STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KEITH A. HARRSCH, Appellant,

v.

State Public Defender, OFFICE OF THE STATE PUBLIC DEFENDER, Respondent.

Case 2
No. 67255
PA(grp)-10

Decision No. 32375

KEITH A. HARRSCH, Appellant,

v.

State Public Defender, OFFICE OF THE STATE PUBLIC DEFENDER, Respondent.

Case 3
No. 67256
PA(sel)-44

Decision No. 32376

Appearances

Philip Klein, appearing on behalf of Keith Harrsch.

Kellie M. Krake, Legal Counsel, P. O. Box 7923, Madison, WI 53707-7923, appearing on behalf of the Office of the State Public Defender.

ORDER GRANTING, IN PART, MOTION TO DISMISS

These matters, which arise from the efforts of Keith Harrsch to gain employment with the Wisconsin State Public Defender, are before the Wisconsin Employment Relations Commission on Respondent's motion to dismiss the appeals for lack of subject matter jurisdiction and as untimely filed. The final date for submitting written arguments was January 31, 2008.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Keith Harrsch separated from state service at the Department of Workforce Development on July 25, 2005 after having been employed in a classified position as an Accountant-Journey.

2. He subsequently sought employment with Respondent.

3. According to the Appellant:

> On April 7, 2007, Ms. Deb Smith, head of the Assigned Counsel Division (A.C.D.) of the Wisconsin State Public Defender (OPD) called and said she would like to offer me a 50% Financial Specialist 2 position with her unit but I would have to talk with the State Public Defender Nick Chiarkas, the head of OPD before a formal offer could be made. On April 9, 2007, I came to the office and Ms. Smith introduced me to Attorney Chiarkas. During our meeting while he was asking me questions, Attorney Chiarkas said, "Don't worry . . . We're going to hire you." This was clearly a job offer, which I accepted. During our meeting, Attorney Chiarkas asked if I was getting paid for the time I was there. Again this was a clear acknowledgement that I was indeed hired. I replied I wasn't sure and deferred to Deb Smith. She looked at Attorney Chiarrkas who said, "We'll pay you." I was then taken to Human Resources to fill out personnel and payroll forms. Before I left, Ms. Smith and I established that my start date would be the next Monday, April 16, 2007.

4. Ms. Smith telephoned Harrsch on April 11, 2007 to inform him that the job offer had been rescinded. Harrsch contends that Smith told him the change was the result of his criminal background check and that she refused to supply any additional details. Harrsch also contends that the stated rationale was not the true reason for the rescission. In a letter of the same date, Respondent confirmed it had rescinded the offer.

5. Lynn Wieser is the human resources manager for the Office of the State Public Defender.

6. Harrsch filed a Wisconsin Professional Employees Council (WPEC) grievance on May 7. The subject of the grievance was the rescission of the job offer. Harrsch contends there was no response to the grievance.

7. Philip Klein is a union steward for WPEC.

8. Harrsch filed a 2nd step WPEC grievance on May 25. He contends the grievance resulted in a meeting with representatives of the Respondent in which he was told the rescission of the job offer

> was not actually based on any information found during the criminal background check, contrary to what I had been told . . . . Rather, it was based on an "*employment and* criminal background check." Mr. Klein asked for clarification. Ms. Smith said that the personnel file they received from DWD and reviewed had no information in it since 1995. Based on that employment review the offer was withdrawn. Mr. Klein said that the file was obviously incomplete and/or inaccurate. He said that could be easily explained and the file could probably be easily corrected or annotated. Ms. Weiser said that any correction would *not* be considered and they would still stand by the withdrawal of the offer. Mr. Klein then asked that a letter or memo be supplied explaining that the job offer withdrawal was not related to any criminal background findings but was only related to the lack of information in the official personnel file provided by DWD. She said she would do this but she never did . . . . (Emphasis in original.)

9. Harrsch filed a 3rd step WPEC grievance on July 5. It included the following language: "Mr. Klein will represent Mr. Harrsch even if the resolution requires non-contract issues." Respondent did not respond to the step 3 grievance. Harrsch contends that the failure to respond was a refusal to deal with Mr. Klein, his representative.

10. In an e-mail dated August 15, 2007, Klein informed Wieser that he had "permission to represent [Keith Harrsch] beyond my Union Steward role."

11. Harrsch contends that Klein "then asked to discuss resolution of the promised payment for work on completing the personnel and tax forms and other related matters."

12. In an e-mail dated August 27, Ms. Wieser informed Mr. Klein:

> "Phil, as I stated on Monday, August 20th at 9:23 a.m. when you called me, this is not a WPEC issue. You have no jurisdiction.
> Your information is not correct. We will not be responding to any more emails or phone calls on this matter. [Emphasis omitted.]

13. Harrsch contends that also on August 27, Wieser refused to pay him for the time he spent filling out personnel and payroll forms on April 9.

14. Harrsch also contends that on August 27 he was denied the right to have Mr. Klein represent him in discussions and grievances related to his efforts to obtain employment with Respondent.

15. On September 4, 2007, Harrsch filed appeal materials with the Commission that described the alleged personnel actions he sought to have reviewed as follows:

> On August 27, 2007, the OPD HR manager refused to pay me for time I spent April 9, 2007 filling out payroll forms after accepting an April 9, 2007 job offer.
>
> On August 27, 2007, I was denied the right to representation by Phil Klein, by the OPD HR manager to discuss this and other issues. On April 11, 2007 in a related matter the job offer I had already accepted and completed personnel forms was withdrawn by a formal letter, sent to me by registered mail. I consider this [an] abuse of discretion, as it was based on incomplete, inaccurate and falsified information.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The Appellant has the burden of establishing that the Commission has subject matter jurisdiction to review his claims and that his appeal was timely filed in accordance with the 30-day time limit established in Sec. 230.44(3), Stats.

2. The Appellant has failed, in part, to sustain that burden.

3. The Commission lacks subject matter jurisdiction to review Appellant's claim as the final step in the grievance process established under Sec. 230.04(14), Stats.

4. The Commission lacks subject matter jurisdiction to review Appellant's allegation that he was "denied the right to representation by Phil Klein."

5. Appellant's allegation that he is entitled to payment for the time he spent completing payroll forms on April 9, 2007 is untimely.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER[1]

Respondent's motion is granted in part and denied in part. HARRSCH I (Case No. 7255) is dismissed. HARRSCH II (Case No. 67256) may proceed on the following statement of issue:

> Whether the Respondent's decision on or about April 11, 2007, to rescind its offer of appointment to the Appellant for the 50% position of Financial Specialist 2 was illegal or an abuse of discretion. Subissue: Whether the alleged misstatement of the rationale for the rescission was illegal or an abuse of discretion.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of March, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Paul Gordon /s/
Paul Gordon, Commissioner

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

[1] Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

State Public Defender (Harrsch)

MEMORANDUM ACCOMPANYING ORDER GRANTING, IN PART, MOTION TO DISMISS

Respondent has moved to dismiss these matters for lack of subject matter jurisdiction and has also identified a timeliness objection. The cases arise from a document filed with the Commission on September 4, 2007, that referenced several events occurring after the Appellant was selected to fill a vacant position within the Office of the State Public Defender in April 2007. In response to the filing, the Commission wrote a letter to the Appellant explaining that his single filing would be treated as two separate appeals which, for the purposes of this ruling, are being identified as HARRSCH I and HARRSCH II:

> You recently filed written materials with the Wisconsin Employment Relations Commission seeking review of certain personnel actions. The Commission has assigned Case 3, No. 67256, PA(sel)-44 [HARRSCH II] to your appeal under Sec. 230.44(1)(d), Stats., of the alleged decision by the Office of State Public Defender to rescind a job offer. You will be contacted for the purpose of scheduling a prehearing conference in that matter.
>
> The Commission has assigned Case No. 67255 [HARRSCH I] to your non-contractual grievance under Sec. 230.45(1)(c), Stats., relating to the alleged actions of failing to pay you for completing certain personnel forms and of failing to allow representation by Mr. Klein. The remainder of this letter relates to these allegations.
>
> Please note that while your submission to the Commission was on a "complaint" form, we do not understand you to be seeking to file a claim under the State Employment Labor Relations Act (SELRA) which is found in Subch. V, Ch. 111, Stats. Please advise promptly if our understanding is incorrect.
>
> Your non-contractual grievance/appeal was filed with the Commission without either the filing fee or hardship affidavit required by Sec. 230.45(3), Stats., and Sec. PC 3.02, Wis. Adm. Code. . . .
>
> The Commission must receive within 30 calendar days from the date of this letter either the filing fee of $50.00 or an executed hardship affidavit.

