

STATE OF WISCONSIN
CIRCUIT COURT
RACINE COUNTY

RACINE EDUCATION ASSOCIATION,

Petitioner,

-vs-

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION, RACINE UNIFIED
SCHOOL DISTRICT, and the
BOARD OF EDUCATION OF THE
RACINE UNIFIED SCHOOL DISTRICT,

Respondents.

DECISION

Case No. 98-CV-1422

[Decision No. 29195-C]

[NOTE: This document was re-keyed by WERC. Original pagination has been retained.]

By petition filed 20 August 1998 the Racine Education Association (REA, hereinafter) seeks review of the decision in No. 29195-B dated 21 July 1998, of the Wisconsin Employment Relations Commission. The Petitioner, REA, alleges that the Wisconsin Employment Relations Commission erroneously concluded that the Racine Unified School District had not violated any provisions of the Municipal Employment Relations Act by entering into an insurance contract for disability insurance which is alleged to not contain comparable provisions as required.

The Racine Unified School District (District, hereinafter) and the Board of Education of Racine Unified School District (Board, hereinafter) entered an appearance and on 7 December 1998 filed a motion to dismiss the

application and petition.

The Court set the matter for hearing. At the time of hearing the parties both appeared by telephone conference call; and at the conclusion of the hearing the Court took the matter under advisement for decision on the motion.

The issue involved is one of some simplicity but of some importance as the Respondents allege the Court lacks jurisdiction over the subject matter due to a failure to meet service requirements on parties as required by Sec. 227.53(1)(c) Stats.

Sec. 227.53(1)(c) provides that:

“A copy of any petition for review of the Commission’s decision shall (emphasis added) 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.”

The affidavits submitted to the Court clearly establish that REA did not serve the Racine Unified School District as required by statute within 30 days.

The file reflects that a copy of the petition was sent to the attorneys for the District on or about 30 October 1998.

The statutory requirement of service has been construed and found to be essential to the Circuit Court’s subject matter jurisdiction. County of Milwaukee v LIRC,

142 Wis.2d 307 (Ct. App. 1987).

The Petitioner has referred the Court to several cases which permitted the judicial review to proceed on several bases. The several cases cited by the Petitioner had language in a dissent opinion or the Court found a waiver to the service rule due to special circumstances.

The facts in this case are simply that there was noncompliance with required service for the Circuit Court to obtain jurisdiction of the subject matter.

The Court grants the motion to dismiss the application. This Court lacks subject matter jurisdiction due to the lack of appropriate and required service. Attorney for the Board/Respondent shall submit to the Court an order pursuant to this decision within 15 days of the date this decision is rendered.

Dated this 28th day of May, 1999.

BY THE COURT:

Allan B. Torhorst /s/

Hon. Allan B. Torhorst