

STATE OF WISCONSIN  
CIRCUIT COURT Branch 6  
DANE COUNTY

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CITY OF MILWAUKEE,

Petitioner,

vs.

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Respondent,

and

ASSOCIATION OF LAW ENFORCEMENT  
ALLIED SERVICES PERSONNEL, LOCAL  
218, IUPA, AFL-CIO;  
MILWAUKEE POLICE ASSOCIATION, and  
AFSCME DISTRICT COUNCIL 48, AFL-CIO,

Interested Parties.

MEMORANDUM DECISION AND ORDER

(Mot. to Dismiss)

Case No. 99-CV-0769

[Decision No. 29547-A]

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

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The City of Milwaukee petitions for judicial review of a decision by the Wisconsin Employment Relations Commission (WERC). The interested parties move to dismiss the petition on the grounds that it was filed in the wrong court. The Court concludes that venue in Dane County Circuit Court is improper and orders the action certified to Milwaukee County Circuit Court.

Milwaukee's petition alleges that on February 24, 1998, it filed a petition with WERC seeking a declaratory ruling as to its duty to bargain with interested party Milwaukee Police Association (MPA) on pension benefits and other issues. WERC allowed interested parties Association of Law Enforcement Allied Services Personnel (ALEASP) and AFSCME to intervene on the pension benefits issue. On March 3, 1999, WERC held against Milwaukee, ruling that MPA's proposal could be funded from existing assets in the

Milwaukee Employes' Retirement System without violating the constitutional rights of other participants in that system.

Milwaukee filed a petition for judicial review in Dane County Circuit Court on April 2, 1999. Interested parties MPA, ALEASP and AFSCME all move to dismiss the petition on the grounds that it should have been filed in Milwaukee County Circuit Court. WERC has not taken an official position.

Chapter 227, Stats., governs judicial review of WERC's decisions involving municipal employment relations. Secs. 111.70(4) (a), 111.07(8), Stats. Chapter 227 Stats., confers subject matter on all circuit courts to review administrative decisions. Shopper Advertiser, Inc. v. DOR, 117 Wis.2d 223, 230 (1984). Though bringing a judicial review in an improper circuit court does not result in a lack of subject matter jurisdiction, the improper court will lack competence to render a valid judgment. 117 Wis.2d at 231.

Sec. 227.53(1) (a)3, Stats., provides in pertinent part:

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. . . . .

The parties have not stipulated to holding judicial review proceedings here and the City of Milwaukee, a municipal body, is not an agency within the meaning of sec. 227.01(1), Stats.

See

State ex rel. Wasilewski v. Board of School Directors, 14 Wis.2d 243, 263-64 (1961). Thus, the question is whether Milwaukee is a “resident” which must commence proceedings in Milwaukee County Circuit Court or a “nonresident” which must commence proceedings in Dane County.

The term “resident” has long embraced both real persons and corporate entities, such as private corporations. E.g, State ex rel. Atty. Gen. v. Milwaukee, L. S. & W. Ry. Co., 45 Wis. 579, 593 (1878); State ex rel. Webster Mfg. Co. v. Risjord, 201 Wis. 26, 27 (1930). The Wisconsin Supreme Court “has repeatedly held that a city is a municipal corporation.” City of Madison v. Hyland, Hall & Co., 73 Wis.2d 364, 370 (1976) (emphasis added). Indeed, Milwaukee’s own city charter identifies it as a municipal corporation. Milw. City Charter, sec. 1-01.

Section 227.53(1)(a)3, Stats., distinguishes between “residents” and “nonresidents”, not residents who are real persons and non-human entities. The obvious and sole rationale for the distinction between residents and non-residents in sec. 227.53(1)(a)3, Stats., is that it allows non-resident petitioners, who do not reside in any Wisconsin county, to have a venue for judicial review. Compare Black’s Law Dictionary at 1309 (6<sup>th</sup> ed. 1990) (a “resident” is a person “who occupies a dwelling within the State”) with Id. at 1057 (a “non-resident” is [o]ne who does not reside within jurisdiction in question; not an inhabitant of the state of the forum.”). A reasonable person reading the statute

would not understand a municipal entity like the city of Milwaukee to be a “nonresident” of Wisconsin.