Approximately two weeks later and in compliance with Sec. PC 3.02, Wis. Adm. Code, the Commission received the Appellant's filing fee.

A member of the Commission's staff convened a prehearing conference with the parties on October 8, 2007. During the course of the conference, the Commission's representative identified a possible statement of issue for hearing in HARRSCH II:

> Whether the Respondent's decision on or about April 11, 2007, to rescind its offer of appointment to the Appellant for the 50% position of Financial Specialist 2 was illegal or an abuse of discretion. Subissues:
> a) Whether the alleged misstatement of the rationale for the rescission was illegal or an abuse of discretion.
> b) Whether the alleged failure to compensate the Appellant for the period of time he spent on April 9 completing certain employment forms was illegal or an abuse of discretion.

Appellant was provided a period of approximately two weeks to accept or modify the proposed statement of issue. He was also directed to explain why he believed the subject of his grievance, HARRSCH I, was properly before the Commission. Appellant subsequently proposed the following additional subissue in HARRSCH II;

> c) Whether Appellant was denied representation while pursuing remedies to the above allegations.

Mr. Harrsch is seeking to advance his various claims pursuant to the Commission's authority, found in Sec. 230.45(1), Stats., to review certain personnel transactions relating to the State civil service. The only two paragraphs in that subsection that are even arguably relevant to these claims are paragraphs (1)(a) and (c).

As the Final Step in the Grievance Procedure (HARRSCH I)

We look first to Sec. 230.45(1)(c), which provides that the Commission shall "[s]erve as final step arbiter in the state employee grievance procedure established under s. 230.04(14)." When Harrsch filed his appeal materials with the Commission on September 4, we explained to the parties that we were interpreting his submission to include a request to file a grievance with the Commission pursuant to our authority under Sec. 230.45(1)(c), Stats. We denominated the grievance as HARRSCH I.

According to Sec. 230.04(14), Stats., the Office of State Employment Relations "shall establish, by rule, the scope and minimum requirements of a state employee grievance procedure relating to conditions of employment." Those rules, found in Ch. ER 46, Wis. Adm. Code, establish various limitations on the scope of the grievance procedure. As provided in Sec. ER 46.02(2), Wis. Adm. Code:

> "Employee" means a state employee in the classified civil service under s. 230.08(3), Stats., except a limited term employee or an employee covered by a collective bargaining agreement under subch. V of ch. 111, Stats.

In other words, the Commission may only serve as the final step arbiter for a grievance filed under Sec. 230.45(1)(c), Stats., if the grievance is submitted for a classified state employee who is not covered by a bargaining agreement and is not employed on a limited term basis.

Harrsch filed his 1st step grievance on May 7 and his 3rd step grievance on July 5 before finally submitting his initial filing with the Commission on September 4. Even if he could be considered a State employee between the dates of April 9 and 11, it is undisputed that he was not an employee of the Respondent by May 7, much less by September 4. Consequently, he does not satisfy the definition of "employee" and the Commission lacks subject matter jurisdiction over his September 4 submission as a grievance under Sec. 230.45(1)(c), Stats. HARRSCH I must be dismissed.

As an Appeal of Personnel Actions Related to the Hiring Process (HARRSCH II)

We have already noted that as reflected in his original appeal as well as subsequent documents, Appellant's allegations of misconduct in HARRSCH II are: 1) a misstatement of the rescission rationale; 2) a failure to compensate him for completing forms; and 3) Respondent's refusal to allow Mr. Klein to represent him. Before addressing the question of whether the Commission has jurisdiction over Appellant's claims pursuant to Sec. 230.44(1)(d), Stats., we note that in their written arguments, both parties made references in their jurisdictional arguments to other statutory provisions.

