

STATE OF WISCONSIN

PERSONNEL COMMISSION

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STUART JAMES NELSON,

Appellant,

v.

President, UNIVERSITY OF  
WISCONSIN-SYSTEM,

Respondent.

Case No. 94-0282-PC

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RULING  
ON  
MOTION  
TO DISMISS

In a letter of appeal filed on July 27, 1994, the appellant wrote, in part:

Just recently my spouse showed me two documents which she obtained through the Public Records Law. These documents provide evidence that the University of Wisconsin used "abuse of discretion" and/or "abuse of authority" in hiring of me as the Chair of the Division of Sciences and Mathematics at the University of Wisconsin-Superior in the Spring of 1991.

Appellant contends that respondent failed to fully disclose to him at the time of his hire that there were significant concerns relating to the divisional structure at UW-Superior, and that these concerns ultimately lead to a reorganization in January of 1994 and appellant's termination from the Division Chair position in August of 1994.

Respondent moves to dismiss the appeal, contending that the matter does not fall within those decisions which may be appealed to the Commission pursuant to §230.44(1), Stats.

Respondent's decision to remove the appellant's responsibilities as Chair of the Division of Sciences and Mathematics<sup>1</sup> is a decision attributable to the

<sup>1</sup>In its motion, the respondent identified appellant as a faculty member at UW-Superior:


Dr. Nelson was hired in May 1991 by the University of Wisconsin-Superior. As a faculty member Dr. Nelson had administrative responsibilities as Chair of the Division of Science and Mathematics and teaching responsibilities. Through a reorganization of UW-Superior from a division to a college structure Dr. Nelson's responsibilities as division chair were

appointing authority rather than to either the Administrator of the Division of Merit Recruitment and Selection (§230.44(1)(a)) or the Secretary of the Department of Employment Relations (§230.44(1)(b)). The decision is not a discharge decision appealable under §230.44(1)(c), because the appellant was employed in a faculty position at UW-Superior rather than in the classified service, so he did not have "permanent status in class." The decision is also not appealable under §230.44(1)(d), because the decision did not relate to the "hiring process in the classified civil service."

ORDER

This matter is dismissed for lack of subject matter jurisdiction.

Dated: October 24, 1994 STATE PERSONNEL COMMISSION

  
LAURIE R. MCCALLUM, Chairperson

KMS:kms  
K:D:temp-11/94 Nelson

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, Commissioner

Parties:

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eliminated effective this August. He will remain employed full-time as a faculty member through the 1994-95 academic year. His employment with UW-Superior will then terminate.

Appellant did not contest respondent's statement that as a faculty member, his position was in the unclassified civil service.

Stuart James Nelson  
3914 Lake St. George Drive  
Palm Harbor, FL 43684

Katharine Lyall  
President, UW-System  
1700 Van Hise Hall  
1220 Linden Drive  
Madison, WI 53706

**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.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.