

STATE OF WISCONSIN  
**BERTHA E. LINCOLN,**  
*Complainant,*

v.

**Secretary, DEPARTMENT OF HEALTH  
AND FAMILY SERVICES,**  
*Respondent.*

Case No. 98-0170-PC-ER

PERSONNEL COMMISSION

FINAL DECISION AND  
ORDER

The Commission consulted with the hearing examiner and agreed with her credibility assessments. Changes are made in this decision as described in footnotes.

A hearing was held in the above-noted case on May 4-5, 2000. The parties later informed the examiner that they decided not to file post-hearing briefs and, as of May 16, 2000, the case was ready for decision.

The parties agreed to the following statement of the hearing issues (see Conference Report dated February 7, 2000):

1. Whether complainant was discriminated against on the basis of age, disability, or race with respect to her rate of pay.
2. Whether complainant was discriminated against on the basis of age, disability, or race with respect to the allegation that Central Wisconsin Center (CWC) failed to "help" her.
3. Whether complainant was discriminated against on the basis of age, disability, or race with respect to the allegation that respondent's employees discussed her personal affairs.

#### FINDINGS OF FACT

##### Pay Issue – Wage Histories

1. Complainant filed this discrimination complaint on September 11, 1998, at which time she worked as a Resident Care Supervisor (RCS) at Central Wisconsin Center (CWC), where she was one of 17 individuals employed in RCS positions. Four of the 17 RCS include Jeanette Heczko, Lorraine Karcz, Davilee Marble and Bonnie Maier. Complainant's

basic contention is that, absent discrimination, she should have had a higher salary than these other four employees because she had more seniority.

2. Complainant was born on March 11, 1934. The four individuals she uses for comparison are younger. Heczko was born on April 29, 1947, Karcz on December 30, 1944, Marble on May 21, 1945 and Maier on September 3, 1950. Complainant is Native American, whereas the other individuals are white. Complainant claims that she is disabled whereas the other individuals were not.

3. The basic information regarding seniority and wages *at the time this complaint was filed* is shown below (from Exhs. R-103 & R-109)<sup>1</sup> The following abbreviations are used for classification titles: "A-T" for institutional aide-in-training and "A-1" for institutional aide  
 1.

|  | Complainant  | Heczko                       | Karcz                        | Marble                      | Maier   |
|--|--|------------------------------|------------------------------|-----------------------------|---|
| Adjusted Seniority Date                                  | 7/2/63   | 10/26/66                     | 3/20/67                      | 5/1/67                      | 2/9/69  |
| Started @ CWC in a Permanent Institutional Aide Position | 3/18/69 @ \$468/month as either A-T or A-1. <sup>2</sup> | 6/27/66 @ \$327/month as A-T | 3/20/67 @ \$368/month as A-T | 5/1/67 @ \$368/month as A-T | 12/2/68 @ \$412/month as A-1 (A-T status not required due to prior LTE work.) |
| Hourly Rate of Pay as of 9/98                            | \$16.334   | \$16.822                     | \$16.578                     | \$16.334                    | \$17.093  |

4. There are two basic forms of pay raises that impact on an employee's base salary. The first are raises over which respondent exercises no discretion such as pay plan in-

<sup>1</sup> There is some conflict between information contained in Exh. R-103 and Exh. R-109. The information in Exh. R-109 is more detailed than the summary document of R-103. Accordingly, where conflicts exist the information in Exh. R-109 was found more reliable.

<sup>2</sup> The date complainant started in an institutional aide position is uncertain. Exh. R-103 is a summary document that recites the date as 2/25/70. Exh. C-3 is a more detailed document that recites the date as 3/18/69. The more detailed document was used as more reliable than the summary document.

creases, legislative increases, equity adjustments, probationary increases, step increases, grid adjustments, etc. The second are discretionary performance awards over which respondent exercises discretion as to which employees will receive them as well as the amount of the award. The non-discretionary wage items are referred to collectively in this decision as “pay plan increases” (PP↑). The shorthand reference “DPA” is used for discretionary performance awards.

5. The table below<sup>3</sup> tracks the wage history of the four employees complainant uses for comparison, starting from the dates they were first hired in a permanent institutional aide position at CWC, either in training status (A-T) or non-training status (A-1). Complainant is not included in the table because her pay records for this period were not in the record. The abbreviation “TA-2” is used for therapy assistant 2.

| Heczko   | Karcz                              | Marble                      | Maier |
|--|------------------------------------|-----------------------------|-------|
| 6/27/66 A-T @ \$327                                    |                                    |                             |       |
| 7/1/66 \$31 PP↑ to \$358                               |                                    |                             |       |
| 10/1/66 \$15 PP↑ for 3-mo, to \$373                    |                                    |                             |       |
| 1/1/67 \$15 PP↑ for 6-mo, to \$388                     |                                    |                             |       |
|  | 3/20/67 A-T @ \$368                |                             |       |
|  |                                    | 5/1/67 A-T @ \$368          |       |
| 7/1/67 \$20 PP↑ for end of probation, to \$408, as A-1 | 7/1/67 \$10 PP↑ for 3-mo, to \$378 |                             |       |
| 7/1/67 \$8 PP↑, & \$16 DPA, to \$432                   | 7/1/67 \$8 PP↑, now @ \$386        | 7/1/67 \$8 PP↑, now @ \$376 |       |

<sup>3</sup> Exh. R-109 as a summary document failed to accurately reflect information in the underlying documents (Exh.s R-110 through R-114) at times. Accordingly, the wage-tables in this decision differ from some of the information in Exh. R-109.

| Heczko                                  | Karcz  | Marble   | Maier                  |
|---|--|--|------------------------|
|   |  | 7/30/67 \$10 PP↑<br>for 3-mo, now @<br>\$386                         |                        |
|   | 9/24/67 \$10 PP↑<br>for 6-mo, to \$396                             |  |                        |
|   |  | 11/2/67 \$10 PP↑<br>for 6-mo↑, now @<br>\$396                        |                        |
|   | 3/23/68 \$20 PP↑<br>for End of proba-<br>tion, to \$416, as<br>A-1 |  |                        |
|   |  | 5/5/68 \$20 PP↑<br>for End of proba-<br>tion, now @ \$416,<br>as A-1 |                        |
| 7/1/68 \$16 PP↑ &<br>\$16 DPA, to \$464 | 7/1/68 \$16 PP↑,<br>\$16 DPA, to \$448                             | 7/1/68 \$16 PP↑ &<br>\$16 DPA, to \$448                              |                        |
|   | 12/1/68 \$27 PP↑<br>for reclassification<br>to A-2, now @<br>\$475 |  |                        |
|   |  |  | 12/2/68 A-1 @<br>\$412 |

6. Information in the prior table demonstrates that individuals in A-T positions received PP↑ at 3 and 6 months, as well as at the end of their probation. All individuals received \$20 upon completing probation. The individual hired first (Heczko) received higher raises at 3 and 6 months (\$15) than did Karcz and Marble (\$10). This is an example demonstrating that anomalies exist in the civil service pay structure even with non-discretionary raises.

7 The same table shows that Ms. Heczko, as the person with the most seniority, maintained a higher wage than the other individuals but only until December 1, 1968, when Ms. Karcz' position was reclassified to a higher level. This demonstrates that seniority dates are not perfect predictors of an individual's wage entitlement. Other factors, such as promotions, play a legitimate (non-discriminatory) part in determining wage levels.

8. Complainant's pay history is added to the table below. The pay histories of the other four individuals continue. The individuals are placed in order according to when they first worked at CWC in a permanent position as an institutional aide, with Heczko having been hired first and complainant last.

| Heczko                               | Karcz                                | Marble   | Maier   | Complainant                                    |
|--------------------------------------|--------------------------------------|--|---|--|
| Previously A-1 @ \$464               | Previously A-2 @ \$475               | Previously A-1 @ \$448                             | Previously A-1 @ \$412                            |  |
|                                      |                                      |  |   | 3/18/69 reinstated @ \$468 as A-1 <sup>4</sup> |
|                                      |                                      |  | 6/1/69 \$20 PP↑ for end-of-probation, now @ \$432 |  |
| 7/1/69 \$36 PP↑ & \$20 DPA, to \$520 | 7/1/69 \$25 PP↑ & \$20 DPA, to \$520 | 7/1/69 \$52 PP↑ & \$20 DPA, to \$520. <sup>5</sup> | 7/1/69 \$68 PP↑ & \$20 DPA, to \$520              | 7/1/69 PP↑ to \$500                            |

9. The information in the prior table shows that complainant received higher pay than the others did when she was reinstated on March 18, 1969. As of July 1, 1969, she lagged behind the others when she did not receive the DPA. Unlike the others, complainant reinstated and only worked about four months prior to this DPA award.

10. The information in tables in ¶¶5 & 8 demonstrate that the method of determining PP↑ (non-discretionary increase) varies. The PP↑ for July 1, 1968 (¶5), involved an across-the-board raise of \$32, whereas the PP↑ for July 1, 1969 (¶8), involved a different amount for each individual.

<sup>4</sup> The record is unclear as to what complainant's classification was upon reinstatement. The A-1 level appeared most logical.

<sup>5</sup> Both increases for Maier on 7/1/69 are shown in Exh. R-112 as merit raises and no PP↑. This appears to be incorrect because she would have been entitled to the same non-discretionary PP↑ as the other A-1s.

11. The pay histories continue in the table below.

| Heczko  | Karcz  | Marble   | Maier   | Complainant  |
|---|--|--|---|--|
| 9/21/69 \$25<br>PP↑ for re-<br>classification<br>to A-2, now<br>@ \$545 |  |  |   |  |
|   | 4/19/70 \$25<br>PP↑ for re-<br>classification<br>to TA-2, now<br>@ \$545 |  |   |  |
|   |  | 5/3/70 \$25<br>PP↑ for re-<br>classification<br>to A-2, now<br>@ \$545 |   | 5/3/70 \$42<br>PP↑ for re-<br>classification<br>to A-2, now<br>@ 542 |
| 7/1/70 \$25<br>PP↑ & \$20<br>DPA, to \$590                              | 7/1/70 \$25<br>PP↑ & \$20<br>DPA, to \$590                               | 7/1/70 \$20<br>PP↑ & \$25<br>DPA, to \$590                             | 7/1/70 \$25<br>PP↑ & \$20<br>DPA, now @<br>\$565                                      | 7/1/70 \$25<br>PP↑ & \$20<br>DPA, now @<br>\$587                     |
|   |  |  | 5/30/71 \$25<br>PP↑ for re-<br>classification<br>to T-2, now @<br>\$590. <sup>6</sup> |  |

12. The information in foregoing tables demonstrate that the amount of raise associated with the same reclassification levels may differ. Karcz received an increase of \$27 when her position was reclassified from A-1 to A-2 on December 1, 1968, whereas Heczko's later reclassification from A-1 to A-2 on September 21, 1969 resulted in a \$25 increase.

13. The transactions noted in the prior paragraph further demonstrate that the timing of a reclassification decision can be important. The increase Karcz received for reclassification on December 1, 1968, left her with a higher salary than others only until the PP↑ of July 1,

<sup>6</sup> Barbara Bronte developed the information contained in Exhs. C-3 & R-109. She testified that an error exists in that the 5/30/71 entry for Maier shows a reclassification to an A-2, whereas she was reclassified to a T-2. The table shows this correction.

1969. Heczko's reclassification did not occur until about 3 months after the PP↑ of July 1, 1969, which then put her salary higher than Karcz' salary even though Karcz was reclassified to the A-2 level before Heczko was. Such anomalies exist in the civil service pay structure.

14. The table below continues with the employment history of the individuals mentioned previously

| Heczko                                | Karcz                                    | Marble                                | Maier                                    | Complainant                              |
|---------------------------------------|--|---------------------------------------|--|--|
| Previously A-2 @ \$590                | Previously TA-2 @ \$590                  | Previously A-2 @ \$590                | Previously T-2 @ \$590                   | Previously A-2 @ \$587                   |
|                                       |  |                                       | 6/30/71 Termination                      |  |
| 7/1/71 \$30 PP↑ & \$22 DPA, to \$642  | 7/1/71 \$30 PP↑, \$25 DPA, to \$645      | 7/1/71 PP↑ & DPA to \$641             |  | 7/1/71 \$30 PP↑ & \$25 DPA, now @ \$642  |
|                                       |  |                                       | 9/7/71 Reinstated. @ \$620               |  |
| 6/25/72 \$39 PP↑ & \$20 DPA, to \$701 | 6/25/72 PP↑ & DPA, to \$677 <sup>7</sup> | 6/25/72 \$38 PP↑ & \$20 DPA, to \$699 | 6/25/72 \$37 PP↑ & \$20 DPA, now @ \$677 | 6/25/72 \$39 PP↑ & \$20 DPA, now @ \$701 |

15. The information in the prior table shows that when a person leaves a classification, such as Maier who left the T-2 classification through termination on June 30, 1971, the personnel transaction may have a long-term negative impact on subsequent wages. Specifically, when she reinstated to the A-2 level on September 7, 1971, it was at a lower wage than the other A-2s (Heczko, Marble and complainant) who had no interruption in service. Also, she continued to receive a lower wage than her counterparts after the next wage transaction on June 25, 1972.

16. The table below continues with the employment history of the individuals mentioned previously. A difference exists in that the record expresses most of the wages in terms of hourly pay. At times, complainant's wage is shown below in terms of monthly pay as the only available figure in the record.

| Heczko                                      | Karcz  | Marble                                      | Maier                               | Complainant   |
|---|--|---|-------------------------------------|---|
| Previously an A-2 @ \$701                   | Previously a TA-2 @ \$677                              | Previously an A-2, @ \$699                  | Previously an A-2, @ \$677          | Previously an A-2, @ \$701                                    |
| 6/24/73 PP↑, to \$4.289                     | 6/24/73 PP↑ to \$4.335                                 | 6/24/73 PP↑ to \$4.278                      | 6/24/73 PP↑ to \$4.151              | 6/24/73 PP↑ to \$4.289  |
|   |  |   |                                     | 8/19/73 enters LPN training with 50% stipend of \$4.289       |
| 7/7/74 PP↑ to \$4.519                       | 7/7/74 PP↑ to \$4.565                                  | 7/7/74 PP↑ to \$4.508                       | 7/7/74 PP↑ to \$4.381               | PP↑ to \$4.519  |
|   |  |   |                                     | 8/4/74 starts in an unclassified position as LPN-1. @ \$4.519 |
| 1/1/75 PP↑ to \$4.579                       | 1/1/75 PP↑ to \$4.625                                  | 1/1/75 PP↑ to \$4.568                       | 1/1/75 PP↑ to \$4.441               | 1/1/75 PP↑ to \$4.579   |
| 6/8/75 PP↑ promotion to A-4, now @ \$4.80   |  | 6/8/75 PP↑ promotion to A-4, now @ \$4.788  |                                     | 6/8/75 PP↑ promo to A-4, now \$4.80                           |
| 7/6/75 PP↑ to \$5.042                       | 7/6-7/75 PP↑ & PP↑ for promotion to A-4, now @ \$5.088 | 7/6/75 PP↑ to \$5.030                       |                                     | 7/6/75 PP↑ to \$874 per month                                 |
|   |  |   | 9/14/75 promo to A-4, now @ \$4.708 |   |
| 12/7/75 PP↑ end of probation, now @ \$5.244 |  | 12/7/75 PP↑ end of probation, now @ \$5.232 |                                     | 12/7/75 PP↑ end of probation, now @ \$5.244                   |

<sup>7</sup> The PP↑ and DPA amounts for Karcz on 6/25/72, as recited in Exh. R-111, is incorrect. The amounts given do not add up to the noted base-pay amount of \$677



17 The information in the prior table shows that complainant, as of 1/1/75, has regained the same pay as Heczko. Complainant's advancement in this regard most likely was due to successful completion of the LPN training opportunity.

18. The table below continues with the employment history of the individuals mentioned previously.

| Heczko                      | Karcz                                       | Marble                      | Maier   | Complainant                    |
|-----------------------------|---|-----------------------------|---|--------------------------------|
| Previously, A-4 @ \$5.244   | Previously A-4 @ \$5.088                    | Previously A-4 @ \$5.232    | Previously A-4 @ \$4.708                                    | Previously A-4 @ \$5.244       |
|                             | 1/5/76 PP↑ for end of probation, to \$5.290 |                             |   |                                |
| 7/4/76 PP↑ to \$5.541       | 7/4/76 PP↑ & DPA to \$5.592                 | 7/4/76 PP↑ to \$5.529       |   | 7/4/76 PP↑ to \$5.541          |
|                             |   |                             | 7/10/76 transfer out of CWC (class unknown), now @\$4.988   |                                |
|                             |   |                             | 4/17/77 transfer back to CWC, (class unknown), now @\$5.135 |                                |
| 7/3/77 PP↑ to \$5.928       | 7/3/77 PP↑ to 5.982                         | 7/3/77 PP↑ to \$5.916       | 8/14/77 PP↑ to \$5.515 as A-4                               | 7/3/77 PP↑ to \$5.928          |
| 1/29/78 PP↑ to \$6.034      | 1/29/78 PP↑ to 6.088                        | 1/29/78 PP↑ to \$6.022      | 1/24/78 PP↑ to \$5.587                                      | 1/29/78 PP↑ to \$6.034         |
| 7/2/78 PP↑ & DPA to \$6.494 | 7/2/78 PP↑ & DPA to \$6.548                 | 7/2/78 PP↑ & DPA to \$6.482 | 7/2/78 PP↑ to \$6.047                                       | 7/2/78 PP↑ & DPA, now @\$6.494 |
| 12/31/78 PP↑ to \$6.600     | 12/31/78 PP↑ to \$6.654                     | 12/31/78 PP↑ to \$6.588     | 12/31/78 PP↑ to \$6.119                                     | 12/31/78 PP↑ to \$6.600        |

19. The information in the prior table shows that pay levels do not always bear a direct relationship between seniority, as measured by adjusted seniority date or as measured by

seniority within a classification. Karcz, as of December 31, 1978, earned a higher wage than complainant and Heczko even though Heczko started in an aide position before Karcz and even though Heczko and complainant both had more seniority in state service as measured by adjusted seniority date.

20. The information in the prior table shows that complainant has retained the same salary level as Heczko.

21. The table below continues with the employment history of the individuals mentioned previously.

| Heczko                           | Karcz                          | Marble                           | Maier                       | Complainant  |
|----------------------------------|--------------------------------|----------------------------------|-----------------------------|--|
| Previously an A-4, @ \$6.60      | Previously an A-4, @ \$6.654   | Previously an A-4 @ \$6.588      | Previously an A-4 @ \$6.119 | Previously an A-4 @ \$6.60                                       |
|                                  |                                |                                  |                             | 1/14/79 Voluntary demotion to Adm. Asst. 1 (AA-1) still @ \$6.60 |
| 7/1/79 PP↑ to \$7.273            | 7/1/79 PP↑ to \$7.331          | 7/1/79 PP↑ to \$7.261            | 7/1/79 PP↑ to \$6.692       |  |
|                                  |                                |                                  |                             | 8/26/79 reallocation to program asst 3, still at \$6.60          |
|                                  |                                |                                  |                             | PP↑ equity adjustment to \$7.259, retroactive to 7/1/79          |
| 6/29/80 PP↑ to \$7.994           | 6/29/80 PP↑ to \$8.056         | 6/29/80 PP↑ to \$7.981           | 6/29/80 PP↑ to \$7.305      | 6/29/80 PP↑ to \$7.785   |
|                                  |                                |                                  |                             | 10/5/80 reinstate to A-4, @ \$7.785                              |
| 6/28/81 PP↑ & DPA, now @ \$8.794 | 6/28/81 PP↑ & DPA, now \$8.862 | 6/28/81 PP↑ & DPA, now @ \$8.581 | 6/27/81 PP↑ to \$7.910      | 6/28/81 PP↑ & DPA, now @ \$8.409                                 |

22. The information in the prior table shows that complainant's decision to take a voluntary demotion had a negative impact on her wages thereafter. Due to the demotion, she was not entitled to receive the PP↑ on July 1, 1979 that the A-4s received. She later recovered most of the lost increase as an equity adjustment retroactive to July 1, 1979, leaving her wage about 2 cents less than Heczko's wage. Complainant received a PP↑ on June 29, 1980, which left her wage about 20 cents less than Heczko's wage. At that time, however, complainant's PP↑ entitlement was determined by the impact of her voluntary demotion and resulting classification as a Program Assistant 3, whereas Heczko's entitlement was determined by her classification as an A-4.

23. The information in the prior table also shows that until June 28, 1981, Heczko received a lower wage than Karcz and Marble. This was true even though Heczko had more seniority than Karcz or Marble.

24. The table below continues with the employment history of the individuals mentioned previously.

| Heczko                           | Karcz                             | Marble                           | Maier                    | Complainant                                 |
|----------------------------------|-----------------------------------|----------------------------------|--------------------------|---|
| Previously A-4 @ \$8.794         | Previously A-4 @ \$8.862          | Previously A-4 @ \$8.581         | Previously A-4 @ \$7.910 | Previously A-4 @ \$8.409                    |
| 10/3/82 PP↑ & DPA, now @ \$9.630 | 10/31/82 PP↑ & DPA, now @ \$9.616 | 10/3/82 PP↑ & DPA, now @ \$9.226 | 10/3/82 PP↑ to \$8.543   | 10/3/82 PP↑ & DPA, now @ \$9.166            |
|                                  |                                   |                                  |                          | 6/10/83 Termination                         |
|                                  |                                   |                                  |                          | 7/25/83 reinstated as A-4, still at \$9.166 |
| 6/24/84 PP↑ & DPA to \$10.00     | 6/24/84 PP↑ & DPA, now @ \$9.986  | 6/24/84 PP↑ & DPA, now @ \$9.581 | 6/24/84 PP↑ to @ \$8.872 | 6/24/84 PP↑ & DPA, now @ \$9.518            |
| 7/7/85 DPA to \$10.40            | 7/7/85 DPA to \$10.386            | 7/7/85 DPA to \$10.070           |                          | 7/7/85 DPA to \$10.004                      |
|                                  |                                   |                                  | 12/8/85 PP↑ to \$9.405   |   |

25. Previous tables show that the impact on complainant's wages after her termination and reinstatement in 1983, were less severe than the ongoing impact of Maier's termination and reinstatement in 1971.

26. The table below continues with the employment history of the individuals mentioned previously

| Heczko  | Karcz   | Marble  | Maier  | Complainant  |
|---|---|---|--|--|
| Previously an A-4 @ \$10.40                     | Previously an A-4 @ \$10.386                    | Previously an A-4 @ \$10.070  | Previously an A-4 @ \$9.405                      | Previously an A-4 @ \$10.004                         |
|   |   | 6/8/86 PP↑ to \$10.337  |  | 6/8/86 PP↑ to \$10.337                               |
| 7/6/86 PP↑ to \$10.868                          | 7/6/86 PP↑ to \$10.854                          | 7/6/86 PP↑ to \$10.803  | 7/6/86 PP↑ to \$9.782                            | 7/6/86 PP↑ to \$10.803                               |
| 7/5/87 PP↑ to \$11.086                          | 7/5/87 PP↑ to \$11.072                          | 7/5/87 PP↑ to \$11.020  | 7/5/87 PP↑ to \$9.988                            | 7/5/87 PP↑ to \$11.020                               |
| 3/27/88 PP↑ to \$12.228                         | 3/27/88 PP↑ to \$11.084                         |   | 3/27/88 PP↑ to \$10.182                          | 3/27/88 PP↑ to \$11.032                              |
|   |   | 6/27/88 PP↑ to \$11.032   |  |  |
| 7/3/88 PP↑ to \$11.318                          | 7/3/88 PP↑ to \$11.304                          |   |  |  |
|   |   |   |  | 1/1/89 DPA to \$11.142                               |
| 10/23/88 PP↑ for reclass to A-5, now @ \$11.609 | 10/23/88 PP↑ for reclass to A-5, now @ \$11.595 | 10/23/88 PP↑ to \$11.252<br>10/23/88 PP↑ reclass to A-5 to \$11.543 |  | 10/23/88 PP↑ reclassification to A-5, now @ \$11.433 |
|   |   |   | 10/25/88 PP↑ reallocation to TA2, now @ \$10.520 |  |

27 The information from the prior table shows that complainant still has not regained the loss, which resulted from her voluntary demotion.

