

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 OAKFIELD SCHOOL DISTRICT :
 Requesting a declaratory ruling :
 pursuant to Section 227.06(1) :
 Wis. Stats., involving a dispute :
 between said Petitioner and :
 OAKFIELD EDUCATION ASSOCIATION :

Case 9
 No. 37764 DR(M)-415
 Decision No. 24379

Appearances:

Mr. David R. Friedman, Attorney at Law, 30 West Mifflin Street, Room 802,
 Madison, Wisconsin 53703
Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association
 Council, 101 West Beltline Highway, P.O. Box 8003, Madison,
 Wisconsin 53708

ORDER DISMISSING PETITION FOR DECLARATORY RULING

Oakfield School District having on October 31, 1986 filed a petition pursuant to Sec. 227.06(1), Stats. with the Wisconsin Employment Relations Commission seeking a declaratory ruling invalidating a mediation-arbitration award issued pursuant to Sec. 111.70(4)(cm), Stats. and the parties having thereafter submitted written argument in support of and in opposition to said petition, the last of which was received on December 12, 1986; and the Commission having considered the matter of whether it should exercise its discretionary jurisdiction over the petition, 1/ and having concluded that it is inappropriate to exercise said jurisdiction where, as here, the District had but did not exercise a right to obtain review of the mediation-arbitration award through the statutory and administrative procedures expressly established for such purposes, 2/ and because resolution of the issue would provide no significant guidance to parties around the state given the unique facts involved herein;

NOW, THEREFORE, it is

ORDERED 3/

That the instant petition is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 1st day of April, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
 Stephen Schoenfeld, Chairman

Herman Torosian
 Herman Torosian, Commissioner

Danae Davis Gordon
 Danae Davis Gordon, Commissioner

1/ In Green Lake County, Dec. No. 22820 (WERC, 8/85) we set forth the following criteria which we would use when determining whether we should exercise our discretionary jurisdiction over a party's objection under Sec. 227.06, Stats. (renumbered to Sec. 227.41, Stats. (1985-86): (1) the

(Footnote 1 continued)

guidance, if any, which a decision on the issue presented might provide to parties around the state; (2) the presence of other forums for resolution of the issue; and (3) optimal use of Commission resources.

2/ **ERB 31.18 Enforcement of award.** (1) **PROCEDURE.** If either party refuse or otherwise fails to implement an interest arbitration award lawfully made by failing to incorporate it into a written collective bargaining agreement, the other party may file a complaint of prohibited practices as provided in chapter ERB 12, Wis. Adm. Code. Such proceeding shall be deemed to be a class 2 proceeding within the meaning of s. 227.01(2) (b), Stats., and shall be governed by the provisions of s. 111.07 and s. 111.70(4) (a), Stats. In determining whether an interest arbitration award was lawfully made, the commission shall find that said award was not lawfully made under the following circumstances:

(a) Where the interest arbitration award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality on the part of the neutral mediator-arbitrator(s) or corruption on the part of any of the mediator-arbitrator(s);

(c) Where the mediator-arbitrator was guilty of misconduct in refusing to conduct an arbitration meeting upon request or refusing to postpone the meeting upon sufficient cause shown, or in refusing to hear supporting arguments or evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

(d) Where the mediator-arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final and definite interest arbitration award was not made.

. . .

3/ 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 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

(Footnote 3 continued on Page 3)

(Footnote 3 continued)

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.