

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARK A. CHRISTENSEN, Complainant.

vs.

CITY OF RACINE, Respondent.

Case 524
No. 55281
MP-3312

Decision No. 29370-A

Appearances:

Weber & Cafferty, S.C. by **Attorney Robert K. Weber**, 2932 Northwestern Avenue, Racine, Wisconsin 53404, appearing on behalf of Mark A. Christensen.

Long & Halsey Associates, Inc., by **Attorney William R. Halsey**, 8330 Corporate Drive, Racine, Wisconsin 53406, appearing on behalf of the City of Racine.

ORDER

On June 12, 1997, Mark A. Christensen filed a complaint with the Wisconsin Employment Relations Commission alleging that the City of Racine had committed a prohibited practice within the meaning of Sec. 111.70(3)(a)3, Stats. by failing to promote Christensen to the position of Lieutenant in the City of Racine Police Department because Christensen had previously raised issues regarding alleged inequities in the Department's promotional process.

Thereafter the parties asked that I be appointed Examiner to determine whether under the facts alleged in the complaint, Secs. 111.70(2) and (3)(a)3, Stats. have any application. The record was closed on March 9, 1998 upon receipt of a stipulation and statement of issue.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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Having considered the matter, I am satisfied that because Christensen is a supervisor within the meaning of Sec. 111.70 (1)(o)1, Stats., he has no rights under Sec. 111.70(2), Stats. and thus that the failure to promote him cannot violate Sec. 111.70(3)(a)3, Stats.

Therefore, the complaint is dismissed.

Dated at Madison, Wisconsin, this 6th day of May, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis /s/
Peter G. Davis, Examiner

CITY OF RACINE (POLICE)

MEMORANDUM ACCOMPANYING ORDER

The parties have asked whether a supervisor who is denied a promotion to another supervisory position has any rights under Secs. 111.70(2), Stats. and Sec. 111.70(3)(a)3, Stats.

By its terms, Sec. 111.70(2), Stats. creates rights which are limited to "municipal employees." 1/ The parties stipulated that Christensen is a "supervisor" within the meaning of Sec. 111.70(1)(o)1, Stats. 2/ Therefore, he is not a "municipal employee" within the meaning of Sec. 111.70(1)(i), Stats. 3/ Therefore, Christensen has no rights under Sec. 111.70(2), Stats.

1/ Section 111.70(2) provides in pertinent part:

(2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall have the right to refrain from any and all such activities except that employees may be required to pay dues in the manner provided in a fair-share agreement.

2/ Section 111.70(1)(o)1, Stats. provides:

(o) "Supervisor" means:

1. As to other than municipal and county fire fighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

3/ Section 111.70(1)(I), Stats. provides:

(i) "Municipal employee" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employee.

A necessary element of an alleged violation of Sec. 111.70(3)(a)3, Stats. is that a "municipal employe" has exercised rights created by Sec. 111.70(2), Stats. MUSKEGO-NORWAY C.S.J.S.D. NO. 9 V. WERB, 35 Wis. 2D 540 (1967); GREEN BAY SCHOOL DISTRICT, DEC. NO. 28871-B (WERC, 4/98). Because Christensen is not a "municipal employe", he cannot establish this necessary element and thus cannot establish a violation of Sec. 111.70 (3)(a)3, Stats. Therefore, I have dismissed the complaint.

Because Christensen is a supervisor, his complaint does not raise the issue presented in STATE OF WISCONSIN, DEC. NO. 15699-B (WERC, 11/81) where a non-supervisory employe was denied a promotion to a supervisory position for having engaged in lawful concerted activity.

Dated at Madison, Wisconsin, this 6th day of May, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis /s/

Peter G. Davis, Examiner