Harrsch suggests that these matters can be reviewed pursuant to Sec. 230.44(1)(b), Stats., as decisions "delegated by the director."[2] This suggestion ignores the rest of

[2] Appellant referred to paragraph (1)(b) in his January 17, 2008 response to the motion to dismiss even though he had very clearly cited paragraph (1)(d) in the attachment to his October 22, 2007 e-mail to the Commission.

paragraph (1)(b) which limits the scope of appealable decisions, whether those decisions are made by or delegated by the Director of the Office of State Employment Relations, to "decisions under s. 230.09(2)(a) or (d) or 230.13(1)." Those statutory provisions relate to decisions to keep certain personnel records closed to the public and to classification, reclassification, reallocation and regrade decisions. None of these actions encompass Harrsch's allegations about a rescission of an offer of employment, a request to be paid wages, and an attempt to have someone else represent his interests.

The Respondent has advanced arguments why Sec. 230.44(1)(c), Stats.,[3] has no application to the Appellant's claims. However, Harrsch has not suggested that paragraph (1)(c) provides jurisdiction over HARRSCH II so there is no reason for the Commission to address Respondent's arguments relating to that paragraph.

Instead, Harrsch references Sec. 230.44(1)(d), Stats., which provides:

> A personnel action after certification which is related to the hiring process in the classified service and which is alleged to be illegal or an abuse of discretion may be appealed to the commission.

The "hiring process" in this paragraph has been interpreted to include "the appointing authority's decision as to whom to appoint to a vacancy and the determination of the employee's initial incidents of employment, e.g., starting salary." DEPPEN V. DILHR & DER, CASE NO. 91-0083-PC (PERS. COMM. 3/5/92), citing RUCK V. DNR, CASE NO. 86-0007-PC (PERS. COMM. 12/29/86); TADDEY V. DHSS, CASE NO. 86-0156-PC (PERS. COMM. 6/11/87); and SIEBERS V. DHSS, CASE NO. 87-0028-PC (PERS. COMM. 9/10/87). The paragraph "typically serves as the vehicle for obtaining review of selection decision [but] it does not extend to every personnel action taken after an employee has been hired." ARENZ, ET AL. V. DOT & DER, CASE NOS. 98-0073-PC (PERS. COMM. 2/10/99). For example, the "hiring process," as the term is used in paragraph (1)(d), "cannot be reasonably construed to embrace the acquisition of permanent status in class." BOARD OF REGENTS V. WIS. PERS. COMM., 103 WIS. 2D 545, 559, 309 N.W. 2D 366 (CT. APP., 1981). Other rulings have clarified the limits of the "hiring process," holding that it does *not* encompass the action of an appointing authority to deny an appellant's request for an exemption to the agency's employee fraternization policy;[4] the decision to remove the appellant's name from an inmate's visitation

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[3] "If an employee has permanent status in class . . . the employee may appeal a demotion, layoff, suspension, discharge or reduction in base pay . . . ."

[4] GREUEL V. DOC, CASE NO. 96-0135-PC (PERS. COMM. 1/16/97)

list;[5] the decision to deny the appellant's application for medical insurance;[6] the decision to set an employee's rate of pay upon completion of her probationary period;[7] a work assignment occurring at least 11 years after the appellant had been hired into a position;[8] or the decision to create a position.[9] In BROWN V. DOC, CASE NO. 99-0006-PC (PERS. COMM. 4/21/1999), the Commission held that an appeal of an alleged withdrawal of an employment offer falls within the jurisdictional scope of paragraph (1)(d).

Respondent attempts to draw a jurisdictional distinction between the decision to rescind a job offer and the action of informing a prospective employee of the rescission decision:

> The facts surrounding the telephone call made by Ms. Smith to Harrsch on April 1, 2007 may be relevant to the ultimate question of whether or not the rescission of the job offer is an abuse of discretion or illegal but the existence of a misstatement is not a separate and distinct cause of action on which to base an appeal to WERC.

The Respondent's argument might carry some weight if Sec. 230.44(1)(d), Stats., simply referred to an appeal of a hiring decision. However, the language used in the paragraph makes it clear that the statutory intent was to encompass the selection decision as well as the other personnel actions that are "related to the hiring process." This phrase is much less limiting than Respondent suggests.

Harrsch contends that the Respondent abused its discretion when Ms. Smith allegedly (mis)informed him that the rescission of the job offer resulted from his criminal background check. We see no basis on which to conclude that this contention refers to a personnel action that is *not* related to the hiring process.

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[5] ID.

[6] CLEASBY V. DOT, CASE NO. 82-227-PC (PERS. COMM. 12/29/82).

[7] MESCHEFSKE V. DHSS, CASE NO. 88-0057-PC (PERS. COMM. 7/13/88).

[8] DVA (DEMOYA), DEC. NO. 31636 (WERC, 3/2006).

[9] UW (SEARS), DEC. NO. 30794 (WERC, 3/2004).

The same result does not apply to Harrsch's allegation that he was "denied representation while pursuing remedies" with respect to his other contentions. Harrsch was clearly not an employee of the Respondent as of the time Klein sought to act on his behalf.[10] More importantly, Klein's actions were part of the Appellant's effort to pursue a grievance rather than part of the hiring process. Likewise, the conduct of Respondent's attorney in the instant proceedings before the Commission cannot be considered part of the hiring process for the Financial Specialist 2 position. For example, if Harrsch had made a discovery request in this matter and was dissatisfied with Respondent's response to that request, he could not invoke Sec. 230.44(1)(d), Stats., and contend that the discovery response was "illegal or an abuse of discretion."[11] Because the representation issue relates to the grievance and not to the underlying hiring process, the Commission lacks subject matter jurisdiction to review it.

Given the conclusion we reach below regarding the timeliness of Harrsch's allegation that he was improperly denied payment for the time he spent on April 9 completing payroll forms, we do not need to formally address the jurisdictional objection to that topic.

Timeliness objection

The Respondent also contends that Harrsch's claim relating to the alleged failure to compensate him for the period he spent completing forms on April 9, 2007 was not timely filed with the Commission. In its motion to dismiss, Respondent notes:

> Even [if] the SPD could pay someone it does not employ, the decision to not compensate Harrsch would have been made on April 9, 2007, not on August 27, 2007, the date on which Harrsch alleges he learned that he would not be compensated. Harrsch knew or should have known that the SPD cannot compensate persons whom it does not employ. Consequently, any WERC complaint would have to have been filed within 30 days of April 9, 2007.

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[10] Harrsch states that "[d]enial of representation definitely occurred when Ms. Wieser responded on August 27, 2007."

[11] Although decided in the context of a separate source of jurisdiction, this result is consistent with the conclusion reached in LARSEN V. DOC, CASE NO. 91-0063-PC-ER (PERS. COMM. 7/11/1991).

The time limit for filing a State classified service personnel appeal is found in Sec. 230.44(3), Stats., which reads, in part:

> Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later.

Harrsch filed his appeal with the Commission on September 4, which was nearly 5 months after the April 9 date for which he contends he was entitled to compensation. August 5 would be the cut-off date for making a September 4 appeal timely.

For some types of personnel actions that may be appealed to the Commission, the employer must provide written notice of the underlying decision. Section 230.34(1)(b), Stats., provides that employees must be notified in writing of the reasons for any suspension, demotion, reduction in base pay or discharge. Pursuant to Sec. ER 3.04, Wis. Adm. Code, incumbent employees must be notified in writing when the positions they fill have been reclassified or reallocated. There is no such requirement for a pay-related decision such as the one that Harrsch seeks to have reviewed here.

The State of Wisconsin pays its classified employees on a bi-weekly basis.[12] Knowledge of the bi-weekly payments can be attributed to Harrsch because of his employment in a classified position in the Department of Workforce Development until 2005. If Harrsch believes he was told on April 9 that he would be compensated for completing forms on April 9, he must have known well before August 5 that Respondent was not considering him to have been an employee on April 9 and, consequently, was not considering him to be entitled to compensation for that date. Weiser may have first voiced the wage decision to Harrsch on August 27. However, there were 116 days between April 9 and August 5, representing 8 complete two-week periods.

This result is consistent with the decision in PERO V. DHSS & DER, CASE NO. 83-0235-PC (PERS. COMM. 4/25/1985), where the appeal related to the proper effective date for a reclassification. As already noted, Sec. ER 3.04, Wis. Adm. Code, provides that position incumbents must be notified in writing when a reclassification request is either

[12] The bi-weekly nature of the payment schedule is reflected in Sec. 20.865(1)(e), (jm), (m), (tm), and (x), Stats.

approved or denied.[13] Mr. Pero was employed as an Officer 1 at a correctional institution and the mere passage of time in that classification entitled him to a reclassification to Officer 2 on November 2, 1983 as long as he had not received an "Employee Conduct Report" (i.e. disciplinary report) within the previous six-month period. On September 27, 1983, Pero was notified he was being suspended without pay for one day. He was never notified that his otherwise automatic reclassification was being delayed, but he filed an appeal with the Commission on November 23. He was eventually reclassified to the Officer 2 level in March 1984, approximately 6 months after the suspension. In a ruling issued on March 29, 1984, the Commission ruled that even though Pero had never filed a written reclassification request with his employer, it did "not alter the fact that his reclassification was effectively denied by someone with authority to halt the procedure before the reclass was granted." In its subsequent decision on April 25, 1985, the Commission addressed the "specific question of whether the requirement of written notice in [Sec. ER 3.04, Wis. Adm. Code] applies to what may be characterized as a constructive denial of reclassification such as occurred here":

> In a typical progression series where the employee is reclassified after the satisfactory completion of a specified period of training and experience, an employee would be expected to realize that reclassification in effect had been denied even without specific notice, since he or she would expect it at a certain point (e.g., after 6 months), and would be aware that the pay increase that accompanies reclassification had not occurred. . . .

Here, Harrsch would have known by August 4, after the passage of at least 8 pay periods, that he was not being paid for April 9.

We are not saying that Harrsh knew by April 9, April 11, April 25 or even May 5 that he would not be paid for filling out forms on April 9; but he had to have known this information sometime before August 5. To the extent he is contending that the 30 day filing period began when he posed his pay question on August 27, we also reject this suggestion.

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[13] According to the current rule:

> Approvals or denials of reallocations or reclassifications shall be made to the appointing authority in writing. The appointing authority shall immediately notify the incumbent in writing.

Under Appellant's theory, he could have waited five years to specifically ask whether he would be paid and then still file a timely appeal within 30 days after receiving a response.[14]

Dated at Madison, Wisconsin, this 11th day of March, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Paul Gordon /s/
Paul Gordon, Commissioner

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

[14] The instant facts are distinct from those in COULTER V. DOC, CASE NO. 90-0355-PC (PERS. COMM. 1/24/1991), where the employer had, for an extended period, failed to render a decision on a specific request that had been posed at the time of hire. Mr. Coulter had earned college credits for taking various courses before he was hired, effective February 13, 1989, as a teacher. Teachers were entitled to add-on pay for credits that were relevant to the duties and responsibilities of their civil service position and at the time of his hire, Coulter informed management that he should receive the add-on. The employer failed to make a decision about the add-on pay question, so in May of 1990 Coulter wrote a memo to his supervisor again asking for the pay. In August, the employing agency granted the add-on pay, retroactive to his 1989 hiring date, for some of Coulter's college courses but denied it as to others. Two weeks later, Coulter filed an appeal. The employer raised a timeliness objection, contending the appeal had not been filed within 30 days of the date of hire. The Commission denied the motion to dismiss, explaining:

> Not all decisions "related to the hiring process" are rendered prior to or contemporaneous with the appointment decision and the failure of the appointing authority to render related decisions at that time should not operate to deprive an employee of his or her right of appeal. In the instant case, respondent failed to render a decision on appellant's add-on pay prior to or at the time of appellant's appointment to the subject position despite appellant having raised the issue with respondent at that time. To permit respondent to avoid review of this add-on pay decision by simply delaying this decision until after 30 days had passed from the date of appellant's appointment would frustrate the goals of the civil service system and would lead to an inequitable and absurd result. It is clear that respondent's decision relating to add-on pay to be included in appellant's starting rate of pay was communicated to appellant on or around August 8, 1990, and that appellant appealed this decision on August 21, 1990, well within the statutory 30 day time limit for appealing decisions pursuant to Sec. 230.44(1)(d), Stats.

In contrast to the present case, the employer in the COULTER matter had not made a decision on the pay issue at the time of hire, but waited until August of 1990. Harrsch does not dispute Respondent's statement, found in its brief, that the decision not to compensate him was made on April 9.

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