

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHVIEW HOME AND
NORTHVIEW HOSPITAL OF
WAUKESHA COUNTY EMPLOYEES,
LOCAL 2490, AFSCME, AFL-CIO,

Complainant,

vs.

WAUKESHA COUNTY,

Respondent.

Case LXVI
No. 27375 MP-1186
Decision No. 18402-D

ORDER AFFIRMING EXAMINER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

Examiner Lionel L. Crowley having, on January 5, 1982, issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter, wherein he dismissed the complaint filed herein, resulting from his conclusion that Waukesha County did not terminate the employment of Connie Lang on June 16, 1980 as the result of the exercise of any protected concerted activity by Lang, and that, therefore, Waukesha County did not commit any prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 3 of the Municipal Employment Relations Act; and Northview Home and Northview Hospital of Waukesha County Employees, Local 2490, AFSCME, AFL-CIO, having, on January 25, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to review the Examiner's decision, claiming dissatisfaction with the Findings of Fact, Conclusions of Law and Order, and contending that the Findings were erroneous and contrary to the preponderance of the evidence; and on May 25, 1982, the Complainant having advised that it did not intend to file a brief in support of its petition for review, and the Respondent having chosen not to file a brief in opposition thereto; and the Commission, having reviewed the entire record and the briefs filed with the Examiner, being fully advised in the premises, and being satisfied that the Examiner's decision be affirmed in its entirety,

NOW, THEREFORE, it is

ORDERED

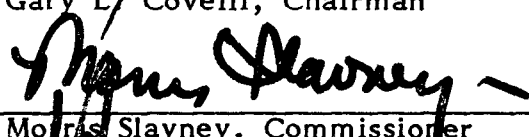
That the Examiner's Findings of Fact, Conclusions of Law and Order issued in the above-entitled matter be, and the same hereby is, affirmed. 1/

Given under our hands and seal at the City of
Madison, Wisconsin this 1st day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

MEMORANDUM ACCOMPANYING ORDER AFFIRMING
EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Union's complaint initiating the instant proceeding alleged that the County discharged probationary employee Lang because of her participation in the drafting and circulating of a letter addressed to a local newspaper supporting the grievance of a fellow employee. The Examiner, after a consideration of the record evidence, concluded that agents of the County had no knowledge of such protected activity of said employee, and that therefore the termination of employment by the County was not motivated by any animus resulting from such activity. The Examiner's decision indicates that the employee involved had disregarded instructions regarding her work performance (working out of her normal working area), and further that she was nearing the end of her probationary period.

In its petition seeking Commission review, the Union contended that the Examiner issued Findings of Fact which "are clearly erroneous and contrary to the preponderance of the evidence". Such alleged errors were not set forth. However, a review of the record convinces the Commission that the evidence supports the findings of the Examiner, as well as his Conclusions of Law, and therefore we have affirmed the decision in its entirety.

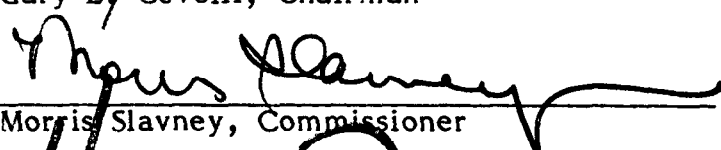
Dated at Madison, Wisconsin this 1st day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

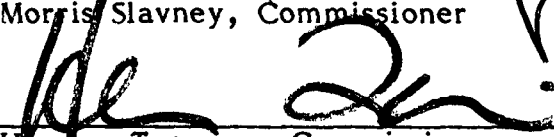
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner