

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 139,

Complainant,

vs.

PROELL PLUMBING CO., INC.,

Respondent.

Case 1

No. 54213 Ce-2174

Decision No. 28887-B

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin, 53212, by Mr. John J. Brennan, on behalf of International Union of Operating Engineers, Local 139.

Mr. Gregory J. Proell, 10343 West Fond du Lac Drive, Milwaukee, Wisconsin, 53224, on behalf of Proell Plumbing Company, Inc.

NOTICE OF COMMISSION'S FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER PURSUANT TO SECTION 111.07(5), STATS.

On March 21, 1997, Examiner David E. Shaw issued Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above-entitled matter determining that the above-named Respondent had committed unfair labor practices within the meaning of Secs. 111.06(1)(d) and (f), Stats. He therefore ordered the Respondent to cease and desist from such conduct and to take certain affirmative action.

The Examiner also determined that Respondent had not committed certain other unfair labor practices within the meaning of Sec. 111.06(1)(f), Stats. He therefore dismissed these complaint allegations.

Within the statutory period set forth in Sec. 111.07(5), Stats. 1/ no petition for review of

(Footnote 1 continues on page 2)

1/ Respondent did not receive the decision until April 17, 1997. Section 111.07(5), Stats.,

No. 28887-B

said Findings of Fact, Conclusions of Law and Order was filed and no intervening order by the Examiner or the Commission was issued.

NOW, THEREFORE, the Commission issues the following

NOTICE 2/

(Footnote 1 continued from page 1)

provides in pertinent part:

If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order, it may extend the time another 20 days for filing a petition with the commission.

Pursuant to the above quoted statutory language, we are persuaded Respondent had through April 30, 1997, (i.e., 40 days from March 21, 1997, issuance of the Examiner's decision) to file a petition for review.

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 page 3)

(Footnote 2 continued from page 2)

No. 28887-B

By operation of Sec. 111.07(5), Stats., Examiner Shaw's 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 May 1, 1997.

Within 20 days of the date of this Notice, Respondent shall advise the Commission in

(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.

No. 28887-B

writing regarding the action it is taking to comply with the Commission's Order.

Given under our hands and seal at the City of Madison, Wisconsin,
this 15th 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