

FEB 11 1988

NOTICE: This Court's decision is subject to review by the Wisconsin Supreme Court. If the Supreme Court reverses this decision by a majority vote, the Court will issue an order to the Clerk of the Court of Appeals to issue a new decision pursuant to Rule 808.10.

NOTICE

This opinion is subject to further editing. If published the official version will appear in the bound volume of the Official Reports.

FILED

RECEIVED

FEB 15 1988

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

No. 87-1812

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

VILLAGE OF RIVER HILLS,

Petitioner-Appellant,

v.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

FEB 11 1988

CLERK OF COURT OF APPEALS
OF WISCONSIN

Decision No. 24570-A

APPEAL from a judgment of the circuit court for
Dane county: JAMES C. BOLL, Judge. Affirmed.

Before Gartzke, P.J., Dykman and Eich, JJ.

PER CURIAM. The Village of River Hills appeals a judgment denying its petition for a writ of mandamus directed against the Wisconsin Employment Relations Commission. The Village Police Association filed a complaint with the Commission alleging that the Village was engaging in prohibited employment practices. The Village moved to dismiss the complaint for failure to state a cause of action. When the Commission designated a staff examiner to rule on the motion, the Village commenced this action to require the full Commission to decide it. The issue is

whether the Commission properly assigned an examiner to decide the Village's motion. We conclude that the Commission properly delegated that responsibility and therefore affirm.¹

Section 227.46(1), Stats., lists the duties of an administrative hearing examiner without specifically providing that the examiner can decide prehearing motions. A Commission rule, Wis. Adm. Code s. ERB 10.11(2) (October 1986) provides in part that in municipal employment disputes "[t]he Commission shall rule upon motions filed with it before or after hearing.... Motions made during a hearing shall be ruled on by the individual conducting the hearing...." The Village contends that the plain language of this rule combined with the absence of specific authorization in sec. 227.46(1) requires the full Commission to decide its motion. The Commission cites other statutes and rules as authorizing it to delegate that responsibility.

Interpretation of statutes and rules presents a question of law which we decide without deference to the trial court. Moonlight v. Boyce, 125 Wis.2d 298, 303, 372 N.W.2d 479, 483 (Ct. App. 1985). We construe administrative rules in the same manner as we construe statutes. Id.

We have reviewed the applicable statutes and rules and conclude that they authorize the Commission to delegate its responsibility to decide prehearing motions. Section 111.07(5), Stats., provides that in an unfair labor practice proceeding "[t]he Commission may authorize a commissioner or examiner to make findings and orders." This section resolves the issue because its unambiguous terms give the Commission broad authority to delegate without restricting or limiting the power to delegate prehearing matters.

Furthermore, neither sec. 227.46(1) nor sec. E.R.B. 10.11(2) conflict with sec. 111.07(5). Section 227.46(1) only prescribes the duties of "examiners presiding at hearings." It places no limits on other duties that an agency may delegate to examiners outside of their responsibilities to conduct hearings.

Section E.R.B. 10.11(2) divides responsibility between "the Commission," for pre- and post-hearing decisions on motions, and "the individual conducting the hearing" for motions made during the hearing. This division of responsibility is ambiguous because it may reasonably be construed in two ways. Heaton v. Larsen, 97 Wis.2d 379, 394, 294 N.W.2d 15, 23 (1980). "The Commission" may

}

reasonably refer only to the three commissioners. But the term may also refer to either the Commission or its agents, who, under sec. 111.07(5), may be examiners or individual commissioners.

We adopt the latter construction because it is consistent with the broad authority to delegate permitted by sec. 111.07(5). It is also consistent with Wis. Adm. Code s. ERB 12.06(1) (October, 1986), which provides in part that "upon granting a motion for dismissal of a complaint, the Commission, or examiner if authorized to do so, shall make and file findings of fact, conclusions of law and order." Where possible, we will adopt a construction that is consistent with other provisions. Law Enforcement Standards Board v. Village of Lyndon Station, 101 Wis.2d 472, 489, 305 N.W.2d 89, 98 (1981). We also give controlling weight to an agency's construction of its own rule unless that construction is inconsistent with the rule's plain meaning. Pfeiffer v. Board of Regents, 110 Wis.2d 146, 154, 328 N.W.2d 279, 283 (1983).²

By the Court.--Judgment affirmed.

