises from the following language in §ER-Pers 22.08, Wis. Adm. Code:

> If an employee with permanent status in a class has received a notice of layoff under s. ER-MRS 22.07 these alternatives shall be available in the order listed below until the effective date of the layoff. . . .
>
> (1) Transfer. (a) All employees who have received a notice of layoff have the right to transfer:
>
> 1. Within the employing unit, to any vacancy in the same or counterpart pay range for which the employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in the position; or
>
> 2. Within the agency, to any vacancy in the approved layoff group from which the employee is being laid off for which the employee is qualified to perform the work . . . .
>
> (2) Demotion as a result of layoff. If no transfer under sub. (1) is available and there is a vacancy available for which the employee is qualified to perform the work after being given the customary orientation provided to newly hired workers in such positions . . . an appointing authority shall offer the employee a demotion to that vacancy. . . .

Ms. Pedracine, the director of respondent's Bureau of Human Resources testified that she only considered the three positions within DATCP that were both vacant and had been "authorized" to be filled at the time of the layoff decision. These three positions were the Agriculture Auditor Supervisor, the Veterinary Program Manager and the Budget and Policy Supervisor Advanced. Ms. Pedracine did not consider other positions in the agency that were unfilled but had not been authorized to be filled. (T69)

The appellant premises her argument on the Commission's decision in *Lyons v. WGC*, 93-0206-PC, 12/5/94. In *Lyons*, the Commission concluded that there were one or more vacant positions into which the appellant should have been demoted in lieu of layoff. The decision included the following language:

> Ms. Lyons contended the examiner should find [respondent] WGC's action of withholding the AA3 [Administrative Assistant 3] opportunities at the Green Bay district office as arbitrary and capricious. She cited the fol-

lowing case as support for her argument. *Givens v. DILHR*, 87-0039-PC, 3/10/88. The Commission agrees.

Givens involved a potential transfer opportunity for an employee affected by a layoff. The position was vacant and the employer had filed a certification request with DER to fill the position. Prior to the employee's actual layoff, the employer rescinded the certification request. The Commission rejected the employer's argument that a "*vacancy*" within the meaning of the administrative code, did not exist because the certification request no longer existed.

WGC and DER contend in Ms. Lyons' case, that a vacancy for an AA3 position in Green Bay did not exist because no certification request was pending. The contention is incorrect. The existence of a vacancy is not determined by the existence of a certification request.

Ms. Lyons' demotion rights as an alternative to layoff, are contained in ER-Pers 22.08(2), Wis. Adm. Code . . . . This code section provides (in pertinent part) that a demotion opportunity in lieu of layoff arises if a *vacancy* exists, within the meaning of ER-Per 1.02(34), Wis. Adm. Code, the text of which is shown below.

> "Vacancy" means a classified position to which a permanent appointment may be made after the appointing authority has initiated an action to fill that position.

The plain language of the above definition is contrary to the interpretation urged by WGC and DER. The definition provides the basic premise that a vacancy is a classified position, rather than an unclassified position (under s. 230.08, Stats.). The definition further provides that only classified positions eligible for permanent appointment are included as vacancies (as opposed to positions created and funded to last only a specified period such as appointments for limited term employment, under s. 230.26, Stats.). The final clause in the definition "after the appointing authority has initiated an action to fill that position" provides further description of the first part of the preposition clause "to which a permanent appointment may be made." The final clause does not further limit or define the types of classified positions included in the term vacancy.

The definition of vacancy would need to be rewritten to reflect the meaning urged by WGC and DER. For example, it would be rewritten to include an additional preposition clause, such as: "a classified position to which a permanent appointment may be made *and for which* the appointing authority has initiated an action to fill that position."

> Furthermore, the interpretation urged by WGC and DER would create absurd results for other code sections. For example, ER-Pers 12.01, WAC, provides as shown below.
>
> > **Action by appointing authority.** To fill a vacancy, the appointing authority shall submit a request on the prescribed form to the administrator.
>
> The parties agree that the "prescribed form to the administrator" is a certification request sent to DER. This section of the code would have no meaning if WGC and DER were correct in asserting that the definition of vacancy in ER-Pers 1.02(34), Wis. Adm. Code, subsumes the directive to file a certification request with DER. The illogic of their argument was addressed already in *Givens*. (*Givens, id.*, p. 5)
>
> One purpose of the code chapter covering layoffs is to protect employee rights in layoff situations. ER-Pers 22.01, Wis. Adm. Code. The purpose is not furthered by allowing employing units to avoid rights which employees otherwise would have under the code by acting like the employing unit in *Givens* which made the *unilateral* decision to rescind its certification request. The purpose also is not served where, as in *Lyons*, the employing unit has continued need for the services and the position is funded and vacant; or by other *unilateral* action or nonaction of the employing unit which declares certain positions unavailable to employees affected by layoff. This is the crux of the *Givens* decision. (Emphasis in original.)

