

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
ELMBROOK SCHOOL DISTRICT
Involving Certain Employes of
ELMBROOK SCHOOL DISTRICT

Case 32
No. 52769 ME-780
Decision No. 28772-A

Appearances:

Brendel Law Offices, Attorneys at Law, by Mr. John K. Brendel, 595 North Barker Road, Suite 300, Brookfield, Wisconsin 53045, appearing on behalf of the Association of Custodians and Maintenance Employees.

Davis & Kuelthau, S.C., Attorneys at Law, by Ms. Nancy L. Pirkey, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of Elmbrook School District.

ORDER DENYING PETITION FOR REHEARING

On July 15, 1996, the Association of Custodians and Maintenance Employees filed a Petition for Rehearing in the above matter pursuant to Sec. 227.49, Stats., asserting that the Commission made errors of law and fact in a June 26, 1996, decision when it concluded that the occupants of the position of Head Custodian are supervisors within the meaning of Sec. 111.70(1)(o), Stats.

The Elmbrook School District did not file any written position with the Commission regarding the Petition.

The Commission has reviewed the Petition and concludes that its June 26, 1996, decision did not contain errors of fact or law and that its resulting conclusion regarding the supervisory status of the Head Custodians was correct.

NOW, THEREFORE, the Commission makes and issues the following

ORDER 1/

The Petition for Rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin,
this 14th day of August, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

1/ 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 1/ continues on the next page.)

(Footnote 1/ 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 August 15, 1996); 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.