

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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ROBERT STROESS, Appellant

v.

STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION, Respondent

Case ID: 315.0010

Case Type: PA

DECISION NO. 37483

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**Appearances:**

Daniel P. Bach, Attorney, Lawton & Cates, S.C., 146 East Milwaukee Street, Suite 120, P.O. Box 399, Jefferson, Wisconsin, appearing on behalf of Robert Stroess.

Wilhelmina A. Mickelson, Executive Human Resource Officer, Department of Administration, 101 E. Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of the State of Wisconsin Department of Administration.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

On January 2, 2018, Robert Stroess filed an appeal with the Wisconsin Employment Relations Commission, pursuant to § 230.44(1)(a), Stats., asserting that the State of Wisconsin Department of Administration erred when it did not change his pay retroactive to April 2014 following the December 2017 reallocation of his position. On June 18, 2018, the State filed a motion to dismiss asserting that the appeal is untimely. Stroess filed a response in opposition to the motion and the record was closed on August 7, 2018, following Commission receipt of an additional document.

Having considered the matter, the Commission concludes the motion to dismiss should be denied.

NOW, THEREFORE, it is:

**ORDERED**

The motion to dismiss is denied.

Dated at Madison, Wisconsin, this 22nd day of August, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND  
ORDER DENYING MOTION TO DISMISS**

Robert Stroess appealed the State's December 2017 determination that the reallocation of his position from Special Investigative Warden to Administrative Warden (effective June 25, 2017) did not produce an increase in his pay. In effect, he contends that if the reallocation had been effective in April 2014, his pay would be greater than it is now. The State asserts that if Stroess believed his April 2014 position was incorrectly classified (and thus he was paid less than he should have been), it was incumbent on Stroess to then initiate the reclassification or reallocation process and he did not do so. Thus, the State contends the appeal is untimely. Stroess responds by contending that in April 2014, there was no State action to appeal.

After the appeal was filed, the State chose to review the December 2017 notice of reallocation for the following purposes:

- (1) ... to confirm the correct classification of your position and (2) to verify the appropriate timeline of your request to ensure the effective date of the change complied with stated policy.

In a May 22, 2018 communication to Stroess, the State advised that: (1) he was correctly classified as a Special Investigative Warden in April 2014; (2) he was currently correctly classified as an Administrative Warden; (3) that his position would now be reclassified to Administrative Warden with an effective date of July 10, 2016, and (4) under the 2015-2017 State Compensation Plan no pay adjustment would be made. The May 22 communication concluded with following statement:

Normally, following a decision such as this, DPM would indicate you have the right to appeal to the Wisconsin Employment Relations Commission (WERC); however, because this review was done as a result of your appeal to the WERC, for which a hearing is scheduled for May 30, 2018, there is no need to file an additional appeal.

Given all of the foregoing, it is concluded that dismissal of the appeal is not warranted. Among other matters, the May 22, 2018 communication determined that Stroess was correctly classified in April 2014. Given that determination, the Commission concludes it is appropriate for the appeal to proceed to test the validity of that conclusion. However, the Commission encourages the parties to review the then applicable pay plan to determine whether any additional pay would be owed to Stroess even if he successfully establishes that an April 2014 change in classification is appropriate.

Dated at Madison, Wisconsin, this 22nd day of August, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman