

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
STATE ENGINEERING ASSOCIATION
To Initiate Fact Finding Between
Said Petitioner and
STATE OF WISCONSIN

Case 252
No. 39631 FF(S)-2
Decision No. 25023

Appearances:

Kelly and Haus, Attorneys at Law, by Mr. William Haus, 121 East Wilson Street, Madison, Wisconsin, 53703-3422, appearing on behalf of the Association.

Mr. Thomas Kwiatkowski, Staff Attorney, Division of Collective Bargaining, Department of Employment Relations, 137 East Wilson Street, P.O. Box 7855, Madison, Wisconsin, 53707-7855, appearing on behalf of the State.

ORDER OF DISMISSAL

State Engineering Association having, on November 2, 1987, filed a petition with the Wisconsin Employment Relations Commission seeking to initiate fact finding pursuant to Sec. 111.88, Stats., with the State of Wisconsin as to an alleged deadlock in negotiations between the parties as to certain State employees represented by the Association; and the State having, on November 12, 1987, advised the Commission that the State did not join in the Association's request and that the petition should therefore be dismissed because Sec. 111.88(1), Stats., requires that a fact finding petition be jointly filed; and the parties having submitted written argument the last of which was received on December 3, 1987; and the Commission being satisfied that the petition should be dismissed because it was not jointly filed 1/ as required by Sec. 111.88(1), Stats.; 2/

NOW, THEREFORE, it is

ORDERED 3/

That the instant fact finding petition is hereby dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 16th day of December, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner

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- 1/ We reached the same conclusion in State of Wisconsin, Dec. No. 14715 (WERC, 6/76).
 - 2/ Sec. 111.88(1), Stats., provides:

111.88 Fact-Finding. (1) If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted, the representative which has been certified by the commission after an election, or, in the case of a representative of employees specified in s. 111.81(7)(a), has been duly recognized by the employer, as the exclusive representative of employees in an appropriate collective bargaining unit, and the employer, its officers and agents, after a reasonable period of negotiation, are deadlocked with respect to any dispute between them arising in the collective bargaining process, the parties jointly, may petition the commission, in writing, to initiate fact-finding under this section, and to make recommendations to resolve the deadlock.

- 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 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.