

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO,

Complainant,

vs.

WEST END COMMUNITY
ASSOCIATION, INC. (f/k/a
WEST SIDE COMMUNITY
CENTER INC.).,

Respondent.

Case 2
No. 37794 Ce-2055
Decision No. 19212-D

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, by Mr. Alvin R. Ugent,
Suite 315, 207 East Michigan Street, Milwaukee, Wisconsin 53202,
appearing on behalf of the Complainant.

Mr. Dennis J. Weden, Attorney at Law, 1216 North Prospect Avenue,
Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent.

ORDER DENYING PETITION FOR REHEARING

On April 25, 1983, Examiner David E. Shaw issued proposed Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum wherein he concluded that the above-named Respondent had committed certain unfair labor practices within the meaning of Secs. 111.07(1)(a) and Sec. 111.06(1)(c) of the Wisconsin Employment Peace Act by suspending and discharging Mark Meiling due in part to his protected activities on behalf of Complainant, and the Examiner ordered that the Respondent immediately reinstate Meiling and make him whole for lost wages and benefits.

On May 16, 1983, the Respondent timely filed a petition for Commission review of the Examiner's decision pursuant to Sec. 111.07(5), Stats., and on March 5, 1984, the Commission affirmed the Examiner's Proposed Findings of Fact and Conclusions of Law and Modified the Examiner's Proposed Order to include interest at the statutory rate on the remedy ordered by the Examiner.

On April 2, 1984, the Respondent filed a petition to review the Commission's decision in the Circuit Court of Milwaukee County. On May 5, 1986, Circuit Judge Clarence R. Parrish, issued an Order wherein he affirmed the Commission's Order and remanded the matter to the Commission to determine the specific amount of back pay, if any, which should be awarded to Mark Meiling. On June 24, 1986, the Respondent filed an appeal of the Circuit Court decision to the Court of Appeals, and on August 26, 1986, the Court of Appeals dismissed the Respondent's appeal of the Circuit Court decision.

On December 30, 1986, Lionel L. Crowley, a member of the Commission's staff, held a hearing in Milwaukee, Wisconsin, to determine the amount of back pay, if any, which should be awarded to Mark Meiling. On March 3, 1987, the Respondent filed a Motion For Relief From An Order requesting the Commission to set aside its original decision on the basis that Meiling's testimony on December 30, 1986, constituted perjury. The parties submitted briefs, the last of which was received on March 3, 1987, and certain exhibits were received on March 6, 1987, whereupon the record was closed.

Having considered the record, Judge Parrish's decision and Order, and the arguments of the parties and being fully advised in the premises the Commission on May 18, 1987 issued Findings of Fact and Order Denying Motion for Relief from Prior Order and Determining Amount of Back Pay.

On June 5, 1987, Respondent filed a petition for rehearing pursuant to Sec. 227.49, Stats. which asserted in pertinent part:

Petitioner contends that the decision should be reheard by the Commission because the substantial rights of the Petitioner have been prejudiced as a result of the admini-

strative findings, inferences, conclusions and decisions of the Wisconsin Employment Relations Commission WERC being contrary to the Constitutional rights and privileges of Petitioner, affected by errors of law, made or propagated upon procedures, unsupported by substantial evidence in view of the entire record and arbitrary and capricious.

Complainant was given the opportunity to respond to the petition for rehearing but elected not to respond. Having considered the matter, the Commission is not persuaded that there is a basis under Sec. 227.49(3) Stats. to grant the petition.

NOW, THEREFORE, it is

ORDERED 1/

That the petition for rehearing is denied.

Given under our hands and seal at the City of
Madison, Wisconsin this 2nd day of July, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner
Danae Davis Gordon
Danae Davis Gordon, Commissioner

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- 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 paragraph commences on the day after personal service or mailing of the

(Footnote 1 continued)

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.

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.