

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MR. ROBERT M. BENISH, :  
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 Complainant, :  
 :  
 vs. : Case 397  
 : No. 48219 MP-2652  
 : Decision No. 27975-C  
 CARPENTER'S LOCAL 264 and :  
 CITY OF MILWAUKEE :  
 City Service Commission, :  
 :  
 Respondents. :  
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Appearances:

Castellani, Sheedy & Associates, Attorneys at Law, 829 North Marshall Street  
Grant F. Langley, City Attorney, by Mr. Thomas C. Goeldner, Assistant  
City Attorney, 800 City Hall, 200 East Wells Street, Milwaukee,  
Wisconsin 53202-3551, appearing on behalf of the Respondent City of  
Milwaukee.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys  
Carpenter's Local 264.

ORDER DENYING PETITION FOR REHEARING

On June 28, 1994, Examiner Coleen A. Burns issued Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above-entitled matter determining that the above-named Respondents had not committed prohibited practices within the meaning of the Municipal Employment Relations Act. She therefore dismissed the complaint.

Within the 20 day statutory period set forth in Sec. 111.07(5), Stats., no petition for review of said Findings of Fact, Conclusions of Law and Order was filed and no intervening order by the Examiner or the Commission was issued.

By operation of Sec. 111.07(5), Stats., Examiner Burns' Findings of Fact, Conclusions of Law and Order in the above-entitled matter became the Commission's Findings of Fact, Conclusions of Law and Order on July 18, 1994.

On July 27, 1994, Complainant filed a Petition for Rehearing asserting that dismissal of the complaint was erroneous, arbitrary, and capricious. Respondents filed written responses to the Petition, urging the Commission to deny same.

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We have reviewed the matter and concluded that Complainant has not established a material error of law or fact or the existence of new evidence sufficiently strong to reverse or modify the order which could not have been previously discovered by due diligence. Thus, we have denied the petition. In doing so, we wish to emphasize that dismissal of the complaint only represents a conclusion that Benish's rights under the Municipal Employment Relations Act as a municipal employe and as an applicant for municipal employment were not violated by the conduct of Carpenter's Local 264 and the City of Milwaukee. 1/

NOW, THEREFORE, it is

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1/ For instance, as an applicant for employment with the City of Milwaukee, Benish was entitled to the protection of Sec. 111.70(3)(a)3, Stats., which prohibits discrimination in regard to hiring based upon a motive of encouraging or discouraging union membership. No such discrimination was established here.

The petition for rehearing is denied.

Given under our hands and seal at the City of  
Madison, Wisconsin this 26th day of August,  
1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

Commissioner William K. Strycker did not participate.

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2/ 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.

(Footnote 2/ continues on the next page.)

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(Footnote 2/ continues from the previous page.)

(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.

