

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

: MS. SAMELLA WILLIAMS and THE :
: WISCONSIN STATE EMPLOYEES UNION (WSEU), :
: AFSCME, COUNCIL 24, AFL-CIO, :
: : Case 257
Complainants, : No. 40486 PP(S)-144
: Decision No. 25805-C
: vs. :
: :
STATE OF WISCONSIN, :
: :
Respondent. :
: :

Appearances:
Lawton & Cates, S.C., Attorneys at Law, 214 West Mifflin Street, Madison, Wisconsin 53703-2594, by Mr. Richard V. Graylow, appearing on behalf of the Complainants.
Ms. Raenae Bugge, Employment Relations Specialist, Department of Employment Relations, State of Wisconsin, 137 East Wilson Street, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Respondent.

ORDER DENYING PETITION FOR REHEARING

Examiner Coleen A. Burns having on August 3, 1989 issued her Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein she concluded that Respondent had not committed unfair labor practices within the meaning of Secs. 111.84(1)(a), (c) or (d), Stats., by requiring Complainant Williams to pay an interest charge on a retirement fund payment; and Complainants' having on August 15, 1989 timely filed a petition with the Commission seeking review of the Examiner's decision pursuant to Secs. 111.07(5) and 111.84(4), Stats.; and the parties thereafter having filed written argument in support of and in opposition to said petition; and the period for the filing of such argument having been terminated on October 3, 1989; and the Commission having on December 5, 1989, issued an Order Affirming Examiner's Findings of Fact, Conclusions of Law and Order wherein it was concluded that inter alia:

In our view, when the parties bargained the Settlement Agreement and elected to make no mention of Complainant Williams' obligations vis-a-vis her retirement account, the parties chose to leave such matters outside the scope of their agreement and thus presumably subject to whatever provisions of the master bargaining agreement, statutes and/or administrative code are applicable. Thus, the Examiner correctly concluded that the agreement before her was not violated by Respondent's action. Whether Respondent's action was consistent with the applicable statute and administrative rule is beyond the scope of the issue before us.

and Complainants having on December 21, 1989 filed a petition for rehearing pursuant to Sec. 227.49, Stats., wherein Complainant asserted that the Commission committed an error of law because it failed to conclude the Settlement Agreement superseded any statutory retirement provisions and thus precluded Respondent from requiring Complainant Williams to pay an interest charge; and Respondent having on January 10, 1990 filed a response in opposition to the petition; and the Commission having reviewed the matter and concluded that the petition for rehearing should be denied and that the Complainants' argument on rehearing has already been addressed in the decisions of the Examiner and the Commission;

No. 25805-C

NOW THEREFORE, it is

ORDERED 1/

That the petition for rehearing is denied.

Given under our hands and seal at the City of
Madison, Wisconsin this 19th day of January,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

William Strycker /s/
William Strycker, Commissioner

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- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties 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.

227.53 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 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.

(Footnote 1/ continued on page 3)

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(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.