

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KAREN BISHOP, Complainant,

vs.

MILWAUKEE PUBLIC SCHOOLS

and

**SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 150**, Respondents.

Case 437
No. 65294
MP-4200

Decision No. 31602-F

Appearances:

Alan C. Olson, Alan C. Olson and Associates, S.C., 2880 South Moorland Road, New Berlin, Wisconsin 53151-3744, appearing on behalf of Complainant Karen Bishop.

Donald L. Schriefer, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, appearing on behalf of Respondent Milwaukee Public Schools.

Ying Tao Ho, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Respondent Service Employees International Union Local 150.

ORDER GRANTING PETITION FOR REHEARING

On January 2, 2007, the Wisconsin Employment Relations Commission issued an Order on Review of Examiner's Decision (Decision No. 31602-C) wherein the Commission concluded that: (1) Respondent Service Employees International Union Local 150 (Local 150) had failed to fulfill its duty of fair representation by the manner in which it processed the discharge grievance of Karen Bishop and had thereby committed a prohibited practice within

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the meaning of Sec. 111.70 (3)(b) 1, Stats.; and (2) given Local 150's breach of the duty of fair representation, the Commission will exercise its jurisdiction under Sec. 111.70(3)(a)5, Stats. to determine whether the Respondent Milwaukee Public Schools (MPS) violated a collective bargaining agreement by discharging Bishop.

To remedy the prohibited practice committed by Local 150, the Commission ordered Local 150 to post a notice and to reimburse Bishop for the costs, including reasonable attorney's fees, if any, that she incurred when litigating the merits of her discharge grievance in the violation of contract prohibited practice proceeding.

On March 21, 2007, the Commission issued an Order which gave Examiner Daniel J. Nielsen final authority to issue the Commission's decision as to the issue of whether MPS violated Sec. 111.70(3)(a) 5, Stats, by discharging Bishop. In that Order, the Commission further stated that it:

. . . retains decision-making authority over issues as to compliance with its Order in Decision No. 31602-C including Respondent Local 150's obligation to reimburse Ms. Bishop for the costs, including reasonable attorney's fees, that she incurs when litigating the merits of her discharge grievance before Examiner Nielsen . . .

On May 20, 2008, Examiner Nielsen issued Findings of Fact, Conclusions of Law and Order wherein he concluded that MPS had violated a collective bargaining agreement by discharging Bishop and thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 5, Stats. To remedy this prohibited practice, the Examiner ordered MPS to reinstate Bishop and make her whole. In his decision, the Examiner rejected an MPS contention that Local 150 should pay a portion of the back pay liability. When doing so, the Examiner commented that:

The Commission's prior order addressed the remedy for the Union's breach, and limited it to the costs of litigation.

On June 9, 2008, MPS filed what the Commission denominated as a petition for rehearing pursuant to Sec. 227.49, Stats. only as to the issue of whether Local 150 should pay a portion of the back pay ordered by Examiner Nielsen. On June 19, 2008, Local 150 filed a response to the petition for rehearing arguing it should be denied because it does not meet the procedural requirements of the statute and because it lacks merit.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The petition for rehearing is granted for the sole purpose of allowing the Commission to determine whether it committed an error of fact and/or law by failing to require that Local 150 contribute to Bishop's back pay.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of July, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

MILWAUKEE PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING ORDER
GRANTING PETITION FOR REHEARING

We have granted the petition for rehearing because we conclude that the MPS filing was sufficient in the context of this case to meet the requirements of Sec. 227.49, Stats. and because we wish to determine whether we erred as to the issue of a Local 150 contribution toward Bishop's back pay.

As to the procedural requirements of Sec. 227.49 (1), Stats., Local 150 correctly notes that a petition for rehearing is to: "Specify in detail the grounds for the relief sought and supporting authorities." Because the parties fully litigated the contribution issue before Examiner Nielsen, we conclude that it is readily apparent what MPS believes are the grounds for relief and supporting authorities. Thus, we conclude that in the context of this litigation, the purposes behind the requirements of Sec. 227.49(1), Stats. have been met. Therefore, we have denied the Local 150 request that the petition be dismissed as procedurally deficient. However, to allay the process concerns expressed by Local 150, we ask that MPS file any additional argument (beyond that provided to Examiner Nielsen) on or before July 25, 2008 and then ask Local 150 and Bishop to make any response on or before August 15, 2008.

As to the merits of the petition, we have granted the petition to allow us to determine whether we erred as to the issue of a Local 150 contribution toward Bishop's back pay.

Dated at Madison, Wisconsin, this 8th day of July, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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