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KAREN LAWRENCE  
and JACK WERMUTH,

Appellants,

v.

Secretary, DEPARTMENT OF  
EMPLOYMENT RELATIONS,

Respondent.

Case No. 94-0443-PC

\* \* \* \* \*

DECISION  
AND  
ORDER

On October 14, 1994, respondent filed a Motion to Dismiss for untimely filing. The parties were permitted to file briefs and the briefing schedule was completed on December 27, 1994. The following findings are derived from materials provided by the parties and appear to be undisputed.

1. The appellants were notified by letter dated June 26, 1994, of the subject reallocations of their positions. The effective date of such reallocations was June 26, 1994.
2. These letters were mailed to appellants the end of July or the beginning of August, 1994, by staff in the personnel unit of the University of Wisconsin-Madison Division of Physical Plant. These letters were mailed to appellants at their work addresses, i.e., another building on the UW-Madison campus.
3. Appellants filed their appeals of the subject reallocations with the Commission on August 31, 1994.

Section 230.44(3), Stats., requires that an appeal be filed within 30 days of the date of notice of the action or the effective date of the action, whichever is later. In the instant case, the date of notice of the action is later than the effective date of the action, i.e., June 26, 1994, so the date of notice of the action would control for purposes of determining whether the 30-day filing deadline had been met.

The Commission has consistently held that this 30-day filing deadline is jurisdictional, i.e., if the deadline is not met, the Commission does not have the authority to decide the appeal. Commission precedent is also consistent in holding that the burden of proof is on the appellant to show that the 30-day filing requirement has been satisfied

The appellants have not met this burden here. The only evidence they have presented relating to the date they received notice is an unsworn statement from Carin Wallin, Personnel Manager of the Division of Physical Plant, which states as follows, in pertinent part:

While the reallocation was effective June 26, 1994, the reallocation notices were not received by our office at that time. To the best of our knowledge, Sharon Peterson (Program Assistant 2 in my office) and I remember the notices being delivered by mail to our office either the end of July or beginning of August 1994. The notices were then placed in the mail to John [Wermuth] and Karen [Lawrence] at the Environmental Services Office (which is in another building).

In order to have sustained their burden of proof, the appellants would have had to show that they received their reallocation notices on or after August 1, 1994. A vague statement to the effect that these notices were mailed to them late in July or early in August of 1994 does not satisfy this burden. It is just as probable, given this statement, that the appellants were mailed these notices late in July and received them late in July as it is that they received them on or after August 1, 1994. The appellants cannot be concluded to have sustained their burden of proof when the only evidence they have presented can be interpreted to support a conclusion that the filing deadline has not been met as easily as a conclusion that the filing deadline has been met. This is reinforced by the appellant's statement (addressed to respondent) in their written arguments that:

As you can see from the enclosed letter from the personnel manager, your notices, although dated 6-26-94, were not received until at least a month later.

In other words, the appellant are stating that the reallocation notices were received some time on or after July 26, 1994. However, they would have had to have been received some time on or after August 1, 1994, in order for the appellants to have sustained their burden of proof.

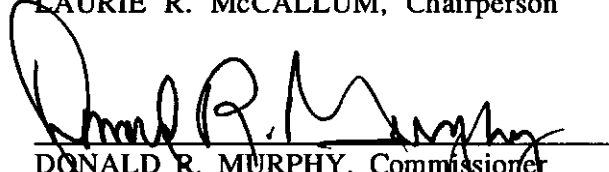
Order

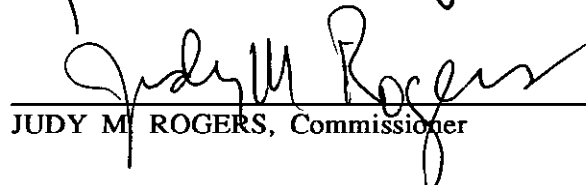
The respondent's Motion to Dismiss is granted and this appeal is dismissed.

Dated: January 20, 1995 STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

LRM:lrn

  
DONALD R. MURPHY, Commissioner

  
JUDY M. ROGERS, 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.

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.)