

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 236

Involving Certain Employes of

CITY OF MADISON

Case 12

No. 52106 ME-746

Decision No. 9980-D

Appearances:

Mr. Michael O'Brien, Business Agent, Laborers International Union of North America, Local 236, 2021 Atwood Avenue, Madison, Wisconsin, 53704, for the Petitioner.

Mr. Kenneth B. Wright, Labor Relations Specialist, City of Madison, City-County Building, Room 502, 210 Martin Luther King, Jr. Boulevard, Madison, Wisconsin, 53709-0001, for the City.

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin, 53717-1903, for the Intervenor.

Mr. Wally Meyer, 4401 Kennedy Road, Madison, Wisconsin, 53704-1205, on his own behalf.

ORDER DENYING PETITION FOR REHEARING

On July 8, 1996, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit with Accompanying Memorandum in the above matter wherein it concluded among other matters that the position of Operations Clerk held by Wally Meyer should be included in a bargaining unit represented by Dane County, Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO.

On July 23, 1996, Meyer filed a Petition for Rehearing with the Commission pursuant to Sec. 227.49, Stats. asserting that the Commission erred by placing his position in the Local 60 bargaining unit.

On July 30, 1996, Local 60 filed a written statement in opposition to the Petition for Rehearing. On August 5, 1996, the City of Madison filed a written response to the Petition. No written response to the Petition was received from Laborers International Union of North America,

Local 236.

Section 227.49, Stats., allows "any person aggrieved by a final order" to file a petition for rehearing. Section 227.01(9), Stats., defines "person aggrieved" as "a person or agency whose substantial interests are adversely affected by a determination of an agency." Given these statutory definitions, we are satisfied Meyer has a right to file a petition for rehearing.

Section 227.49(3), Stats., states that a petition for rehearing "will be granted only on the basis of:

- (a) Some material error of law.
- (b) Some material error of fact.
- (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

Meyer asserts the facts contained in the Commission decision are in error as to certain of his duties, his hours of work, and the percentage of time he spends performing certain duties. First, we would note that the facts found in our decision regarding Meyer's job accurately reflect the testimony and evidence presented during the hearing. Second, even if we assume that Meyer's claims of error are correct, and that the existing record is wrong, we are satisfied that the errors of fact cited by Meyer would not be sufficient to change the outcome of this case as to his position.

Given the foregoing, we do not think it is appropriate under Sec. 227.49(3), Stats., for us to grant the petition for rehearing.

NOW, THEREFORE, it is

ORDERED 1/

The Petition for Rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin,
this 22nd day of August, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/

1/ See Footnote on Pages 3 and 4.

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the 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. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Footnote Continued on Page 4

Footnote Continued from Page 3

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

