

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
SOUTH MILWAUKEE EDUCATION ASSOCIATION
Involving Certain Employees of
SOUTH MILWAUKEE SCHOOL DISTRICT

Case 47
No. 60028
ME-1028

Decision No. 30277-A

Appearances:

Mr. Troy Hamblin, Executive Director, Council #10 WEAC, 13805 West Burleigh Road, Brookfield, Wisconsin 53005, appearing on behalf of the South Milwaukee Education Association.

Ms. Jennifer L. Sielaff, Director of Personnel and Administrative Services, South Milwaukee School District, 1225 Memorial Drive, South Milwaukee, Wisconsin 53172, appearing on behalf of the South Milwaukee School District.

ORDER DENYING PETITION FOR REHEARING

On February 7, 2002, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit in the above matter concluding that the Associate Principal for Activities and Athletics of the South Milwaukee School District was a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and thus should continue to be excluded from the collective bargaining unit represented by the South Milwaukee Education Association.

On February 27, 2002, the Association hand-delivered a copy of a Petition for Rehearing to the Wisconsin Employment Relations Commission.

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The Association subsequently filed a letter dated March 6, 2002, with the Commission regarding how and when the Association had filed the Petition for Rehearing. The March 6, 2002 letter included a copy of the petition with a Commission date stamp of February 27, 2002. By letter dated March 8, 2002, the Commission provided the District with a copy of the Association's March 6, 2002 letter and enclosure.

On March 18, 2002, the District filed a statement in opposition to the Petition asserting among other matters that it had not received a copy of the Petition for Rehearing until it received the March 8, 2002 letter and enclosures from the Commission.

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.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

The Petition for Rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of March, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

SOUTH MILWAUKEE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR REHEARING

We begin with the question of whether a valid Petition was timely served on the Wisconsin Employment Relations Commission.

As reflected in the preface to our Order, we are satisfied that a Petition for Rehearing was hand-delivered to the Commission in a timely manner on February 27, 2002.

However, the document hand-delivered February 27, 2002, was a copy of the Petition. Thus, there is a question as to whether the absence of an original Petition precludes us from proceeding to consider the merits of the Petition.

Section 227.49(1), Stats., provides in pertinent part that “. . . Any person . . . may file a written petition for rehearing . . .”

Section 227.49(4), Stats., provides in pertinent part: “Copies of petitions for rehearing shall be served on all parties of record.” (Emphasis added)

From the contrast between the above-quoted statutory provisions, we conclude that the Petition filed with the Commission pursuant to Sec. 227.49(1), Stats., must be an original. 1/ Because we did not timely receive an original Petition, we do not have jurisdiction to decide the matter. 2/

1/ We also note that ERC 10.09 provides in pertinent part:

ERC 10.09 Form of documents other than correspondence.

. . .

(3) NUMBER OF COPIES; FORM.. Except as otherwise provided in these rules, any document or paper filed with the Commission, prior to or after hearing shall be submitted with 3 copies in addition to the original. All matter filed with the commission shall be printed, typed or otherwise legibly duplicated.

(4) SIGNATURE. The original of each document filed shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party, or by an officer of the party if it is a corporation or an unincorporated association.

(See footnote 2/ on page 4)

2/ If the petition had been correctly filed, we would have denied it because we are not persuaded that we made any material errors of law or fact and because the new evidence recited by the Association in its Petition is not sufficiently strong to reverse our conclusion that the Associate Principal is a supervisor. We note that the Association has the right to file a new petition for unit clarification if it believes that the facts upon which we based our decision have changed in a material way.

Dated at Madison, Wisconsin, this 21st day of March, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner