

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

OSHKOSH PROFESSIONAL POLICE OFFICERS  
ASSOCIATION,

Complainant,

vs.

DAVID W. ERICKSON and THE CITY OF  
OSHKOSH,

Respondents.

Case 267

No. 54297 MP-3196

Decision No. 28971-B

Appearances:

Mr. Frederick J. Mohr, Attorney at Law, 414 East Walnut Street, Suite 216, PO Box 1015,  
Green Bay, Wisconsin, 54305, for the Complainant.

Mr. William G. Bracken, Coordinator of Collective Bargaining Services, Godfrey & Kahn,  
S.C., Attorneys at Law, 219 Washington Avenue, PO Box 1278, Oshkosh,  
Wisconsin, 54902-1278, for the Respondents.

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

On August 18, 1997, Examiner Karen J. Mawhinney issued Findings of Fact, Conclusions of Law and Order, with Accompanying Memorandum, in the above-entitled matter determining that the above-named Respondents had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)1, Stats. She therefore ordered Respondents to cease and desist from such conduct and to take certain affirmative action. 1/

The Examiner also concluded the Respondents had not committed certain other alleged violations of Secs. 111.70(3)(a)1, 2, 3, and 5, Stats., and therefore dismissed those portions of the complaint.

---

1/ By letter dated August 29, 1997, Respondents advised the Examiner of the action they were taking to comply with her order.

Within the 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.

NOW, THEREFORE, the Commission issues the following

NOTICE 2/

---

2/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Examiner 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.

Section 227.49, Stats. provides in pertinent part:

(1) A petition for rehearing shall not be a 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. . . .

Section 227.53, Stats. provides in pertinent part:

(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)1. Proceedings for review shall be instituted by serving a petition therefor 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. . . .

2. 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

(Footnote 2 continues on page 3)

No. 28971-B

---

(Footnote 2 continued from page 2)

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.

3. 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(5)(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. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent. . . .

(c) A copy 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 each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

**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 Examiner; 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. 28971-B

By operation of Sec. 111.07(5), Stats., Examiner Mawhinney'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 September 9, 1997.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of September 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