

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SAUK PRAIRIE FAIR SHARE MEMBERS
SAUK PRAIRIE SCHOOLS, WI

Complainants,

vs.

SAUK PRAIRIE SCHOOL BOARD, SAUK PRAIRIE
EDUCATION ASSOCIATION, SOUTH CENTRAL
UNITED EDUCATORS, WISCONSIN EDUCATION
ASSOCIATION COUNCIL,

Respondents.

Case 22
No. 29357 MP-1312
Decision No. 19467-I

ORDER OF DISMISSAL

The complaint initiating the instant proceeding was filed on February 24, 1982. Following various procedural developments, the Wisconsin Employment Relations Commission, on September 1, 1987, issued Findings of Fact, Conclusions of Law and an Order concluding that in certain respects the "Respondent Associations in these cases . . . committed prohibited practices within the meaning of Sec. 111.70(3)(b)1, Stats." Dec. No. 19467-F at 14. The Commission's Order left to be "determined the amount that was properly chargeable to Complainants as a fair-share fee for each of th[e] years" at issue and whether "Respondent Associations are prepared to provide adequate notice to all fair-share fee payors in the [relevant] bargaining unit[] and have established the proper fair share procedures. Id. at 16-17. The Commission's Order dismissed the Complaint in all other respects, including all claims against Respondent Sauk Prairie School Board. Id. at 14, 17.

On rehearing, the Commission issued Supplemental Findings of Fact, Conclusions of Law and Order on February 13, 1991, which did not modify the portions quoted above. Dec. No. 19467-H.

The parties thereafter held this matter in abeyance pending the decision of the Wisconsin Supreme Court in Browne v. WERC, 169 Wis.2d 79 (1992). After the Supreme Court's decision in Browne, Complainants and Respondent Associations utilized Commission mediator Marshall L. Gratz in an attempt to settle the claims remaining at issue.

On January 30, 1996, the Commission received a motion to dismiss the instant complaint filed on behalf of all but two of the individuals who remained Complainants in the matter at that time. That motion was filed by Raymond J. LaJeunesse, Jr., of the National Right to Work Legal Defense Foundation. The original Counsel for the Complainants in this matter, Walter L. Harvey, confirmed by written affidavit dated June 29, 1995, that, at Mr. Harvey's request, Mr. LaJeunesse had agreed to replace Mr. Harvey as attorney for all of the Complainants in this matter.

The motion sets forth the following bases for dismissal of the complaint in its entirety:

5. On October 16, 1995, all Complainants, except Added Complainants Charles Christopherson and Anne Nerenz, and Respondent Associations entered into the attached Settlement Agreement. Respondent Associations' compliance with the terms of this Settlement Agreement constitutes a full and complete settlement of all complaints of all Complainants party thereto based upon Respondent Associations' "collection of 'fair share' fees . . . for all periods through the 1995-96 school year."

6. On information and belief, Added Complainants Charles Christopherson and Ann Nerenz moved out of Wisconsin several years ago. Counsel for Complainants was unable to locate them, because they did not keep lead Complainant Ronald H. Jordi informed of their addresses. Counsel believe that the failure of these two Added complainants to stay in contact with Mr. Jordi shows a lack of interest in pursuing their prohibited practices complaint.

7. On January 23, 1996, Counsel for Complainants received from Respondent Wisconsin Education Association Council ("WEAC") the last of the refund payments required by the Settlement Agreement.

8. The Settlement Agreement and this motion are "without prejudice to any claims the [nonmembers party to the Settlement Agreement] might have with regard to 'fair share' fees in periods after the 1995-96 school year" and do "not constitute agreement by [those nonmembers' that WEAC's current 'fair share' notice and procedures comply with the requirements of Teachers Local 1 v. Hudson, 475 U.S. 292 (1986), and Sauk Prairie Fair Share Members, Decision No. 19467-F (WERC Sept. 1, 1987)."

The Commission is satisfied that the Motion to Dismiss Complaint should be granted on the above-quoted bases. The Commission finds it appropriate to serve this Order on Complainants

Anne Nerenz and Charles Christopherson both by service on original and replacement Counsel for Complainants and by service in the manner prescribed in Sec. 111.07(2)(a), Stats and Ch. ERC 10.10(2)(e), WIS. ADM. CODE, for parties located outside the State, to wit, at their last address known to Counsel for Complainants and in care of the Secretary of State's office.

Therefore, the Commission issues the following

ORDER 1/

1. The complaint in the above matter is dismissed as to Added Complainants Anne Nerenz and Charles Christopherson on the basis of their failure to take reasonable steps to continue to pursue the complaint, to wit, their failure to keep lead Complainant Ronald Jordi apprised of changes in their address.

2. The complaint in the above matter is dismissed as to all other Complainants on the basis of the settlements reached between each of those Complainants and the Respondent Associations.

Given under our hands and seal at the City of Madison, Wisconsin,
this 1st day of March, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

1/ See footnote pages 4 and 5

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- 1/ Pursuant to Sec. 227.48(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. 227.49 and 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.

227.49 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.

227.53 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 therefore 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.

(Continued on page 5)

1/ (Continued)

(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.

