

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CLAIRE FRIED, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION and the DIRECTOR OF THE BUREAU OF MERIT RECRUITMENT AND SELECTION, DIVISION OF PERSONNEL MANAGEMENT, DEPARTMENT OF ADMINISTRATION, Respondents.

Case ID: 454.0002

Case Type: PA

DECISION NO. 37433-B

Appearances:

Michael J. Modl and Michael J. Westcott, Attorneys, Axley Brynelson, LLP, 2 East Mifflin Street, Suite 200, Madison, Wisconsin, appearing on behalf of Claire Fried.

William Ramsey and Anfin Jaw, Attorneys, Department of Administration, 101 East Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Agriculture, Trade and Consumer Protection and the Director of the Bureau of Merit Recruitment and Selection, Division of Personnel Management, Department of Administration.

ORDER GRANTING PETITION FOR REHEARING

On September 13, 2018, a Proposed Interim Decision and Order was issued in this matter concluding that the Department of Agriculture, Trade and Consumer Protection did not have just cause to lay off Claire Fried and directing that Fried be allowed to exercise displacement rights. The concluding paragraph of that Decision and Order stated:

The Commission is hopeful that the State will now comply with this Order. As Fried correctly notes, given the absence of any other displacement appeals and the now accomplished repeal of Wis. Admin. Code § ER-MRS 22.08(3), the legal issues presented by this appeal will not recur and thus, even if the State continues to disagree with the Commission's analysis, pragmatism might suggest that compliance (or in the alternative a mutually satisfactory settlement) is a viable option. Should compliance be the course of action chosen

by the State, the Commission will retain jurisdiction over the appeal to resolve any compliance disputes that might arise, to determine the scope of any appropriate remedy and to rule on any motion for fees and costs. **Should the State elect not to comply, the Commission will then issue this decision as a final Decision and Order after determining the scope of any appropriate remedy and ruling on any motion for fees and costs filed by Fried.** At that juncture this matter would become ripe for a petition for rehearing and/or judicial review by either party and for the commencement of compliance proceedings pursuant to § 230.44(4)(c), Stats. (emphasis added).

The State subsequently advised that it would not comply with the Proposed Interim Decision and Order. On December 21, 2018, a final Decision and Order was issued that contained a ruling on Fried's motion for fees and costs but did not "determine the scope of any appropriate remedy."

On January 4, 2019, Fried filed a Motion for Clarification/Amendment of WERC's December 21, 2018 Decision and Order or Alternatively Petition for Rehearing. Fried therein seeks addition of a remedial provision in the Commission's order. Respondents filed a statement in opposition to Fried's request on January 11, 2019.

Having considered the matter, the Commission concludes that the petition for rehearing should be granted because the Commission committed an error of law in its December 21, 2018 Decision and Order by not addressing the issue of remedy raised in the September 13, 2018 Proposed Interim Decision and Order.

NOW, THEREFORE, it is

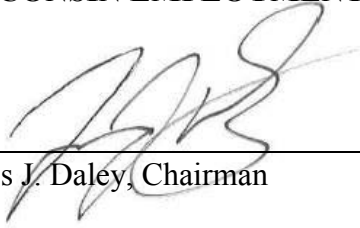
ORDERED

1. The petition for rehearing is granted.
2. On or before January 31, 2019, Claire Fried shall file any written argument addressing the following:
 - a. What is the appropriate remedy should Claire Fried not become employed through exercise of displacement rights?
 - b. What is the appropriate remedy should Claire Fried become employed through exercise of displacement rights?
 - c. Any supplemental request for fees and costs.

3. Respondents shall file any responsive argument on or before February 14, 2019.

Signed at the City of Madison, Wisconsin, this 17th day of January, 2019.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman