



STATE OF WISCONSIN

PERSONNEL COMMISSION

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RODNEY A. ARNESON,

Appellant,

v.

President, UNIVERSITY OF
WISCONSIN SYSTEM (Madison),

Respondent.

Case No. 90-0184-PC

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RULING ON
SUPPLEMENTARY
MOTION FOR
ATTORNEY'S FEES

This matter is before the Commission on appellant's "supplementary motion for attorney's fees [and] costs pursuant to sec. 227.485, Stats.," filed August 26, 1992. Both parties have filed arguments and supporting documents with respect to this motion.

By way of background, on May 14, 1992, the Commission entered a "decision on fees and final order." This finalized the Commission's February 6, 1992, order, which had rejected respondent's disciplinary action but had retained jurisdiction for the purpose of entertaining a §227.485, Stats., fee petition. The May 14, 1992, decision and order, in addition to finalizing the Commission's earlier resolution of the merits, awarded those attorney's fees and costs that were statutorily permitted pursuant to §227.85. This decision and order was served on the parties on May 15, 1992. The instant supplementary motion covers fees and costs expended in attempts by appellant's counsel to obtain full compliance or a compromise settlement with respect to the remedy ordered by the Commission. Appellant's counsel asserts that a final settlement agreement resolving all matters was signed on July 30, 1992, but that as of the date of the supplemental motion respondent still had not complied fully with the agreement. Appellant contends that these fees and costs are awardable pursuant to §227.485:

Appellant requests that the Commission issue a supplemental order awarding him these additional attorney's fees on the same grounds on which the Commission's [original] award of post-hearing fees ... were awarded, namely that all fees were necessarily incurred in pursuit of the appropriate remedy to com-

pensate appellant for the agency's damaging actions. The Commission found that these actions were not substantially justified as having a reasonable basis in law or fact and must therefore find that the subsequent actions of respondent's attorney in avoidance of the Commission's order cannot have a reasonable basis in law or fact.

The Commission first must address the threshold issue of whether it has any authority to rule on this supplemental motion. Under the relevant statutes, there are only certain specific procedures that are available with respect to a contested case proceeding once a final order has been entered. The Administrative Procedure Act, §227.49(1), Stats., provides for the filing of a petition for rehearing, or for a rehearing ordered by an agency sua sponte, within 20 days of the service of the final order. Section 227.53(1)(a)2., Stats., provides for the initiation of a petition for judicial review within 30 days after service of the agency's decision. A more specific provision within the Commission's enabling statute, §230.44(4)(c), provides that:

After conducting a hearing on an appeal under this section, the commission shall either affirm, modify or reject the action which is the subject of the appeal. If the commission rejects or modifies the action, the commission may issue an enforceable order to remand the matter to the person taking the action for action in accordance with the decision. Any action brought against the person who is subject to the order for failure to comply with the order shall be brought and served within 60 days after the date of service of the commission's decision.

Clearly, none of these provisions apply to this supplemental motion. The general rule with respect to the jurisdiction of administrative agencies after the entry of a final order and the expiration of the time for seeking rehearing or review is basically as stated in M.W. Martin Inc. v. Industrial Comm., 13 Wis. 2d 570, 574 (1961), with respect to a Worker's Compensation proceeding: "the jurisdiction of the Industrial Commission is exhausted by a final order for compensation when the statutory time for review has expired or the last review permitted by statute has confirmed that final order." See also 2 Am Jur 2d Administrative Law §522 ("When the jurisdiction of the administrative agency has terminated, there is no longer any power to reconsider or change the determination, and even a statutory provision for continuing jurisdiction may be held to end when the matter is no longer pending before the agency.); Elder v. DHSS, 79-PC-ER-89 (3/19/82) (Commission has no authority to reopen a

case, several months after it had been dismissed, on the ground that the respondent had not complied with the settlement agreement.) Therefore, in the absence of some provision in §227.485, Stats., for this type of motion, the Commission lacks the authority to entertain it under its more general authority.

Section 227.485 provides a very specific procedure for the award of attorney's fees in contested case proceedings. The statute provides that rather than issuing a final decision, the adjudicative agency is to issue a proposed decision, and then the prevailing party has 30 days to petition for costs while the Commission retains jurisdiction. If the agency decides to award costs, it shall "include an order for payment of costs in the final decision" §227.485(5). This is what occurred in this case when the Commission entered its final order on May 14, 1992. The statute makes no provision for another petition to seek costs incurred in attempting to enforce the final order or to negotiate a post-order settlement. Therefore, there is no basis under §227.485 for the Commission to entertain this supplemental motion. The situation conceivably could be different if the Commission had the authority to enforce its own orders and appellant were in a position to institute such a proceeding here, and then to seek to recover these fees in the context of such a proceeding. However, §230.44(4)(c), Stats., provides for a judicial enforcement action.¹

¹ Section 814.245, Stats., governs awards of costs against state agencies in judicial proceedings.

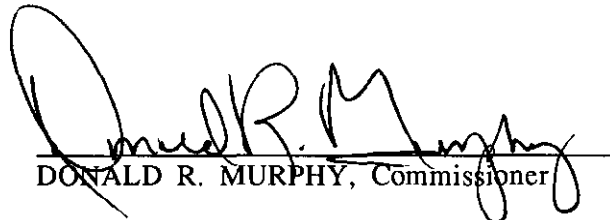
ORDER

Appellant's "supplementary motion for attorney's fees and costs" is denied because of lack of subject matter jurisdiction.

Dated: November 13, 1992 STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

AJT/gdt/2


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

Parties:

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NOTICE

**OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW
OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION**

Petition for Rehearing. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be

filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.