

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 WISCONSIN COUNCIL 40, AFSCME, AFL-CIO : Case 83
 : No. 44135 ME-425
 Involving Certain Employes of : Decision No. 20999-E
 :
 MARATHON COUNTY :
 :

Appearances:

Ruder, Ware & Michler, S.C., Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, by Mr. Dean R. Dietrich, and Mr. Jeffrey P. Jones, appearing on behalf of the County.
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, appearing on behalf of the Union.

ORDER DENYING PETITION FOR REHEARING

The Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit and Dismissing Petitions on February 11, 1992 in the above-entitled matter wherein inter alia the occupant of the position of Executive Assistant at the Central Wisconsin Airport was found to be a confidential employe within the meaning of Sec. 111.70(1)(i), Stats.

On March 2, 1992, Marathon County filed a Petition for Rehearing with the Commission pursuant to Sec. 227.49, Stats. asserting:

1. With respect to the Executive Assistant at the Airport position, the Commission made a material error of fact and law in that the Commission did not:
 - a. Consider to the lack of any other confidential employee at the Central Wisconsin Airport to perform the confidential duties performed by the Executive Assistant;
 - b. Consider the confidential duties performed by the prior Executive Assistant in determining whether the present Executive Assistant is a confidential employee; and
 - c. Consider other evidence in the record in regard to the confidential duties performed by the Executive Assistant.

Wisconsin Council 40, AFSCME, AFL-CIO filed a written statement with the Commission on March 5, 1992 in opposition to the petition.

We have considered the matter and concluded that we did not make any material errors of fact or law. Our decision reflects our consideration of all matters raised by the County and our determination that inter alia:

1. The Executive Assistant has performed virtually no confidential work in two years.
2. The County Personnel Department has primary

labor relations responsibilities and thus is available to perform confidential work for the Airport Manager.

3. The incumbent Executive Assistant has not performed the confidential duties of her predecessor.

Thus, we find it appropriate to deny the petition.

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 23rd day of March, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, 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.

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1/ Continued

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.

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.