

STATE OF WISCONSIN
CIRCUIT COURT
MILWAUKEE COUNTY

GERHARDT J. STEINKE,
Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Case No. 93 CV 000-019
Decision No. 26459-G

MEMORANDUM DECISION

A. Background

On January 4, 1993, petitioner Gerhardt Steinke, pro se, commenced this Chapter 227, Wis. Stats. action for judicial review. This case was initially assigned to the calendar of Circuit Judge George A. Burns. Judge Burns then recused himself when Mr. Steinke filed a complaint against him with the Wisconsin Judicial Commission in Case No. 92 CV 006-353. This case was then assigned to Judge Robert Landry and this court assumed jurisdiction when it assumed Judge Landry's calendar upon his retirement from the bench.

Mr. Steinke has filed a motion to stay proceedings to permit arbitration. A hearing was scheduled for October 11, 1993. The court, however, having considered the record, the parties extensive written arguments and the relevant law has determined that no motion hearing is necessary. Because there are no issues in this action referable to arbitration, the motion to stay proceedings is denied and a new briefing schedule will be instituted.

B. Discussion

This is an action for judicial review under Chapter 227, Stats. Mr. Steinke cites sec. 788.02, Stats. as the basis for his notion to stay these proceedings.

Section 788.02, Stats. provides that an action may be stayed when it involves "issue(s] referable to arbitration...." In this case there are no issues referable to arbitration.

In any Chapter 227, Stats. proceeding, the court's review is limited to the record made before the administrative agency. Sec. 227.57, Stats. Section 227.57(3), Stats., provides that the issues before the court in an action for judicial review are (1) issues of agency procedure; (2) interpretations of law; (3) determinations of fact; and (4) determinations of policy within the scope of the agency's delegated discretion. The fundamental issue in any Chapter 227, Stats. proceeding is whether the agency's findings are supported by substantial evidence in the record. *Robertson Trans. Co. v. PSC*, 39 Wis.2d 653, 658-59 (1968). None of these issues are referable to arbitration; they are all matters solely for the court's consideration. Accordingly, Mr. Steinke's motion to stay proceedings is denied.

The following briefing schedule is instituted and shall control the remainder of this action:

Petitioner's brief due: October 11, 1993

Respondent's brief due: November 12, 1993

Intervenor's brief due: November 26, 1993

Petitioner's reply brief due: December 10, 1993

Additionally, all briefs shall be double spaced and limited to twenty pages, except for Mr. Steinke's final reply brief will shall be limited to ten double spaced pages. This page limitation rule does not include exhibits and/or copies of authorities, but does include anything else the parties wish the court to consider.

The court will not accept any further facsimile transmissions, nor will it accept any single spaced briefs. Further, all parties must strictly comply with these directives. **The failure of any party to strictly comply with those directives will cause the court to disregard any submission not in compliance with its directives as set forth above.**

The court is aware of the fact that Mr. Steinke is prosecuting this action pro se. This fact, however, does not permit the court to modify the procedural and

substantive rules of law applicable to an action for judicial review. Mr. Steinke has stated in a September 9, 1993 facsimile transmission to the court that he does not want to file an initial brief. He claims that: "MY 1/4/93 PETITION WAS QUITE CLEAR. I SEE NO NEED TO REPEAT."

Mr. Steinke has misconstrued his burden of proof. It is his burden to establish that the agency's decision was incorrect. "The burden in a ch. 227 review proceeding is on the party seeking to overturn the agency action, not on the agency to justify its action." *City of La Crosse v. DNR*, 120 Wis.2d 168, 178 (Ct. App. 1984). Mr. Steinke's petition is not "quite clear" and standing alone is clearly insufficient to support his contentions of error on the part of the respondent. Accordingly, if Mr. Steinke fails to submit a brief addressing the substantive issues in accordance with the court's briefing schedule, the respondent and/or intervenor may file a motion to dismiss in lieu of filing a reply brief.

C. Conclusion

For the reasons stated above, Mr. Steinke's motion for a stay of proceedings is denied, the briefing schedule set forth above shall control the remainder of this action and all parties shall strictly comply with the court's directives as stated above.

Counsel for the respondent shall draw an order consistent with this opinion and submit it under the five day rule.

Dated at Milwaukee, Wisconsin this 16th day of September, 1993.

BY THE COURT:

/s/ Louise M. Tesmer

Louise M. Tesmer

Circuit Judge, Branch 40