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CITY OF MILWAUKEE,	.	#138-169
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Petitioner,	.	
	.	
vs.	.	MEMORANDUM DECISION
	.	
WISCONSIN EMPLOYMENT RELATIONS	.	
COMMISSION,	.	
	.	
Respondent.	.	Decision No. 11434
	.	

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The City of Milwaukee brings this proceeding by way of a petition for review of an order of the Wisconsin Employment Relations Commission dated November 22, 1972, which denied the city's petition for rule changes and for a rule.

The Municipal Employment Relations Act, sec. 111.70, Stats., as amended in 1971, extended certain rights to firefighters. About six weeks after this grant of rights, the firefighters of the City of Milwaukee and another labor organization petitioned the Wisconsin Employment Relations Commission to conduct an election to determine which of them was the representative of supervisory firemen and policemen.

The first petition was dismissed on December 8, 1971, for reasons not material here. A second petition was scheduled for hearing on February 2, 1972, and was adjourned to enable the parties to agree on the issues. Failing agreement, the commission noticed resumption of the hearings to begin November 7, 1972. On about October 30, 1972, the city petitioned the commission to make some rule changes and for a rule. At the same time, in the case involving the petition for the conduction of an election, the City moved to adjourn the hearings pending disposition of the issues in the petition for rule changes and a rule. The commission denied the motion on November 3, 1972.

On November 22, 1972, the commission denied the petition for rule changes and a rule. The city now petitions for review of this order denying its petition for rule changes and a rule.

The right to have judicial review of an administrative agency decision is entirely statutory. United R. & W.D.S.E. of A. v. Wis. E. R. Board, 245 Wis. 636 (1944).

It is the city's contention that the order is reviewable under sec. 227.15, Stats. However, for review under sec. 227.15 there is the requirement that the agency order evolved from a hearing required by law. In Norway v. State Board of Health, 32 Wis. 2d 362, 367 (1966), the court said:

" . . . It is not the fact but the requirement of a hearing which is the test."

The petitioner in this proceeding petitioned the commission pursuant to sec. 227.015, Stats. There is no requirement of a hearing on a petition for rule changes or creation in sec. 227.015. Therefore, the order denying the petition is not reviewable under sec. 227.15, Stats. Additionally, it must be noted that sec. 227.05(1), Stats.,

provides, ". . . the exclusive means of judicial review of the validity shall be an action for declaratory judgment as to the validity of such rule brought in the circuit court for Dane County."

The court is also of the opinion that the order is not reviewable under Chapter 111, Stats. Sec. 111.70(3)(d), which underlies this action, does not pertain to prohibited practices but merely clarifies certain practices which are not precluded as prohibited practices. The issues of this case do not involve a prohibited labor practice. Judicial review under Chapter 111, Stats., is limited to order affecting rights in unfair or prohibited labor practices. The "order" reviewable under sec. 111.07(8), Stats., is that which terminates unfair or prohibited labor practice proceedings. Accordingly, the review procedure of Chapter 111, Stats., is not applicable to the case at hand.

The court is of the opinion that the petition for review must be dismissed since it is not provided for by statute.

Counsel may prepare an appropriate order for the court's signature.

Dated: October 11, 1973

BY THE COURT:

/s/ William C. Sachtjen  
William C. Sachtjen, Judge