



and Respondent shall have until on or before May 17, 1976, in which to file briefs in the matter of the Commission's review of the Examiner's decision if they so desire.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Howard S. Bellman

Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER

In its Objection to the Notice of Review issued by the Commission the Respondent alleges as follows:

"A. On the basis of the above-mentioned Statute, the Commission is without authority to review on its own motion without cause.

B. The Statute requires the Commission to base its review on its own motion on the grounds of mistake or upon grounds of newly discovered evidence, and the Notice of Review fails to set forth with specificity any mistake or any newly discovered evidence.

C. That the Notice of Review is not properly filed in that the Notice of Review, although being dated the 21st day of April, 1976, was not duly mailed until April 22, 1976 as set forth in the Affidavit attached hereto.

D. That the Commission, by its failure to specifically identify any mistake or newly discovered evidence, is now beyond the 20-day time period to so do, and thus is without jurisdiction to review the same on its own motion."

In issuing its Notice of Review the Commission was not acting pursuant to its authority set out in Section 111.07(6) of the Wisconsin Statutes to set aside, modify or change any Order, Finding, or Award because of any mistakes therein or upon the grounds of newly discovered evidence. The Notice of Review was intended to stay the decision, including the Order, of the Examiner to allow the Commission more time in which to review his decision. As was clearly noted in the Notice of Review the purpose of the review is to determine whether the Commission will adopt, set aside, reverse or modify the Examiner's Findings of Fact, Conclusions of Law and Order and/or the Memorandum accompanying same.

Although the Commission is concerned that there may be a possible inconsistency between the Examiner's Findings and certain statements in his Memorandum, particularly the first paragraph on Page 8, it has not had sufficient time to determine its disposition of the Examiner's decision.

The Commission's Notice of Review in the matter was issued on April 21, 1976. In the affidavit filed in support of the Respondent's Objection the Respondent alleges that the envelope in which its copy of the Notice of Review was contained was post-marked April 22, 1976. The Commission's records indicate that the Notice of Review was not only issued by the Commission on April 21, 1976, but was placed in the United States mail on the same day, pursuant to the Commission's practice of mailing all official documents on the same day that they are issued. In any event there is no requirement in the statute that official Commission documents be post-marked the same day that they are issued.

Even though neither party filed a petition for review of the Examiner's decision within the time limit set by Section 111.07(5)

the Commission has determined that the parties should be afforded the opportunity to file a brief in the matter, if they so desire, to aid the Commission in its review.

Dated at Madison, Wisconsin this 7th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner