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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

MANITOWOC COUNTY,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

DECISION ON MOTION

Case No. 84-CV-170D

Decision No. 21506

A motion in the above captioned action was brought by a labor organization (Local 986-A, AFSCME, AFL-CIO) seeking leave to intervene and moving to dismiss the petition for review brought by the above named petitioner, Manitowoc County. Oral arguments were heard on August 8, 1984. The intervenor and petitioner were represented by counsel at this motion hearing. Briefs were filed by both parties, the last of which was received August 22, 1984.

This action arose when Manitowoc County started a proceeding before the Wisconsin Employment Relations Commission seeking the right to have a management and supervisory position and an employee (one Dorothy Brandt, Register in Probate, Probate Registrar and Probate Court Commissioner) excluded from the collective bargaining unit represented by Manitowoc County Court House Employees, Local 986-A, AFSCME, AFL-CIO. After a hearing before the Commission, a decision was rendered by that Agency on March 15, 1984, designated case CLII, No. 32325 ME-2289, decision number 21506. That decision denied petitioner's application for the removal of this employee from the bargaining unit. Manitowoc

County thereafter on April 12, 1984 filed a petition for review and certificate of service, seeking a court-ordered reversal of the Commission's decision. The County Employees' Labor Union, Local 986-A, then filed its motion to intervene, and also asked for a dismissal of petitioner's petition for review.

Neither Manitowoc County nor the WERC objected to permitting the Labor Union the right to intervene, and that part of the motion was granted forthwith at the outset of the motion hearing of August 8, 1984.

The main issue in this motion is the question of the dismissal of the petition for review. The intervenor, Local 986-A, maintains that due to the County's failure to serve the Union pursuant to Section 227.16(1)(c), Statutes, the reviewing court has no subject matter jurisdiction. The WERC concurs in this position. Petitioner, while acknowledging it made no service on the Union, claims this is not fatal to its petition for review since the Union at the very least had actual notice of such appeal, and that this is really not a question of jurisdiction.

The relevant statute, Section 227.16, and the parts thereof applicable to this proceeding, read as follows:

(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.

(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.

The important language is found in 227.16(1)(c), which calls for service "upon all parties who appeared before the Agency...." It is undisputed that Local 986-A did appear at the hearing before the Commission and took a very active part in such proceeding. The Union's brief claims it was the only party appearing at the Commission hearing in opposition to the County's position, and petitioner does not dispute such allegation.

My decision on this motion is mandated by our Supreme Court's decisions in the cases of Cudahy vs. Department of Revenue, 66 Wis. 2d, 253, and Wisconsin Environmental Decade vs. Public Service Commission, 84 Wis. 2d, 504. Both those cases state that strict compliance with service requirements imposed by the administrative procedure statute is essential to subject matter jurisdiction of Circuit Courts. If the petition is not served on the proper parties, dismissal of the case is required. Both parties to this motion cite the Wisconsin Environmental Decade case, *supra*, as authority for their respective positions. Unfortunately, petitioner relies on the dissent in that case, and such is not regarded as the law of the case. For a more recent reaffirmation by the Supreme Court of this doctrine, see Fox vs. Department of Health and Social Services, 112 Wis. 2d, 514.

The facts are clear and undisputed: Petitioner did not make service upon the Union of the former's petition for review; the Union was a necessary and interested party to this case, having actively


participated in it from the outset; Section 227.16(1)(c) clearly sets forth the service requirements necessary for the reviewing court to acquire subject matter jurisdiction; the above cited cases are in point, and control the result of this motion.

It is the decision of this Court that it does not have subject matter jurisdiction due to petitioner's failure to comply with the service requirements of Section 227.16(1)(c), Statutes.

The motion of Manitowoc County Court House Employees Local 986-A, AFSCME, AFL-CIO, for dismissal of the petition for review is granted, and said petition is dismissed.

Dated this 23rd day of August, 1984.

BY THE COURT:


Circuit Judge