

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TOMMY COMBS, JR., :
 :
 :
Complainant, :
 :
vs. : Case 2
 : No. 50787 Ce-2151
 : Decision No. 27863-A
AMERICAN CONCRETE PIPE and :
TEAMSTERS "GENERAL" LOCAL UNION 200, :
 :
Respondents. :
 :

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

Tommy Combs, Jr., on September 16, 1992, filed a complaint with the Wisconsin Employment Relations Commission alleging that American Concrete Pipe (the Company) and Teamsters "General" Local Union 200 (the Union) had committed certain unfair labor practices within the meaning of Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act by the Respondent-Union's refusal to fairly represent him and by the Respondent-Company's wrongfully discharging him. Prior to any further action by the Commission, Respondent-Union, by Counsel, on October 11, 1993, 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; and Respondent-Company joined in said Petition for Removal. The Commission is satisfied that the Respondents perfected such Removal of the proceedings to the Federal District Court and further being satisfied that this Commission is ousted from jurisdiction in the instant proceedings with the commencement of a Sec. 301 action in Federal District Court, involving matters complained of in this proceeding, pursuant to 28 U.S.C., Sec. 1441; 1/

NOW, THEREFORE, it is

1/ On January 21, 1994, the Court entered judgment dismissing the complaint.
No. 27863-A

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 11th day of April,
1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

2/ 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.

(Footnote 2/ continues on the next page.)

(Footnote 2/ continues from previous page.)

(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.