

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE POLICE ASSOCIATION,

Complainant,

vs.

THE CITY OF MILWAUKEE, a municipal
corporation, THE BOARD OF FIRE AND POLICE
COMMISSIONERS and PHILLIP ARREOLA, Chief
of Police of the City of Milwaukee,

Respondents.

Case 408
No. 50490 MP-2855
Decision No. 28295-A

Appearances:

Adelman, Adelman & Murray, S.C., Attorneys at Law, by Mr. Kenneth J. Murray, 1840 North Farwell, Suite 403, Milwaukee, Wisconsin, 53202, for the Complainant.
Mr. Gregory Powell, Assistant City Attorney, City of Milwaukee, City Hall, Room 800, 200 East Wells Street, Milwaukee, Wisconsin, 53202, for the Respondents.

ORDER DENYING MOTION TO REOPEN

On February 7, 1994, the above-named Complainant filed a complaint with the Wisconsin Employment Relations Commission alleging that the above-named Respondents had committed certain prohibited practices within the meaning of the Municipal Employment Relations Act.

On December 30, 1994, Commission Examiner Coleen A. Burns sent the following letter to the parties by certified mail:

On February 7, 1994, the Milwaukee Police Association filed a complaint involving Police Officer Richard N. Sandoval. To date, neither party has sought a hearing in this matter. Unless advised to the contrary by January 18, 1995, I will assume that the matter has been resolved and will dismiss the complaint.

No response was received to said letter (which the parties received January 3, 1995), and on January 26, 1995, the Commission issued an Order Dismissing Complaint.

On February 7, 1995, the Commission received the following letter from Complainant:

No. 28295-A

Your letter of January 26, 1995 transmitted an Order Dismissing Complaint, of same date.

Please regard this letter as a request to cancel the referenced order and resurrect the subject complaint.

The complaint was initiated by President Bradley DeBraska of the Milwaukee Police Association and all subsequent correspondence went through him including the Commission's letter of December 30, 1994 setting a deadline for advising your Commission as to the intention of the parties, or in the alternative, the matter would be dismissed.

At that point the complaint was referred to my office with instructions to keep the matter open and schedule a hearing. Through inadvertence or oversight we failed to act.

However, the issue presented is vital not only in this particular instance but as a guide for handling matters of the nature presented which can and will arise again.

In the face of current levels of activity not the least of which is the interest arbitration proceedings which have consumed endless hours of everyone's time involved some matters have received short shrift and this, unfortunately, is one of them.

I regret the inconvenience caused your office as well as that of the Respondent City and Fire and Police Commission.

Please be advised that your file should now reflect that my office has been retained to represent the complaint and all future correspondence including, hopefully, a favorable response to this request be sent to my attention.

By letter dated February 8, 1995, the Commission asked Respondents to reply to Complainant's letter at their "earliest convenience." Respondents did not reply.

On November 20, 1996, the Commission received the following letter from Complainant: On February 6, 1995 I had written the then Chairman of the WERC requesting that this file be reopened after an Order Dismissing the Complaint had been issued on January 26, 1995.

I believe your office had written to City Attorney Tom Goeldner, who handled these matters for the City of Milwaukee at the time, requesting a response to my request to reopen. Before Mr. Goeldner could respond, he suffered a serious illness which

No. 28295-A

incapacitated him for some time. After his recovery he was not reassigned to handling labor matters so I requested that the Office of City Attorney review and decide what the response to my Motion to Reopen would be.

Finally, in June of this year I learned by phone that the City would oppose the Motion. A letter to that effect was sent but inexplicably not received by me personally. Now I finally have a copy which was sent to me last week via facsimile which I have enclosed for your review.

Pursuing my effort to have this matter reopened and hopefully resolved, I am requesting that my Motion be taken up for consideration. Perhaps it can be dealt with at the status hearing on a complaint filed with the WERC by the same complainant, Richard N. Sandoval, filed on April 14, 1996. Examiner Raleigh Jones has scheduled a status review of this latter matter for December 18, 1996.

Accompanying the Complainant's letter was a copy of a letter dated June 19, 1996, from Respondents to Complainant which stated in pertinent part:

This will confirm our recent conversation in which I advised you that the City would not be willing to stipulate to reopen the above-captioned proceeding in the WERC because following the dismissal of the proceedings, Mr. Sandoval entered into a full and complete release of the City of Milwaukee of any and all claims resulting from his promotion.

In response to a request from the Commission, Complainant filed an additional statement of position on February 4, 1997.

Having considered the matter, the Commission is satisfied that pursuant to Secs. 111.07(6) and 111.70(4)(a), Stats., it lost jurisdiction over the complaint on February 16, 1995 and thus has no present jurisdiction to consider the merits of the Complainant's request that the complaint be reopened.

NOW, THEREFORE, it is

ORDERED 1/

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.

(Footnote 1 continues on page 4)

(Footnote 1 continued from page 3)

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.

(Footnote 1 continues on page 5)

...

No. 28295-A

Complainant's Motion to Reopen is denied.

Given under our hands and seal at the City of Madison, Wisconsin,
this 7th day of May 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

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

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

(Footnote 1 continued from page 4)

(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.

No. 28295-A

THE CITY OF MILWAUKEE

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO REOPEN

Section 111.07(6), Stats., (which is applicable to this proceeding by virtue of Sec. 111.70(4)(a), Stats.) provides:

(6) The commission shall have the power to remove or transfer the proceedings pending before a commissioner or examiner. It may also, on its own motion, set aside, modify or change any order, findings or award, whether made by an individual commissioner, an examiner, or by the commission as a body, at any time within 20 days from the date thereof if it shall discover any mistake therein, or upon the grounds of newly discovered evidence.

Section 111.07(6), Stats., has been strictly construed by the courts as limiting the Commission's jurisdiction to reopen proceedings to the twenty-day period following issuance of the Commission's decision. In Anderson v. WERC, No. 90-2490 (CtApp, Dist. III, 6/91) unpublished, the court stated:

The commission properly denied all of the motions to reopen because it lacked jurisdiction. Section 111.07(6), Stats., prevents the commission from reopening proceedings more than twenty days after it enters its decision. *Wacho Mfg. v. Industrial Comm'n*, 223 Wis. 312, 314-15, 270 N.W. 63, 65 (1936). The grounds for the motion to reopen are not relevant. The commission's jurisdictional limits apply even in cases of fraud or newly discovered evidence. *See Wacker v. Industrial Comm'n*, 248 Wis. 315, 319-20, 21 N.W.2d 715, 716 (1946); *Amberg v. Deaton*, 223 Wis. 653, 659, 271 N.W. 396, 398 (1937).

Relying upon *Amberg*, Anderson contends that this court may reverse the denial of her first motion to reopen because her stipulation to dismiss was obtained by concealment, misrepresentation and fraud. *Amberg* recognizes the court's power to suspend enforcement of a judgment upon a showing that the underlying administrative order was procured through willful perjury. It does not expand the commission's time for reopening a decision. The commission's jurisdiction is set by the legislature, and is not subject to expansion by the courts.

Therefore, in this case, the Commission's jurisdiction to act on Complainant's request extended only through February 15, 1995 -- twenty days from our January 26, 1995, Order

No. 28295-A

Dismissing Complaint. Having failed to act, we lost jurisdiction over the matter. Thus, we are compelled to deny the request.

Given under our hands and seal at the City of Madison, Wisconsin,
this 7th day of May 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

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

Paul A. Hahn /s/
Paul A. Hahn, Commissioner