

Clearinghouse Rule 95-178

STATE OF WISCONSIN)
)
WISCONSIN STATE PERSONNEL COMMISSION)

I, Laurie R. McCallum, Chairperson of the Wisconsin State Personnel Commission and custodian of the official records, certify that the annexed rules, relating to appeals held by arbitration (Clearinghouse Rule 95-178), were duly approved and adopted by this Commission on January 5, 1996.

I further certify that this copy has been compared by me with the original on file in this Commission and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I
have hereunto set my hand at the
Commission's offices located at Room
1004, 131 West Wilson Street, in the city
of Madison, this 19th day of March
1996.



Laurie R. McCallum
Chairperson
Wisconsin State Personnel Commission

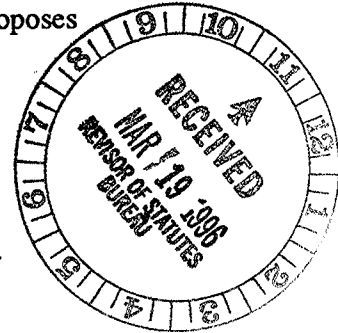


6-1-96

ORDER of the Wisconsin State Personnel Commission

INTRODUCTORY CLAUSE. The Wisconsin State Personnel Commission proposes an order to amend PC 1.01 and 1.07; to renumber PC 6; and to create PC 6, relating to appeals held by arbitration hearing.

Analysis prepared by: Wisconsin State Personnel Commission.



PLAIN LANGUAGE ANALYSIS.

Statutory authority: ss. 230.44 (4) (bm), and 230.45 (1)(i), Stats.

Statutes interpreted: ss. 227.03 (7), 227.44 (8), 227.46 (2) & (4), 227.47 (1) & (2), 230.44 (4) (bm), 230.44 (4) (c), and 230.45 (1) (am), Stats.

This rule describes the informal hearing process referred to as "arbitration" in the statute.

TEXT OF THE RULE.

SECTION 1. *Amend PC 1.01 to add statutory authority for making the arbitration rule, as follows:*

PC 1.01 Authorization. The rules in chs. PC 1 to 6~~7~~ are adopted by the commission pursuant to ss. 230.44 (4) (bm), 230.45 (1) (i) and 230.89 (1), Stats., and relate to the commission's jurisdiction under s. 230.45, Stats.

SECTION 2. *PC 1.07 is amended to read:*

PC 1.07 Time. Unless otherwise provided by chs. PC 1 to 6~~7~~, orders of a hearing examiner or of the commission and time periods set forth in correspondence from the commission, commissioners or staff shall refer to calendar days. The day an order is made or entered shall not count as one of the prescribed days. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal holiday in which case the last day shall be the next day that is neither a Saturday, a Sunday or a legal holiday. As used in this section "legal holiday" means any holiday listed in s. 230.35 (4) (a), Stats.

SECTION 3. *PC 6 is renumbered PC 7.*

SECTION 4. *PC 6 is created to read:*

Chapter PC 6

ARBITRATION OPTION FOR CLASSIFICATION APPEALS

PC 6.01	Definitions.	PC 6.04	Decision and Judicial Review.
PC 6.02	Procedure Prior to Arbitration Hearing.	PC 6.05	Additional Provisions incorporated by reference.
PC 6.03	Arbitration Hearings.		

PC 6.01 DEFINITIONS. In this chapter:

- (1) "Arbitration hearing" means an informal administrative hearing conducted pursuant to this chapter.
- (2) "Arbitrator" means the individual designated by the commission to preside at an arbitration hearing.
- (3) "Classification appeal" means an appeal arising from decisions made under s. 230.09 (2) (a) or (d), Stats.
- (4) "Contested case hearing" means a formal administrative hearing conducted pursuant to ch. PC 4 and ch. PC 5.

NOTE: Appeals involving classification decisions such as allocation, reallocation or reclassification are included as classification appeals filed under s. 230.09 (2) (a) or (d), Stats.

PC 6.02 PROCEDURE FOLLOWED PRIOR TO ARBITRATION HEARING.

(1) ELECTION TO PROCEED BY ARBITRATION.

(a) An appellant in a classification appeal may elect to proceed by arbitration hearing rather than by contested case hearing. Except as permitted in par. (b), an appeal shall proceed by contested case hearing if the appellant fails to make an election at the prehearing conference and fails to make an election by any later date set by the commission.

(b) A decision to proceed by arbitration hearing or by contested case hearing made under par. (a), can be changed only upon agreement of the parties and with approval of the arbitrator.

(c) Where consolidation of more than one classification appeal is requested by any party or the commission, such request shall be granted unless appellants disagree on whether to proceed by arbitration hearing or by contested case hearing, or unless the commission determines that the requested consolidation is undesirable for other reasons.

Note: This provision clarifies that all appellants must agree to proceed in the same manner (for example, all agree to proceed by arbitration, or all agree to proceed by formal hearing) as a prerequisite to consolidation.

(2) DISCLOSURE OF WITNESS LISTS AND EXHIBITS. Each party shall file and serve on the opposing party and on the commission, a list of witnesses and copies of exhibits. These materials shall be received by the commission and by the opposing party at least 3 working days prior to the arbitration hearing. The arbitrator may bar any evidence which the offering party failed to timely disclose under this subsection.

Note: For example, compliance with the "3 working days" requirement in PC 6.02 (2), means that the commission and opposing party must each receive a party's witness list and copies of exhibits no later than 4:30 p.m. on the Thursday preceding a Tuesday hearing, where neither that Thursday, nor the intervening Friday or Monday, is a legal holiday listed in s. 230.34 (4) (a), Stats.

PC 6.03 ARBITRATION HEARINGS. (1) RECORD OF ARBITRATION HEARING. Each party shall have an opportunity to request that any document filed and served under s. 6.02(2), be considered by the arbitrator in reaching the decision. The requested documents shall be marked by the arbitrator as exhibits and shall be made part of the commission's file. Parties shall have an opportunity to ask questions of every witness.

(2) **EXCLUSION OF WITNESSES AT ARBITRATION HEARING.** At the request of either party and for the purpose of keeping witness testimony untainted by the testimony of prior witnesses, the arbitrator may order the exclusion of witnesses.

PC 6.04 DECISION AND JUDICIAL REVIEW. (1) THE ARBITRATOR'S DECISION. The arbitrator shall render a decision orally at the conclusion of the arbitration hearing affirming, modifying or rejecting respondent's action. The arbitrator shall promptly file the decision with the commission.

(2) **COMMISSION REVIEW OF THE ARBITRATOR'S DECISION.** The commission shall issue a final decision which adopts the arbitrator's decision.

(3) **COURT REVIEW.** The decision of the commission is subject to limited court review under ss. 277.53 to 227.57, Stats.

PC 6.05 ADDITIONAL PROVISIONS INCORPORATED BY REFERENCE. The provisions set forth in ch. PC 4 and ch. PC 5, are applicable to arbitration hearings, except as noted in the following subsections:

(1) The arbitrator has the discretion to determine if the following provisions of ch. PC 5, shall apply to an arbitration hearing:

- (a) PC 5.03 (3) relating to opening statements.
- (b) PC 5.03 (4) relating to the order of proceeding.
- (c) PC 5.03 (6) (b) relating to the scope of cross examination.

(2) The following provisions of ch. PC 4 and ch. PC 5, are inapplicable to an arbitration hearing:

- (a) PC 4.02 relating to the exchange of documents and witness lists prior to hearing,
- (b) PC 4.03 relating to discovery.
- (c) PC 5.03 (5) relating to evidence.
- (d) PC 5.04 relating to proposed decisions and orders.
- (e) PC 5.05 relating to motions for fees and costs.
- (f) PC 5.06 relating to written objections and oral arguments.
- (g) PC 5.07 relating to computation of interest.
- (h) PC 5.08 relating to the time limit for decisions.
- (i) PC 5.09 relating to requests for rehearing.


EFFECTIVE DATES. This rule shall take effect on the first day of the month following publication in the Wisconsin State administrative register as provided in s. 227.22(2)(intro.), Stats.

APPLICABILITY. The provisions of this rule shall apply to all cases pending on or after the effective date.

FINAL REGULATORY FLEXIBILITY ANALYSIS. This rule will have no effect on small businesses.

FISCAL ESTIMATES. This rule creates no fiscal impact separate from the impact resulting from the statutory creation of the arbitration process.

Dated: March 19, 1996



Laurie R. McCallum, Chairperson
Wisconsin State Personnel Commission



State of Wisconsin

PERSONNEL COMMISSION

131 West Wilson Street
Suite 1004
Madison, Wisconsin 53702
(608) 266-1995

March 19, 1996

Laurie R McCallum
Chairperson

Donald R. Murphy
Commissioner

Judy M Rogers
Commissioner

Gary L. Poulson
Deputy Revisor
Revisor of Statutes Bureau
131 W. Wilson St., Rm. 800
Madison, WI 53702-3233

Re: Request for publication in end-of-May administrative register.
Re: Appeals held by arbitration (Clearinghouse rule #95-178)

Dear Mr. Poulson:

The Commission requests publication of its new administrative rule regarding appeals held by arbitration in the administrative register issued at the end of May 1996. The rule in proposed form was submitted to the presiding officer of each house on January 8, 1996. The rule was referred to the Senate Committee on Human Resources, Labor, Tourism, Veterans and Military Affairs on January 9, 1996, where no action was taken. No action was taken at the Assembly level either. Accordingly, it appears that the rule is ready for final publication.

The order and certificate required for publication are enclosed. The same documents were filed with the Secretary of State's office today. The Commission is unable to provide your agency with the text on a double-density disk because our software is not formatted for WordPerfect 5.1 or ASCII.

Please call if you have any questions.

Sincerely,

Judy M. Rogers,
Commissioner
(608) 266-9764

