

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TERESA M. ZNIDARSICH, Appellant,

vs.

Director, OFFICE OF STATE EMPLOYMENT RELATIONS, Respondent.

Case 771
No. 66325
PA(der)-203

Decision No. 31951

Appearances:

Emily J. Johnson, Betsy L. Morgan, and Teresa M. Znidarsich, appearing on Appellant's behalf.¹

David Vergeront, Legal Counsel, P.O. Box 7855, Madison, WI 53707-7855, appearing on behalf of the Office of State Employment Relations.

ORDER GRANTING MOTION TO DISMISS

This Matter, which arises from the decision to reallocate the position of Teresa Znidarich to the classification of University Services Associate 2, rather than Academic Department Associate, is before the Wisconsin Employment Relations Commission on Respondent's motion to dismiss the appeal as untimely filed. The final written argument was filed with the Commission on November 8, 2006.

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

FINDINGS OF FACT

1. Effective July 24, 2005, Respondent reallocated Ms. Znidarsich's position to University Services Associate 2.
2. Ms. Znidarich was notified of the reallocation decision by written notice, which Ms. Znidarich received on August 18, 2006.
3. Appellants submitted appeal materials to the Wisconsin Employment Relations Commission, where they were received on September 19, 2006.

¹ Ms. Johnson and Ms. Morgan filed this appeal on behalf of Ms. Znidarich, who is the incumbent in the position at issue.

Based on the above and foregoing Findings of Fact, the Wisconsin Employment Relations Commission makes and issues the following:

CONCLUSIONS OF LAW

1. The Appellants have the burden of establishing that their appeal was timely filed, in accordance with the 30-day time limit established in Sec. 230.44(3), Wis. Stats.
2. The Appellants have 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:

ORDER²

Respondent's motion to dismiss is granted and this matter is dismissed as untimely filed.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of December, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

² Upon issuance of this Order, the accompanying letter of transmittal will contain the names and addresses of the parties to this proceeding and notices to the parties concerning their rehearing and judicial review rights. The contents of that letter are hereby incorporated by reference as a part of this Order.

Office of State Employment Relations

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

The issue before the Commission is whether the Appellants complied with the time limit for filing a State classified service personnel appeal. That time limit is set forth in Sec. 230.44(3), Wis. Stats., as follows:

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later.

The term “filed” in this subsection requires physical receipt by the Commission rather than merely placing the appeal in the mail. *RICHTER V. DP, CASE NO. 78-261-PC (PERS. COMM. 1/30/79)*.

The Appellants have the burden of establishing that the appeal was timely filed. *UW & OSER (KLINE), DEC. NO. 30818 (WERC, 3/04)*. There is no dispute that the classification action that is the subject of this appeal was effective on July 24, 2005. Further, there is no dispute that Ms. Znidarsich received notification of such action on August 18, 2006. The thirtieth day after August 18, 2006, was Sunday, September 17, 2006. Pursuant to Sec. 990.011, Wis. Stats., when what would otherwise be the last day for filing an appeal falls on a Saturday or Sunday or a statewide legal holiday, the filing period is extended to the “next succeeding day that is not a Sunday or a legal holiday”. *STARCZYNSKI & MAYFIELD V. DOA, CASE NO. 81-275, 276-PC (PERS. COMM. 12/31/81)*. Therefore, for a claim under Sec. 230.44(1)(d), Wis. Stats., to be timely, the Appellants were required to file their appeal no later than Monday, September 18, 2006. The appeal was received by the Commission, however, on September 19, 2006.

The sole excuse presented by the Appellants and Ms. Znidarich for the late filing of the present appeal is that heightened demands of the beginning of the academic year and events occurring in Ms. Znidarich’s personal life caused the appeal to be filed in an untimely manner. The thirty-day timeline for the Commission’s receipt of a filing is mandatory, rather than directory. *RUNDE V. DMRS, CASE NO. 97-0088-PC (12/17/97)*. As an administrative agency, the Commission is obligated to apply the restrictions that are imposed upon it by the Wisconsin Statutes. The Commission may not consider the merits of an appeal even if the Commission believes the failure to file the appeal in a timely manner was unintentional or caused by confusion.

Because, in the present case, the Commission did not receive the appeal until after the thirty-day deadline for bringing a timely appeal, it must be considered untimely.

Dated at Madison, Wisconsin, this 12th day of December, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner