

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Grievance
Arbitration Between

MORAINÉ PARK TECHNICAL INSTITUTE

and

MORAINÉ PARK FEDERATION OF
TEACHERS LOCAL 3338 and
SANDRA A. ANDERSON

Case A/P M 86-179
Decision No. 24474-E

Appearances:

Ms. Sandra A. Anderson, 816 Neufeld Street, Green Bay, Wisconsin 54304,
appearing on her own behalf.
Edgerton, Ondrasek, St. Peter, Petak & Massey, Attorneys at Law, by
Mr. John A. St. Peter, 10 Forest Avenue, P.O. Box 1276, Fond du Lac,
Wisconsin 54936-1276, appearing on behalf of Moraine Park Technical
Institute.
von Briesen & Purtell, S.C., Attorneys at Law, by Mr. Alan S. Brostoff,
Suite 700, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4470,
appearing on behalf of Moraine Park Federation of Teachers Local 3338.

ORDER DENYING MOTIONS TO SET ASIDE AWARD
AND GRANT NEW HEARING

Arbitrator Frederick P. Kessler having issued an arbitration award in the above-matter on January 16, 1987 upholding the discharge of the grievant, Sandra Anderson; and an action seeking to vacate said award having been filed in Fond du Lac County Circuit Court; and during the pendency of said action, Sandra Anderson having on May 6, 1988 filed a motion with the Wisconsin Employment Relations Commission seeking an order setting aside the Kessler award and granting a new hearing because of newly discovered evidence; and on August 29, 1988, Judgment confirming the Kessler award having been rendered by the Fond du Lac County Circuit Court; and Sandra Anderson having on September 21, 1988 filed a Motion for New Arbitration Hearing alleging inter alia misconduct by the attorneys who represented the parties before Arbitrator Kessler and seeking an order setting aside the Kessler award and vacating the Judgment of the Fond du Lac County Circuit Court; and Local 3338 and the Institute having filed written argument in opposition to said motions, the last of which was received October 12, 1988; and Anderson having on October 17, 1988 filed an appeal to the Court of Appeals seeking review of the August 29, 1988 Judgment of the Fond du Lac County Circuit Court; and the Commission having considered the matter and concluded that the motions must be denied because jurisdiction over the Kessler award presently rests with the Court of Appeals and because the Commission lacks jurisdiction to overturn the result reached in arbitration awards except in context of a duty of fair representation/violation of contract prohibited practice complaint; 1/

NOW, THEREFORE, it is

ORDERED 2/

That the motions to set aside Award and grant new hearing are denied. 3/

Given under our hands and seal at the City of
Madison, Wisconsin this 21st day of November, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner

No. 24474-E

ENDNOTES

- 1/ In Dec. No. 24474-D, we have today also denied Anderson's motion seeking to reopen her duty of fair representation/violation of contract complaint due to the conduct of her legal counsel. On November 4, 1988, Anderson filed a motion seeking to reopen that complaint on other grounds. After receipt of responsive argument, we will rule upon that motion at another time.
- 2/ 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.

(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.

- 3/ Having denied said Motions, we need not respond to Anderson's September 12, 1988 Motion for the Commission to Appoint Counsel in this matter to assist her in the presentation of facts and argument in a reopened proceeding.