Appellant's argument fails to reflect that subsequent to the date the Commission issued its decision in *Lyons*, the Administrator of the Division of Merit Recruitment and Selection promulgated a new definition of the term "vacancy" as that term is used in the administrative code provisions regarding layoff. The new definition of "vacancy" is in §ER-MRS 22.02(5):

> The following are definitions for terms used in this chapter:
> (5) "Vacancy" or "vacant position" means a classified position to which a permanent appointment may be made after the appointing authority has initiated an action to fill that position and the position has been fully authorized and budgeted by law.

The history relating to this section of the administrative code shows that subsection (5) became effective on June 12, 1995, after the decision in *Lyons*. The final clause in the new definition makes it clear that now, only a "position [that] has been fully authorized and budgeted by law" can qualify as a vacancy for purposes of determining alternatives

to termination as a result of a layoff. The *Lyons* analysis is no longer valid precedent for the Commission when it analyzes the meaning of the word "vacancy" for purposes of a layoff. The only positions that were "fully authorized and budgeted by law" and otherwise met the definition of vacancy at the time of the appellant's layoff were the three positions listed on App. Exh. 13, i.e., 1) Agriculture Auditor Supervisor, 2) Veterinary Program Manager, and 3) Budget and Policy Supervisor Advanced. These positions were funded with either federal funds or program revenues. (T120-1) The appellant was not qualified for any of these three positions because she was not a veterinarian, did not have an accounting degree and lacked significant experience with the state's budget.

The Commission also notes that the appellant failed to identify any specific positions to which she felt she had a right to transfer or demote. While App. Exh. 12 is entitled "Department of Agriculture, Trade and Consumer Protection Vacancies in Dane County," it is dated July 16, 2002, weeks after the respondent's layoff decision and the May 24th effective date of the appellant's layoff.[1] Appellant offered testimony (T165) to the effect that she believed she could have performed the responsibilities for some of the positions on the list. The only "description" of the positions is their classification title, the initials of the division within DATCP that contained the position and the position's funding source (GPR, program revenue, federal, segregated or a combination thereof). With the exception of the Agriculture Auditor Supervisor, the Veterinary Program Manager, and the Budget and Policy Supervisor Advanced positions, the positions listed on App. Exh. 12 were not "vacant" as that term is used in §ER-MRS 22.02(5), because they were not "fully authorized and budgeted by law."[2]

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[1] For example, the appellant identified the Administrative Manager (Consumer Protection Administrator) position listed on App. Exh. 12 as vacant. However, respondent's witnesses offered undisputed testimony that this position did not become vacant until after appellant's layoff. (T145)

[2] For example, the list included a Program and Planning Analyst-Advanced Management position that was funded by a collection of GPR, Program Revenue and Federal funding. The record established that even if the respondent had located the funding to fill that position, there was another former DATCP employee who was already on layoff status who would have had first rights to that position. (T144)

Given the current definition of the term "vacancy" as used in the layoff provisions of the administrative code, the Commission cannot conclude that the respondent either failed to comply with the relevant provisions of the civil service statutes and rules or abused its discretion when it determined that the appellant could not transfer or demote in lieu of layoff. The only positions that definitively met the definition of a "vacancy" were the three positions for which the appellant was not qualified. These three vacancies are described in Finding 18, and the appellant did not have the relevant education or experience to have been able to perform the assigned responsibilities after being given the customary orientation.

Appellant argues that respondent, in the person of Georgia Pedracine, was not sufficiently aware of the appellant's experience in order to determine that she could not fill another position within DATCP. While it is true that Ms. Pedracine did not have an absolutely complete knowledge of appellant's experience, Ms. Pedracine properly relied on appellant's 1997 resume (Resp. Exh. 10) and on Ms. Pedracine's direct knowledge of the duties that appellant performed while working with respondent. The Commission is satisfied that the respondent had a sufficient knowledge of the appellant's experience for the purpose of analyzing the alternatives to layoff for the appellant.

Appellant contends that had the respondent timely informed her that her position was going to be eliminated, she would not have unilaterally terminated the Temporary Interchange Agreement when she did and would have considered other employment opportunities. Appellant argues that respondent should have informed her that her position had been targeted for elimination sometime prior to May 2nd. Appellant does not cite any provision in the statutes or administrative rules that requires such advance notice. In her reply brief, p. 9, appellant references section 232.070 of the Wisconsin Employee's Handbook, which, according to the appellant's brief, describes the procedures for notifying employees who are at risk of layoff. This document is not part of the record so it may not be relied upon by the Commission in reaching its decision in this matter. While it may have been desirable if respondent had kept appellant in-

formed of its actions to lapse the funding from appellant's position and to identify her position as a potential candidate for permanent reduction, respondent's failure to do so does not require overturning the subsequent layoff decision that is the subject of this appeal.[B]

In her reply brief (p. 2) appellant also argues that the appellant herself was identified for layoff before the layoff group was identified and that "no consideration was given to laying off other members of the Administrative Manager layoff group." The appellant has misunderstood the process followed by the respondent. Respondent decided it needed to eliminate the Administrative Manager *position* heading the Office of Outreach and Policy for fiscal reasons. Once respondent identified the position, the employees in that classification became the layoff group. Appellant had the least seniority and she was laid off. Respondent could have decided to eliminate one of the other Administrative Manager positions in the agency if, for example, respondent had concluded that the other Administrative Manager position was less important than appellant's position to the overall mission of the Department.[3] However, the record certainly provides a reasonable basis for the respondent's conclusion that it could best do without the Office of Outreach and Policy position in light of its experience of having done without someone actually working in that position while the appellant was on the temporary interchange to DEG.[4]

[B] Upon reviewing the proposed decision and complainant's objections, the Commission notes that the only notice respondent was required to give to the appellant was the 15 day notice provided for in §ER-MRS 22.07, Wis. Adm. Code. Respondent satisfied this requirement. There was no legal requirement for respondent to notify appellant of the *possibility* of such an event.

[3] Had respondent done so, respondent would have, presumably, still laid off appellant as the least senior in the layoff group of persons employed in the Administrative Manager classification.

[4] In *Newberry & Eft v. DHSS*, 82-98, 100-PC, 8/17/83, amended 9/16/83, the Commission addressed a contention that a layoff decision was arbitrary and capricious and held:

> [T]he Commission's inquiry in appeals of this nature is relatively limited. If the employer can show that it had a rational basis for its decision, it has satisfied its burden of proof. It is not required to prove that its decision was perforce the best personnel decision that could have been made under the circumstances.

In light of the clear directive to make budget reductions, respondent had such a rational basis and has clearly sustained its burden as to appellant's argument.

Finally, appellant argues (reply brief, p. 8 and elsewhere) that "the department cannot surrender the detailed employee's salary while the employee is on detail so that there is, in effect, no position to return to." The Commission finds no basis in the statutes or rules for this argument.[5] In addition, to the extent the appellant is complaining about fiscal decisions that were made prior to her layoff, the argument goes beyond the scope of the layoff issue that is before the Commission.

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[5] Appellant cites the following language from §ER 47.05, Wis. Adm. Code

> (1) When the state of Wisconsin, or any agency or subdivision thereof, is the sending agency, the appointing authority of the sending agency shall:
> (a) Arrange for the employee to remain on the agency's payroll and continue to be covered by the appropriate statutory or contractual provisions relating to pay and employee benefits.

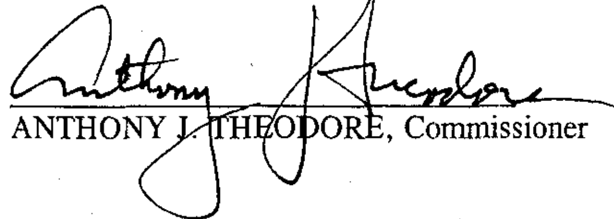
This language does not prevent the sending agency from laying off the employee once the agreement has been terminated and the employee has returned to the sending agency.

ORDER

Respondent's decision to lay the appellant off from her position as Administrative Manager is affirmed and this appeal is dismissed.

Dated: June 13, 2003

STATE PERSONNEL COMMISSION



ANTHONY J. THEODORE, Commissioner

KMS:020032Adec1.1

Commissioner Theodore is the sole sitting commissioner; the other two commissioner positions are vacant. Therefore, Commissioner Theodore is exercising the authority of the Commission. *See* 68 Op. Atty. Gen. 323 (1979).

Parties:

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Rod Nilsestuen
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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.

IMPORTANT NOTICE: EFFECT OF 2003-2005 BUDGET BILL (Senate Bill 44)
The Governor has proposed, effective July 1, 2003, eliminating the Personnel Commission and distributing the Commission's authority between 1) the Wisconsin Employment Relations Commission (WERC) and 2) the Equal Rights Division (ERD) of the Department of Workforce Development. The legislation proposes that WERC assume jurisdiction over all appeals (denominated by case numbers in the format of 00-0000-PC) and that ERD assume jurisdiction over all complaints (denominated by case numbers in the format of 00-0000-PC-ER). In the event this proposed legislation is signed into law, the rights of parties to petition for rehearing or judicial review will be modified to the extent that after the effective date of that legislation, the appropriate successor agency to the Personnel Commission would 1) receive any Petition for Rehearing, and 2) would be named in and would receive any Petition for Judicial Review.

5/21/2003