

JAN 23 1987

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

FOND DU LAC COUNTY

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THOMAS SCHROEDER,

Petitioner,

MEMORANDUM DECISION

vs.

Case No. 86-CV-717

STATE PERSONNEL COMMISSION,

Respondent.  
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The above entitled matter has been submitted to the Court on Briefs for its decision without the necessity of oral argument.

The Briefing Schedule originally entered into by the parties hereto provided that the Petitioner's final Reply Brief, if any, should be filed and served no later than February 27, 1987. By agreement of the parties, that was amended to January 15, 1987, for Petitioner's Reply Brief. As a matter of fact, the Court then received the Petitioner's "In lieu of a Brief in Reply", letter dated December 17, 1986.

The State in this matter is represented by Mr. Carl A. Sinderbrand, Assistant Attorney General; and the Petitioner appears pro se.

This is a Petition for judicial review of an Order by the Personnel Commission which dismissed, as untimely filed, an appeal by the petitioner, Thomas Schroeder.

Petitioner was terminated by the Wisconsin Department of Veteran's Affairs from his position as a facilities repair worker in October 1979. He appealed this action to the Commission by

letter dated July 31, 1986, which was received on August 4, 1986, alleging that he had not been granted a pre-discharge hearing, which he asserted was contrary to constitutional guarantees of due process enunciated in Cleveland Board of Education v. Loudermill, 470 U.S. \_\_\_, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985).

The Commission, in a unanimous decision, dismissed the appeal. It based its decision on the mandate of Sec. 230.44(3) Wis. Stats., which states in effect, that appeals may not be heard by the Commission unless filed within 30 days of the action or notification thereof. The Department's position was indicated in its Statement of Position filed in the matter on September 11, 1986, in which it stated among other things:

The Petition For Judicial Review fails to conform to the requirements of Sec. 227.52(1)(b), Stats. (1985) (formerly Sec. 227.16(1)(b), Stats.), in that it does not state the nature of petitioner's interests or facts showing that he is aggrieved by the decision of the Commission.

The position paper also states at Number 3:

The Commission's decision that it does not have the authority to hear petitioner's claim is required under Sec. 230.44(3), Stats.

One cannot ascertain Petitioner's position in the matter with the exception of his assertions that all actions taken heretofore are in violation of the Federal Constitution, specifically the Fourteenth Amendment and the Loudermill Case (Cleveland Board of Education v. Loudermill) previously cited.

As pointed out in the Respondent's Brief at Page 2:

Section 227.53(1)(b), Stats., requires that a petition for judicial review of administrative actions 'shall state the nature of the petitioner's

interest, by the facts showing that petitioner is a person aggrieved by the decision, and the grounds ... upon which petitioner contends that the decision should be reversed or modified.'

And continuing:

Where a statute provides a direct method of judicial review of agency action, the method is generally exclusive. Kegonsa Joint Sanitary District v. City of Stoughton, 87 Wis. 2d 131, 274 N.W. 2d 598 (1979). Strict adherence to the statutory requirements is necessary. Brachtl v. Department of Revenue, 48 Wis. 2d 184, 179 N.W. 2d 921 (1970). Unless the statutory requirements are strictly complied with, a party seeking review cannot invoke the subject matter jurisdiction of the circuit court. Cudahy v. Department of Revenue, 66 Wis. 2d 253, 224 N.W. 2d 570 (1974).

As again pointed out by the Respondent in his Brief at Page 3:

The Petition for Judicial Review in this action, a copy of which is attached hereto, is fraught with error, resulting in a total failure to comply with the substantive requirements of Sec. 227.53(1)(b), Stats. The statute requires that the petitioner 'state the nature' of his interest; this the petitioner has not done. The statute requires that the petitioner set forth facts showing that he has been aggrieved; this petitioner has not done. Finally, the statute requires a showing of the statutory grounds upon which the petitioner contends the decision should be reversed or modified; other than an allusion to Loudermill and the Fourteenth Amendment to the United States Constitution, petitioner has failed to comply with this requirement as well.

This Court recognizes, as did the Respondent in his Brief, that the Petitioner herein appears pro se, but the Court cannot create subject matter jurisdiction by ignoring numerous jurisdictional deficiencies.

Mr. Schroeder appealed to the Commission on August 4, 1986, and as he indicated in his appeal letter, the acts complained


of was his termination by the Wisconsin Department of Military Affairs in October of 1979. Petitioner therefore missed the statutory deadline by more than six and a half years.

This Court concludes that the Court lacks subject jurisdiction in that the Petition for Judicial Review herein is materially deficient in meeting the statutory requirement of 227.53(1)(b). Additionally, the underlying Commission's Order dismissing Petitioner's appeal was required as a matter of law pursuant to Section 230.44(3) Stats.

The Petition is hereby dismissed.

Dated this 21 day of January, 1987.

BY THE COURT:

  
Henry B. Buslee - Circuit Judge  
Circuit Court Branch 3  
Fond du Lac County, Wisconsin.