

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**JONATHAN SABEZ**, Appellant,

v.

**President, UNIVERSITY OF WISCONSIN SYSTEM and Administrator,  
DIVISION OF MERIT RECRUITMENT AND SELECTION**, Respondents.

Case 4  
No. 62782  
PA(adv)-8

**Decision No. 30890**

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**Appearances:**

**Jonathan Sabez**, 3170 South 114<sup>th</sup> Street, West Allis, WI 53227, appearing on his own behalf.

**Joely Urdan**, Attorney, Office of Legal Affairs, PO Box 413, Milwaukee, WI 53201, appearing on behalf of the University of Wisconsin.

**David J. Vergeront**, Attorney, Office of State Employment Relations, PO Box 7855, Madison, WI 53707-7855.

**ORDER GRANTING MOTION TO DISMISS APPEAL AS UNTIMELY**

This matter is before the Commission 1/ on the Respondents' Motion to Dismiss the appeal. The parties have had an opportunity to submit written arguments and the following findings are undisputed.

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*1/ The appeal was originally filed with the Personnel Commission, which was abolished, effective July 26, 2003, pursuant to 2003 Wis. Act 33. The authority over this matter was transferred to this Commission.*

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Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. At all relevant times, the Appellant has been employed as a Maintenance Mechanic at the University of Wisconsin-Milwaukee (UW-M). Appellant's position is within a bargaining unit and is covered by the provisions of the bargaining agreement between the State of Wisconsin and AFSCME Council 24, Wisconsin State Employees Union, AFL-CIO.

2. As part of its effort to fill a Maintenance Mechanic 3 (MM3) position, UW-M requested a certification list. UW-M received the list on February 17, 2003.

3. Appellant's name was not on the certification list.

4. On February 24, 2003, Appellant filed a contractual grievance because his name was not included on the certification list for the MM3 position. The second step of the grievance was heard on April 23, 2003.

5. Appellant filed his letter of appeal on June 12, 2003. He seeks review of the certification action.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

### **CONCLUSIONS OF LAW**

1. The Appellant has the burden of establishing that his appeal was timely filed in accordance with the 30-day time limit established in Sec. 230.44(3), Stats.

2. The Appellant has failed to sustain that burden.

3. The appeal is untimely.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER**

This matter is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

University of Wisconsin System

**MEMORANDUM ACCOMPANYING ORDER GRANTING  
MOTION TO DISMISS APPEAL AS UNTIMELY**

The time limit for filing a State classified service personnel appeal is “30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later.” Sec. 230.44(3), Stats.

This appeal relates to the action of certifying a list of candidates to consider for the vacant MM3 position at UW-M. Appellant feels he was entitled to have his name on that list.

The 30-day filing period commenced no later than the date the Appellant learned he was not on the list. That date was no later than February 24, 2003, which is when he filed a contractual grievance regarding the same personnel action. Appellant did not file his appeal until June 12, 2003, nearly 3 months after the 30-day time period had run. The Commission notes that the action of filing a contractual grievance does not toll the 30-day filing period. AUSTIN-ERICKSON v. DHFS & DER, 97-0113-PC, 2/25/98; HAGAN v. WEAVER, 76-49, 12/21/76 (PERSONNEL BOARD).

Dated at Madison, Wisconsin, this 30th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Parties

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