



an agency shall not affect the permanent status in class and rights, previously acquired by an employe within such agency." Furthermore, §ER Pers 14.03, Wis. Adm. Code, provides in part as follows:

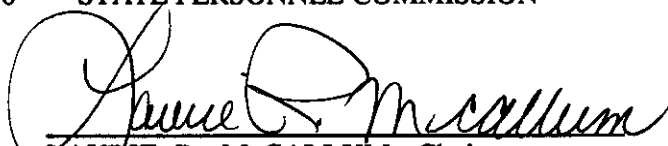
(1) PROMOTION WITHIN THE SAME AGENCY. In accordance with §230.28(1), stats., the promoted employe shall be required to serve a probationary period. At any time during this period the appointing authority may remove the employe from the position to which the employe was promoted without the right of appeal and shall restore the employe to the employe's former position or a similar position and former rate of pay . . . . Any other removal, suspension without pay, or discharge during the probationary period shall be subject to §230.44(1)(c), stats. (emphasis added)

Based on the foregoing provisions, it is clear that at the time of his suspension, appellant had the right to appeal that transaction under §230.44(1)(c), stats. However, the Commission does not agree with appellant that his permanent status in class derived from his Police Officer 2 position provides a basis for appeal of the constructive demotion. Pursuant to §ER Pers 14.03, the Wis. Adm. Code, respondent could have removed appellant from the Campus Police Supervisor 1 position and restored him to the Police Officer 2 position "without the right of appeal." If appellant had no right to appeal this action if it were done overtly, his right to appeal is not enhanced by labeling it a constructive demotion, where the employer allegedly coerced him into doing something which the employer in any event had the right to have effectuated without recourse by him.

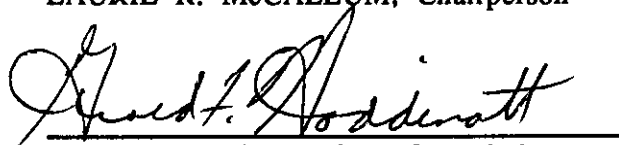
ORDER

So much of this matter as constitutes an appeal of respondent's removal of appellant from the Campus Police Supervisor 1 position is dismissed for lack of subject matter jurisdiction. This matter is to proceed to hearing on the issue regarding the three day suspension as set forth in the conference report dated October 18, 1990.

Dated: November 21, 1990 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT/gdt/2

  
GERALD F. HODDINOTT, Commissioner