28. The wage history of the individuals discussed previously continues in the table below. The abbreviation "RCS" stand for Resident Care Supervisor.

| Heczko  | Karcz   | Marble                    | Maier  | Complainant                                  |
|---|---|---------------------------|--|--|
| Previously A-5 @ \$11.609                     | Previously A-5 @ \$11.595                     | Previously A-5 @ \$11.543 | Previously TA2, \$10.520                     | Previously A-5 @ \$11.433                    |
| 11/5/89 PP↑ to \$12.228                       | 11/5/89 PP↑ to \$12.001                       | 11/5/89 PP↑ to \$11.947   |  | 11/5/89 PP↑ to \$11.843                      |
| 4/8/90 PP↑ reallocated to RCS, now @ \$12.545 | 4/8/90 PP↑ reallocated to RCS, now @ \$12.318 |                           | 4/8/90 PP↑ to \$10.892                       | 4/8/90 PP↑ reallocated to RCS now @ \$12.151 |
|   |   |                           | 4/22/90 PP↑ for promo to RCS, now @ \$11.843 |  |
| 7/1/90 PP↑ to \$13.224                        | 7/1/90 PP↑ to \$12.988                        |                           |  | 7/1/90 PP↑ to \$12.815                       |
|   |   |                           | 10/21/90 PP↑ 6-mo, now @ \$12.169            |  |
| 6/30/91 PP↑ to \$13.357                       | 6/30/91 PP↑ to \$13.118                       | 6/30/91 PP↑ to @ 12.882   | 6/30/91 PP↑ to \$12.291                      | 6/30/91 PP↑ to \$12.944                      |
| 11/3/91 PP↑ to \$13.393                       | 11/3/91 PP↑ to \$13.154                       | 11/3/91 PP↑ to \$12.917   | 11/3/91 PP↑ to \$12.324                      | 11/3/91 PP↑ to \$12.979                      |
| 6/28/92 PP↑ to \$13.795                       | 6/28/92 PP↑ to \$13.549                       | 6/28/92 PP↑ to \$13.305   | 6/28/92 PP↑ to \$12.725                      | 6/28/92 PP↑ to \$13.369                      |
| 5/30/93 PP↑ to \$13.968                       | 5/30/93 PP↑ to \$13.719                       | 5/30/93 PP↑ to \$13.472   | 5/30/93 PP↑ to \$12.885                      | 5/30/93 PP↑ to \$13.537                      |
| 6/27/93 PP↑ to \$14.178                       | 6/27/93 PP↑ to \$13.925                       | 6/27/93 PP↑ to \$13.675   | 6/27/93 PP↑ to \$13.079                      | 6/27/93 PP↑ to \$13.741                      |

29. The prior table shows that that gap between complainant's and Heczko's salary widened from about a 20-cent difference to about a 44-cent difference. This gap widened through non-discretionary awards.

30. The table below continues the employment history of the individuals mentioned previously.

| Heczko                          | Karcz                           | Marble  | Maier                           | Complainant                     |
|---------------------------------|---------------------------------|---|---------------------------------|---------------------------------|
| Previously<br>RCS @<br>\$14.178 | Previously<br>RCS @<br>\$13.925 | Previously A-<br>5 @ \$13.675                                     | Previously<br>RCS @<br>\$13.079 | Previously<br>RCS @<br>\$13.741 |
|                                 |                                 |   | 1/9/94 DPA ↑<br>to \$13.394     |                                 |
|                                 |                                 | 6/24/94 PP↑<br>for realloca-<br>tion to RCS,<br>now @<br>\$14.017 |                                 |                                 |
| 6/26/94 PP↑<br>to \$14.533      | 6/26/94 PP↑<br>to \$14.274      |   | 6/26/94 PP↑<br>to \$13.729      | 6/24/94 PP↑<br>to \$14.085      |
| 8/21/94 PP↑<br>to \$15.396      | 8/21/94 PP↑<br>to \$15.166      | 8/21/94 PP↑<br>to \$14.936  | 8/21/94 PP↑<br>to \$14.706      | 8/21/94 PP↑<br>to \$14.936      |
| 1/26/95 PP↑<br>to \$15.626      | 1/26/95 PP↑<br>to \$15.396      | 1/26/95 PP↑<br>to \$15.166  | <sup>8</sup>                    | 1/26/95 PP↑<br>to \$15.166      |
|                                 |                                 |   | 11/26/95 PP↑<br>to \$14.936     |                                 |
|                                 |                                 |   | 1/7/96 DPA<br>to \$15.166       |                                 |
| 7/7/96 PP↑ to<br>\$15.856       | 7/7/96 PP↑ to<br>\$15.626       | 7/7/96 PP↑ to<br>\$15.396   | 7/7/96 PP↑ to<br>\$15.396       | 7/7/96 PP↑ to<br>\$15.396       |

31. The information from prior table shows that complainant's ending salary is now about 46 cents less than Heczko's salary. Non-discretionary awards determined both individuals' salaries.

32. The table below completes the employment history relevant in this case:

| Heczko                            | Karcz                             | Marble                            | Maier                             | Complainant                       |
|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Previously a<br>RCS @<br>\$15.856 | Previously a<br>RCS @<br>\$15.626 | Previously a<br>RCS @<br>\$15.396 | Previously a<br>RCS @<br>\$15.396 | Previously a<br>RCS @<br>\$15.396 |
|                                   |                                   |                                   | 10/29/96 DPA<br>↑ to \$15.626     |                                   |

<sup>8</sup> There is no PP↑ for Maier on 1/16/95 in Exh. R-113. This appears to be an error as she would have been entitled to the same PP↑ as the other RCSs.

| Heczko                  | Karcz                    | Marble                  | Maier                     | Complainant             |
|-------------------------|--------------------------|-------------------------|---------------------------|-------------------------|
| 9/28/97 PP↑ to \$16.332 | 9/28/97 PP↑ to \$ 16.095 | 6/28/97 PP↑ to \$15.858 | 6/28/97 PP↑ to \$16.095   | 9/28/97 PP↑ to \$15.858 |
|                         |                          |                         | 6/21/98 DPA ↑ to \$16.595 |                         |
| 7/5/98 PP↑ to \$16.822  | 7/5/98 PP↑ to \$16.578   | 7/5/98 PP↑ to \$16.334  | 7/5/98 PP↑ to \$17.093    | 7/5/98 PP↑ to \$16.334  |

33. The information from the prior table shows that complainant's ending salary is now about 49 cents less than Heczko's salary. Non-discretionary awards determined both individuals' salaries.

34. The prior table also shows that Maier ended up as the top wage earner, yet she had less seniority than Heczko and others.

Pay Issue – Discretionary Awards

35. The table below summarizes the DPAs awarded, as noted in previous tables. The table starts on March 18, 1969, when complainant reinstated as an A-1 (see ¶8 above).

| Heczko  | Karcz   | Marble  | Maier    | Complainant |
|---------|---------|---------|----------|-------------|
| 7/1/69  | 7/1/69  | 7/1/69  | 7/1/69   |             |
| 7/1/70  | 7/1/70  | 7/1/70  | 7/1/70   | 7/1/70      |
| 7/1/71  | 7/1/71  | 7/1/71  |          | 7/1/71      |
| 6/25/72 | 6/25/72 | 6/25/72 | 6/25/72  | 6/25/72     |
|         | 7/4/76  |         |          |             |
| 7/2/78  | 7/2/78  | 7/2/78  |          | 7/2/78      |
| 6/28/81 | 6/28/81 | 6/28/81 |          | 6/28/81     |
| 10/3/82 | 10/3/82 | 10/3/82 |          | 10/3/82     |
| 6/24/84 | 6/24/84 | 6/24/84 |          | 6/24/84     |
| 7/7/85  | 7/7/85  | 7/7/85  |          | 7/7/85      |
|         |         |         |          | 1/1/89      |
|         |         |         | 1/9/94   |             |
|         |         |         | 1/7/96   |             |
|         |         |         | 10/29/96 |             |
|         |         |         | 6/21/98  |             |

Pay Issue – Alleged Discriminators

36. Complainant's first-line supervisor, at times relevant here, was Donna Nelson. Ms. Nelson was supervised by Constance Foges, Coordinator of Resident Living, a position she held from the early 1970s until she retired in February 1992. Ms. Foges was supervised by James Schmiedlin, CWC Superintendent. All three supervisors exercised discretionary authority in deciding which employees would receive discretionary performance awards (DPAs).

37 Ms. Foges was aware of complainant's race as early as August 1974, when complainant was a LPN. Sometime in the mid-to-late 1980s, Ms. Foges said that complainant finally found one of her "own kind" when complainant was dating Mr. Lincoln, a Native American whom she later married. Ms. Foges also referred to Mr Lincoln as a "buck." According to complainant, the term "buck" has a negative connotation when used to reference a Native American male. Ms. Foges was unaware that the term "buck" might be considered offensive in this context, nor did complainant inform Ms. Foges of the negative racial connotation.<sup>9</sup>

38. Ms. Foges was in her position as Coordinator of Resident Living for at least six of the nine discretionary awards complainant received. Ms. Foges also recommended complainant for a tenth discretionary award on June 30, 1987 (Exh. C-5, p. 57), but her recommendation was not followed.

39. DPAs are given for meritorious work. The unit coordinator completes a DPA form for each employee. Only employees given the highest performance rating are eligible to be considered for a DPA. The amount of money available for DPAs is limited and, at times, is insufficient to give a DPA to every person recommended for a DPA.

40. Ms. Foges overruled a DPA recommendation for complainant in 1985 (Exh. C-5, p. 54) noting on the form that the recommendation was rejected because complainant "has

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<sup>9</sup> Ms. Foges denied making the statements noted in ¶37 Ms. Foges retired in February 1992. It seemed likely that Ms. Foges' recollection could be less reliable than complainant's due to the passage of time coupled with her absence from the workplace. Also, it would be likely that the person offended (complainant) would have better recall than the person who made the comment but was unaware that it was an offensive statement (Foges).



not exceeded expectations in area of timekeeping.” Ms. Nelson confirmed that the only issue she was aware of between Ms. Foges and complainant was the number of errors complainant made in her timekeeping duties.

41. Complainant’s performance rating was changed from “superior” to “above average” on her 1984 DPA form (Exh. C-5, p. 52). It is unknown who made the change or why the change was made. Ms. Foges signed the form indicating her agreement with the above-average rating. A similar change was made on the 1984 DPA form for Karcz and Ms. Foges also signed the form for Karcz.

42. On May 11, 1998, Mr. Schmiedlin spoke with complainant and noted nothing unusual. His secretary, Mary Shimmerhorn, reported that she smelled alcohol on complainant’s breath. He investigated the allegation with Sue White, CWC unit director, and Ms. White also smelled alcohol on complainant’s breath. Complainant denied using alcohol and said it was probably related to her asthma inhaler that she kept in her purse. He asked if he could smell the inhaler and she agreed. He sprayed it on his hand and said he could not detect an alcohol odor from the inhaler. He also asked if she was taking pills and about her drinking Ensure<sup>10</sup> at work.<sup>11</sup> Mr. Schmiedlin suspended complainant for the day. When complainant left, she said she was going to her clinic to have a Breathalyzer test. Mr. Schmiedlin replied that if she returned with a clean certificate from the clinic that the problem would be resolved. She never shared the results of the test with respondent. Ultimately, she received a letter of reprimand for this incident.

43. Mr. Schmiedlin asked complainant during the last two years she worked at CWC (from 8/18/96 to 8/18/98, approximately), when she was going to retire. Complainant had told him she intended to retire and had discussed her “dreams of retirement” with him.

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<sup>10</sup> Ensure is a nutritional dietary supplement.

<sup>11</sup> Complainant’s testimony about Mr. Schmiedlin smelling her inhalers and quizzing her about pills and drinking Ensure was misleading. Specifically, she did not tie these events to the alcohol incident, which left the incorrect impression that the inquiries came “out of the blue.” It was not until Mr. Schmiedlin testified that the inhaler query was placed in context. Due to complainant’s misleading testimony on this matter and to her failure to tie the allegations to any specific date(s) the hearing examiner concluded that the inquiries about pills and Ensure also were raised in the same, legitimate context.

Complainant also made comments saying she was so tired she did not know if she could return to work which lead to additional discussions about her retirement plans. Complainant received a retirement card when she was on medical leave (sometime between August 18, 1998 and April 19, 1999) to which she took offense because she had not retired. If Mr. Schmiedlin signed such a card, it would have been a card purchased and circulated by other staff.

#### Disability Claims

44. Complainant suffers from asthma but such medical condition did not make achievement unusually difficult or limit her capacity to work. Further, respondent did not perceive her asthma as making achievement unusually difficult or limiting her capacity to work.<sup>12</sup> Complainant commenced a medical leave on August 18, 1998, and remained off work until her employment ended based on a medical separation effective April 19, 1999. The medical leave and later employment separation were based on a medical condition other than asthma. (See Exh. R-120, which shows certain stipulated facts.) Asthma is the only medical condition at issue in this case.

#### Failure-to-Help Issue

45. There were times when Living Unit 5, where complainant worked, was short-staffed. One cause was that the night RCS position was vacant for a period of time or the person holding the position had attendance problems. A similar problem existed at some time in Living Unit 7 where the night RCS position was vacant. Mr. Schmiedlin acknowledge that there were problems filling positions in Living Unit 5 based on his knowledge of two instances where people said it was too difficult to work with complainant. In 1996, there was a period of time when Ms. Nelson was on leave for a serious health condition. Her absence also increased the workload for complainant and others.

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<sup>12</sup> Complainant conceded at hearing that she did not believe Mr. Schmiedlin perceived her as having a disability.

46. Harold R. Zelhofer is a white male who is younger than complainant and who is not disabled.<sup>13</sup> He was the night RCS in Living Unit 5 from September 20, 1993 until February 16, 1997. He found it so stressful working there that he transferred to a different building where the stress level was significantly lower. The stress factors for him included workload; "very difficult staff;" and his perception that his supervisor, Ms. Nelson, continuously over-scrutinized his work and unfairly criticized his performance. Mr. Zelhofer also felt additional stress when he was expected to take on some of Ms. Nelson's duties when she was on medical leave.

#### Discussing-Personal-Affairs Claim

47. In 1996 or 1997, Ms. Nelson told Mr. Schmiedlin about an off-work incident involving complainant which led Ms. Nelson to believe that complainant had consumed alcohol to excess.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this case pursuant to §230.45(1)(b), Stats.
2. It is complainant's burden to establish that she is an individual with a disability, within the meaning of §111.32(8), Stats. She failed to meet this burden.
3. It is complainant's burden to establish that she was discriminated against on the basis of age, disability or race with respect to her rate of pay. She failed to meet this burden.
4. It is complainant's burden to establish that she was discriminated against on the basis of age, disability or race with respect to the allegation that CWC failed to help her. She failed to meet this burden.
5. It is complainant's burden to establish that she was discriminated against on the basis of age, disability or race with respect to the allegation that CWC employees discussed her personal affairs. She failed to meet this burden.

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<sup>13</sup> Mr. Zelhofer testified about a period of time when he experienced stress-related health problems. His testimony did not show that he was an individual with a disability within the meaning of §111.32(8), Stats.

## OPINION

### Disability Claims

Complainant alleged in all three hearing issues that discrimination occurred due to her disability of asthma. The Fair Employment Act (FEA) defines disability in §111.32(8), Stats., as shown below:

“Individual with a disability” means an individual who:

- (a) Has a physical or mental impairment which makes achievement unusually difficult or limits the capacity to work;
- (b) Has a record of such an impairment; or
- (c) Is perceived as having such an impairment.

It is the complainant’s burden of proof to show that she is an individual with a disability within the meaning of §111.32(8), Stats. *La Crosse Police Comm. v. LIRC*, 139 Wis.2d 740, 775 (1987), citing *Dairy Equipment and Brown County v. LIRC*, 124 Wis.2d 560, 369 N.W.2d 735 (1985).

Complainant testified that she suffered from asthma and took medication for it. There is no reason to doubt this testimony. She did not provide details about how her asthma impacted on her ability to perform the duties of her job or to engage in other major life activities. Furthermore, Mr. Schmiedlin was the only person complainant identified as having discriminated against her because of her disability. The evidence she claimed supported this belief is noted in ¶¶43-44 of the Findings of Fact (FOF), and footnotes #11 & 12. As noted in footnote #11, complainant’s testimony suggested that Mr. Schmiedlin took certain actions, such as smelling her asthma inhaler, without legitimate reason. The record established, however, that he took those actions after his secretary reported smelling alcohol on her breath which placed his actions in the context of a legitimate investigation unrelated to her asthma disability. Complainant failed to show that she was an individual with a disability or that respondent perceived her as being an individual with a disability, within the meaning of §111.32(8), Stats. Accordingly, the disability claims are not discussed further in this decision.

Discussing-Personal-Affairs Issue

Next for discussion are the claims of age and race discrimination in regard to the third hearing issue that CWC employees discussed her personal affairs. The record evidence regarding this issue is noted in ¶45 FOF.

Under the Wisconsin Fair Employment Act (FEA), the initial burden of proof is on the complainant to show a prima facie case of discrimination. If complainant meets this burden, the employer then has the burden of articulating a non-discriminatory reason for the actions taken, which the complainant may, in turn, attempt to show, was a pretext for discrimination. *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 5 FEP Cases 965 (1973), *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct. 1089, 25 FEP Cases 113 (1981).

The elements of a prima facie case here are that: 1) complainant is protected under the FEA, 2) respondent took an adverse action against her and 3) circumstances exist which raise an inference that the adverse action was taken because of her protected status. Complainant is protected under the FEA due to her race and, pursuant to §111.33(1), Stats., due to her age as of March 11, 1974 when she reached the age of forty. The evidence of record, however, was insufficient to establish the second or third element of the prima facie case.

Not everything that makes an employee unhappy is a cognizable adverse action. The FEA was not intended to create a cause of action for minor or trivial employment actions. See *Dewane v. UW*, 99-0018-PC-ER, 12/3/99, citing *Williams v. Bristol-Myers Squibb Co.*, 85 F.3d 270, 70 FEP Cases 1639 (7th Cir. 1996) The fact that Ms. Nelson told Mr Schmiedlin about complainant's off-work incident is insufficient to constitute a cognizable adverse action. The discussion occurred between two individuals in complainant's supervisory chain of command and was not disseminated to other CWC employees. The discussion resulted in no concrete or tangible effect on complainant's employment status. Furthermore, even if the discussion were considered as a cognizable adverse action, there is no evidence to support the conclusion that such discussion occurred due to complainant's age or race.

### Failure-to-Help Issue

Next for discussion are the claims of age and race discrimination in regard to the second hearing issue that respondent failed to help complainant. The record evidence regarding this issue is noted in ¶45-46 FOF.

The elements of a prima facie case here are that: 1) that complainant is protected under the FEA, 2) that respondent failed to help her, and 3) that circumstances exist which raise an inference such failure was to her protected status. Complainant is protected under the FEA due to her race and, pursuant to §111.33(1), Stats., due to her age as of March 11, 1974 when she reached the age of forty. The claimed adverse action is respondent's failure to provide additional staff to ease the workload when positions were vacant or otherwise unoccupied. Such failure may constitute a cognizable adverse action under some circumstances, the existence of which is unnecessary to delineate here because, in any event, complainant failed to establish the third element of the prima facie case. Similar staff shortages existed in other living units. Even in complainant's living unit, the staff shortages impacted on staff regardless of age or race, as shown by Mr. Zelhofer's testimony. Simply stated, the circumstances do not raise an inference of discrimination required to establish the third element of the prima facie case.

### Pay Issue<sup>14</sup>

Next for discussion are the claims of age and race discrimination in regard to the first hearing issue that complainant's pay should have been higher than the pay of Heczko, Karcz, Marble and Maier. The record evidence regarding this issue is noted in ¶1-43 FOF. Since the parties have effectively addressed this issue at hearing, this discussion bypasses the prima facie case analysis and moves directly to the issue of pretext. *Hagmann v. UW (Eau Claire)*, 95-0044-PC-ER, 4/25/00.

Complainant contends she received less pay than her entitlement because she had more seniority in state service (as measured by adjusted seniority date) than Heczko, Karcz, Marble and Maier and yet complainant's pay was the same or less than their pay. Respondent offered as a non-discriminatory reason for the pay difference the contention that there is no direct cor-

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<sup>14</sup> This section of the decision has been changed to reflect the rationale of the Commission.

relation in state service between adjusted seniority date and wages earned. The record supports respondent's contention.

The first category of evidence undermining complainant's assertion that she should have received a higher wage due to her seniority involved the fact that this proposition was untrue even among the group she uses for comparison (white individuals younger than complainant). Specifically, Heczko had more seniority than Karcz, Marble or Maier yet Heczko was not always the top wage earner among this group. See, for example, ¶¶7, 19, 23 and 34 FOF. The second category of evidence undermining complainant's assertion that she should have received a higher wage due to her seniority is that factors other than seniority play a regular and legitimate (non-discriminatory) role in determining an employee's rate of pay. See, for example, ¶¶7, 12, 13, 14, 17 and 22 FOF.

Complainant next argues that she should have received a discretionary performance award (DPA) in 1984 and 1985 (see ¶¶40-41 FOF).<sup>15</sup> The circumstances regarding the DPAs, however, are insufficient to find that discrimination occurred.

Ms. Foges was the only person complainant identified as discriminating against her because of race. Complainant's only evidence to support this claim is recited in ¶37 FOF. It is true that Ms. Foges changed the DPA recommendation in 1985, but complainant's evidence of unsavory comments (see ¶37 FOF) was insufficient to establish that Ms. Foges changed the form because of complainant's race. Complainant received the majority of her DPAs (at least 6 of 9) when Ms. Foges was in a position to exercise such discretion. It also is true that a change occurred on the DPA form in 1984 (see ¶38 FOF), but complainant failed to establish that Ms. Foges made the change. Nor did complainant establish that such change was unique to her because a similar change was made on the DPA form for Karcz, a white individual.

Mr. Schmiedlin was the only person complainant identified as discriminating against her because of age. It is true that Mr. Schmiedlin asked complainant about her retirement plans but such conversations occurred from August 18, 1996 through August 18, 1998, which

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<sup>15</sup> The change to the 1984 and 1985 forms were litigated fully without objection. Accordingly, they are discussed in this decision.

was *after* the 1994 and 1995 DPA forms at issue here. She failed to present any evidence of age discrimination prior to or contemporaneous with the 1994 and 1995 DPA forms.

ORDER

This case is dismissed.

Dated: August 28, 2000.

STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

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JUDY M. ROGERS, Commissioner

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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 (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) 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.)

2/3/95