

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENNETH L. SCHMIDT,

Complainant,

vs.

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
LOCAL LODGE NO. 873 and JOHN DEERE
HORICON WORKS OF DEERE & COMPANY,

Respondents.

Case 8

No. 41224 Cw-3652

Decision No. 25776-A

ORDER DISMISSING COMPLAINT OF UNFAIR LABOR PRACTICES
UPON RESPONDENT'S PERFECTING REMOVAL TO
FEDERAL DISTRICT COURT

Kenneth L. Schmidt, having, on October 28, 1988 filed a complaint with the Wisconsin Employment Relations Commission alleging that International Association of Machinists and Aerospace Workers, Local Lodge No. 873 and John Deere Horicon Works of Deere & Company had committed certain unfair labor practices within the meaning of Section 111.06(1)(f) of the Wisconsin Employment Peace Act by the Respondent, Machinists Lodge 873's refusal to fairly represent him and by the Respondent, Company's wrongfully discharging him; and Respondent Company by Counsel, having, on November 14, 1988, filed a Petition for Removal of the Proceedings to the United States District Court, Eastern District of Wisconsin alleging therein that the Respondent may remove, as a matter of right, the proceeding before the Commission to the Federal District Court pursuant to 28 U.S.C., subsection 1441(a); and Respondent, Machinists Lodge No. 873, having consented to said Petition for Removal; and the Commission being satisfied that the Respondents perfected such removal of the proceeding to the Federal District Court and further being satisfied that this Commission is ousted from jurisdiction in the instant proceeding with the commencement of the Sec. 301 action in Federal District Court involving the matters complained of in the proceeding, pursuant to 28 U.S.C. Sec. 1441;

NOW, THEREFORE, it is

No. 25776-A

ORDERED 1/

That the complaint of unfair labor practices filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 18th day of January, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By S. A. Schoenfeld /s/
S. A. Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

1/ 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.