Publication in the official reports is not recommended.

We have reviewed the applicable statutes and rules and conclude that they authorize the Commission to delegate its responsibility to decide prehearing motions. Section 11.07(5), Stats., provides that in an unfair labor practice proceeding "[t]he Commission may authorize a commissioner or examiner to make findings and orders." This section resolves the issue because its unambiguous terms give the Commission broad authority to delegate without restricting or limiting the power to delegate prehearing matters.

Furthermore, neither sec. 227.46(1) nor sec. E.R.B. 10.11(2) conflict with sec. 11.07(5). Section 227.46(1) only prescribes the duties of "examiners presiding at hearings." It places no limits on other duties that an agency may delegate to examiners outside of their responsibilities to conduct hearings.

Section E.R.B. 10.11(2) divides responsibility between "the Commission," for pre- and post-hearing decisions on motions, and "the individual conducting the hearing" for motions made during the hearing. This division of responsibility is ambiguous because it may reasonably be construed in two ways. Heaton v. Larsen, 97 Wis.2d 379, 394, 294 N.W.2d 15, 23 (1980). "The Commission" may

reasonably refer only to the three commissioners. But the term may also refer to either the Commission or its agents, who, under sec. 11.07(5), may be examiners or individual commissioners.

We adopt the latter construction because it is consistent with the broad authority to delegate permitted by sec. 11.07(5). It is also consistent with Wis. Adm. Code s. ERB 12.06(1) (October, 1986), which provides in part that "upon granting a motion for dismissal of a complaint, the Commission, or examiner if authorized to do so, shall make and file findings of fact, conclusions of law and order." Where possible, we will adopt a construction that is consistent with other provisions. Law Enforcement Standards Board v. Village of Lyndon Station, 101 Wis.2d 472, 489, 305 N.W.2d 89, 98 (1981). We also give controlling weight to an agency's construction of its own rule unless that construction is inconsistent with the rule's plain meaning. Pfeiffer v. Board of Regents, 110 Wis.2d 146, 154, 328 N.W.2d 279, 283 (1983).²

By the Court.--Judgment affirmed.

Publication in the official reports is not recommended.

APPENDIX

¹This matter has proceeded as an expedited appeal pursuant to Rule 809.17.

²The Village also argues that it will be denied due process if and when the examiner denies its motion, because an examiner's decision is not immediately reviewable in court. As the Village is not yet, and may not be, aggrieved by the examiner's decision, the argument is premature.

RECEIVED
MAR 11 1988
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

No. 87-1812

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

VILLAGE OF RIVER HILLS,

Petitioner-Appellant,

v.

ERRATA SHEET

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION,

Decision No. 24570-A

Respondent.

Marilyn Graves
Clerk of Court of Appeals
231 East, State Capitol
Madison, WI 53702

Court of Appeals
District I
901 N. Ninth Street
Milwaukee, WI 53233

Court of Appeals
District III
740 Third Street
Wausau, WI 54401

William C. Dineen
710 N. Plankinton Avenue
Milwaukee, WI 53203

Hon. James Boll
Dane County Circuit Court
Madison, WI 53709

Earl Hazeltine
Chief Staff Attorney
119 Martin Luther King Jr.,
Blvd. - 7th Floor
Madison, WI 53703

Court of Appeals
District II
2727 N. Grandview Blvd.
Waukesha, WI 53188-1672

Court of Appeals
District IV
231 East, State Capitol
Madison, WI 53702

~~David~~ David C. Rice
Asst. Attorney General
P.O. Box 7857
Madison, WI 53707-7857

PLEASE TAKE NOTICE that the attached pages 3 and 4 are substituted for pages 3 and 4 in the above-captioned opinion which was released on February 11, 1988.

Dated this 9th day of March, 1988.