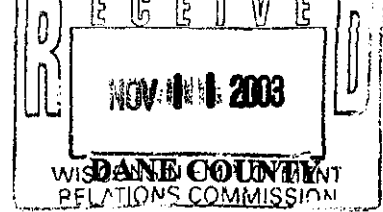


STATE OF WISCONSIN

CIRCUIT COURT
Branch 10



J. [REDACTED],

Plaintiff,

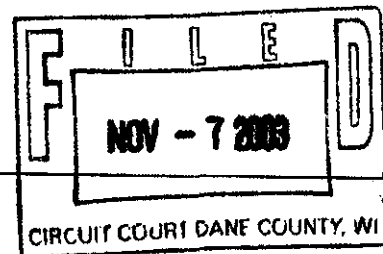
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vs.

Case No. 03CV000668

PHYLLIS J. DUBE', Secretary,
Department of Health and Family Services,
STATE OF WISCONSIN-DEPARTMENT OF
HEALTH AND FAMILY SERVICES, and,
ANTHONY J. THEODORE, Commissioner,
State Personnel Commission,

Defendants.



WISCONSIN DEPARTMENT OF HEALTH
AND FAMILY SERVICES

Petitioner,

vs.

Case No. 03CV000884

WISCONSIN PERSONNEL COMMISSION,

Respondents.

ORDER DISMISSING ACTIONS

By order dated October 23, 2003, the above cases were consolidated. Respondent Wisconsin Personnel Commission has moved to dismiss the consolidated cases on the grounds that there is no longer in effect a final order subject to review. Respondent maintains that the Commission reopened part of its earlier order to consider granting attorneys fees and costs, and that the remainder of the order remains in force and is both reviewable and enforceable. Not

only does petitioner want the court to enforce the part of the order he maintains was not reopened, but he wants the court to review a later termination of him by DHFS, even though that later job action dispute is still pending and has not been the subject of a final order by WPC.

Because the Commission has granted one of the parties' requests for rehearing and has vacated its January 6, 2003 order, there is no final order in effect at this time by operation of §227.49(2), Stats. Therefore, this court has no jurisdiction to either review or enforce the January 6, 2003 order of the Commission. The court also has no jurisdiction to determine any proceedings before the WPC that have not resulted in a final order.

DECISION

The facts herein are not in dispute.

Petitioner K [REDACTED] was employed by the Department of Health and Family Services (DHFS) in a classified civil service position when his employment was terminated effective April 23, 2002. Petitioner appealed his termination to the Wisconsin Personnel Commission (WPC). On October 24, 2002, the WPC issued an interim order, directing DHFS to reinstate Petitioner with back pay and benefits.

On January 6, 2003, the WPS issued a final order, incorporating its interim order, and also denying Petitioner's motion for costs and fees. Both DHFS and Petitioner petitioned for rehearing. In response to those petitions for rehearing, the WPC entered the following order on February 21, 2003:

Respondent's [DHFS] petition for rehearing . . . is denied. The appellant's [K [REDACTED]] petition for rehearing . . . is denied in part and granted in part consistent with the foregoing discussion. The Commission's ruling entered January 6, 2003, is vacated and this matter is reopened for further consideration of the issue of whether costs should be awarded to the appellant [K [REDACTED]] pursuant to s. 227.485, Stats., with regard to its substantive decision to terminate appellant's employment.

After entry of the February 21, 2003 order, petitioner K█████ moved to enforce parts of the January 6, 2003 order he views are still in effect. DHFS also commenced an action for judicial review of the January 6, 2003 order. It is these two enforcement and judicial review proceedings, which are consolidated before this court.

Section 227.49(2), Stats., provides:

The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition [for rehearing] is granted or until the order is superseded, modified or set aside as provided by law. (Emphasis added).

The effect of this subsection is that the granting of a petition for rehearing suspends what would otherwise have been a final order. It is clearly the legislative scheme for judicial review under Chapter 227 that only final agency decisions are reviewable pursuant to §227.53, Stats. See *Pasch v. DOR.*, 8 Wis.2d 346, 353-57 (1973); and *Friends of the Earth v. PSC*, 78 Wis.2d 388, 405 (1977). Until the Commission finishes its consideration of all the interrelated parts of its order, and so long as it is continuing to rehear part of its decision, the decision is not final and is not subject to judicial review.

Petitioner's attempt to consolidate a pending administrative appeal, Case No. 03-0014-PC, in which petitioner is challenging DHFS's later reinstatement and later termination of petitioner K█████, completely destroys the legislative scheme, whereunder only final agency decision are reviewable by the circuit courts.

CONCLUSION AND ORDER

For the reasons stated above and based on the entire record herein, the above-entitled actions are hereby dismissed, because the January 6, 2003 order of the Wisconsin Personnel

Commission is not a final order, once the Commission granted one of the parties' motions for rehearing by operation of §227.49(2). Stats. Petitioner's motion to consolidate an administrative appeal before the Commission and reinstate petitioner is also hereby denied.

THIS IS THE FINAL WRITTEN ORDER CONTEMPLATED BY THE COURT IN THE ABOVE-ENTITLED ACTIONS.

Dated: November 7, 2003

By the Court:



Angela B. Bartell
Circuit Court Judge

cc:

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