

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 RON PATROS,
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 Appellant,
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 v.
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 DEPARTMENT OF HEALTH AND
 SOCIAL SERVICES and
 DIVISION OF PERSONNEL,
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 Respondents.
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 Case No. 78-103-PC
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OPINION
 AND
 ORDER

NATURE OF THE CASE

This is an appeal of a decision to limit overtime paid during the 1977 state employees' strike to employees earning less than \$10.00/hour. The respondents have objected to subject matter jurisdiction on the grounds that the appeal was not timely filed.

FINDINGS OF FACT

1. This appeal was opened on June 27, 1978, upon the receipt of a letter dated June 23, 1978, from the appellant.

2. The text of this appeal letter is as follows:

"Attached please find my letter to you of last year which I do not feel has been adequately responded to.
 Does the Board plan to take action on a decision which I believe to have been arbitrary?
 May I hear from you on this matter in writing? Thank you for your consideration."

3. The attached letter referred to in the preceding paragraph was a copy of a letter dated August 9, 1977, which contained, in part, the following language:

"With this letter I wish to grieve my receiving only straight

time instead of time and one half pay for the hours I worked over 40 hours per week during the recent crisis caused by the union strike at Ethan Allan School."

4. The Personnel Board had no record of receiving this letter of August 9, 1977, opening an appeal file with regard to it, processing it in any way, or receiving any follow-up inquiry with regard to it.

5. The strike referred to above was over with at the time the appellant wrote the August 9, 1977, letter.

CONCLUSIONS OF LAW

1. This appeal was not timely filed in accordance with §16.05(2), Stats. (1975) and 230.44(3), Stats. (1977).

2. The Personnel Commission lacks subject matter jurisdiction over this appeal.

OPINION

The June 23, 1978, letter was clearly untimely with regard to the transaction in question since it was not filed within 30 days. §230.44(3), Wis. Stats. (1977). The question is whether the submission of the August 9, 1977, letter, which was not received by the Personnel Board, served to toll the running of the time limit.

At the time the August 9, 1977, letter was written, the operative statute was §16.05(2), Stats. (1975):

"The Board shall not grant an appeal under sub. (1)(e) or (f) unless a written request therefor is received by the Board within 15 days after the effective date of the decision, or within 15 days after the appellant is notified of such decision, whichever is later.

This statute required that the appeal actually be received physically by the Board within 15 days. See Van Laanen v. Wettengel, Wis. Pers. Bd. 74-17 (1/2/75), Morgan v. Knoll, Wis. Pers. Bd. 75-204 (5/25/76). The

Dane County Circuit Court has held that the time limit for the commencement of an appeal was a strict limitation on the Board's jurisdiction and an appellant's failure to completely and strictly comply with the time limit leaves the Board without power to hear the appellant's case. See State ex rel DOA v. Personnel Board, No. 145-295 (1976). See also the decision of the Supreme Court Odav v. Personnel Board, 250 Wis. 600 (1947). While the appellant argues that he had to work unusually long hours under unusually difficult circumstances during the strike, this does not provide a basis for waiver of this strict time requirement. Along the same line, the fact that the letter apparently was either lost in the mail or misdelivered cannot constitute compliance with the statute which required receipt by the Board within the 15 day time limit.

It is the opinion of the Commission that the result reached here works a hardship on the appellant. However, the statute in question is unambiguous and has been interpreted consistently by the Personnel Board and the courts. While the statute has, to some extent been rewritten, since the time involved here, see §230.44(3), Stats. (1977), this is a prerogative of the legislature and not this agency.

ORDER

This appeal is dismissed for failure of subject matter jurisdiction.

Dated: 7/12 22, 1978.

Edward D. Durkin
Edward D. Durkin
Commissioner

Dated: Nov. 22, 1978.

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner

Dated: Nov 22, 1978.

Joseph W. Wiley
Joseph W. Wiley
Chairperson