Milwaukee notes the affidavit of WERC’s attorney, ¶4, which asserts that Milwaukee is neither a resident nor a non-resident within the meaning of sec. 227.53(1)(a)3, Stats. However, “judicial review of ‘decisions and orders of administrative agencies’ must be had ‘as set forth in ch. 227.’” Metro. Greyhound Mgt. Corp. v. Racing Bd., 157 Wis.2d 678, 697-98 (Ct. App. 1990). It is simply incredible to believe that the legislature would set up an exclusive procedure for judicial review only to have that procedure be completely silent as to the proper venue for a large class of petitioners, private or municipal corporations, especially when doing so requires disregarding more than a century’s worth of precedent which clearly applies the concept of residence to corporate entities.

Section 227.53(1)(a)3, Stats., is clearly intended to govern venue in all chapter 227 judicial reviews unless some other statute expressly governs. It creates three categories--residents, non-residents and agencies. As noted, Milwaukee as a municipality is not an agency, nor does it contend to be. Thus, it must be either a resident or a non-resident. Milwaukee does not reside outside of Wisconsin, nor does it reside in Dane County. Venue here is improper.<sup>1</sup>

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<sup>1</sup>Milwaukee contends that it is not a resident of Milwaukee County because it has territory in other counties. However, Milwaukee’s petition, ¶1, alleges a Milwaukee County address. At any rate, Milwaukee is neither a non-resident of Wisconsin nor a resident of Dane County, the pertinent considerations here.

Without citing any other authority, Milwaukee contends that venue here is proper under sec. 801.50(3), Stats., which provides that Dane County is the proper venue for actions against state agencies. However, the rules of civil procedure apply to chapter 227 reviews only where they do not conflict with the provisions of chapter 227. State ex rel. town of Delavan v. Walworth County Circuit Court, 167 Wis.2d 719, 727 (1992). Unlike the venue statute at issue in Shopper Advertiser, 117 Wis.2d at 231, sec. 801.50(3), Stats., does not specifically apply to reviews of administrative decisions in general or municipal employment decisions of WERC in particular. To the contrary, chapter 227 applies by specific law. Secs. 111.70(4)(a), 111.07(8), Stats. Because applying sec. 801.50(3), Stats., here would create a conflict with sec. 227.53(1)(a)3, Stats., “the civil procedures must give way to the dictates of ch. 227.” Town of Delavan, 167 Wis.2d at 727.

Under sec. 807.07(2), Stats., circuit courts in which judicial reviews are erroneously filed may certify the case to the proper court “provided that the error arose from mistake.” See Shopper, 117 Wis.2d at 233. This rule of civil procedure does apply to judicial reviews brought in the wrong venue. Id. Because this Court does have subject jurisdiction, certification would not be made untimely because the time for filing in the proper venue had lapsed. Id., 117 Wis.2d at 235-36.

Unlike Shopper Advertiser, 117 Wis.2d at 235, this does not appear to be a case in which a petitioner, faced with a choice

between two potential forums and ambiguous laws, innocently chose the wrong venue. The interested parties present an affidavit from WERC's attorney which at least suggest that Milwaukee was attempting to forum shop and knew that the interested parties would not stipulate to venue in Dane County. Rice Aff., ¶¶2, 5. Milwaukee's position calls for unreasonably strained application of the statutes and principals involved. Nevertheless, there are no cases directly on point and, though Milwaukee may have been motivated to gain an advantage against its adversaries, the court does not see any evidence that arises to the level of bad faith. See Shopper Advertiser, 117 Wis.2d at 235. The Milwaukee city attorney did discuss the matter with WERC's attorney who did no more than indicate that he was probably wrong. See Rice Aff., ¶4. Moreover, dismissal is an extreme sanction for an error in venue where, as discussed, the Court's subject matter jurisdiction has been properly invoked. Thus, the Court will not dismiss the action, but will order it certified to Milwaukee County Circuit Court, the proper venue.

Accordingly,

ORDER

IT IS HEREBY ORDERED that the motions to dismiss of interested parties Association of Law Enforcement Personnel, Milwaukee Police Association and AFSCME are GRANTED to the extent that the Court rules that venue in Dane County Circuit Court is improper, but otherwise the motions are DENIED;

IT IS FURTHER ORDERED that the above-captioned action be CERTIFIED to Milwaukee County Circuit Court pursuant to sec. 807.07(2), Stats.

Dated, at Madison, Wisconsin, this 15<sup>th</sup> day of November, 1999.

BY THE COURT

Richard J. Callaway /s/

Richard J. Callaway, Judge  
Circuit Court, Branch 6

cc: Assistant City Attorney Thomas J. Beamish (Milwaukee)  
Assistant Attorney General David C. Rice (WERC)  
Attorney Jeffrey P. Sweetland (ALEASP)  
Attorney Laurie A. Eggert (MPA)  
Attorney Alvin R. Ugent (AFSCME)