

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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FRANCIS S. SEVERSON,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case I
	:	No. 19374 Ce-1616
	:	Decision No. 13828-D
HARRY VINER, INC.,	:	
	:	
Respondent.	:	
	:	

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ORDER DENYING MOTION TO RECONSIDER

Examiner Peter G. Davis having, on April 1, 1976, issued his Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled matter; and the Commission having, on April 21, 1976, issued a Notice of Review 1/ wherein it notified the parties that the Commission was in the process of reviewing the entire record in the matter and the Examiner's Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum, and further notifying the parties that assuming that neither of the parties timely filed a Petition to Review the Examiner's decision, the Examiner's Findings of Fact, Conclusions of Law and Order and Accompanying Memorandum would not be considered as the Commission's Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum, as would otherwise result pursuant to Section 111.70(5), Wisconsin Statutes; and neither of the parties having timely filed a Petition to Review the Examiner's decision; and the Respondent having on April 27, 1976, filed an objection to said Notice of Review, requesting that said Notice be stricken, together with a Motion in the Alternative that the Commission specify any items of mistake or newly discovered evidence relied upon by the Commission in issuing said Notice of Review, and to afford the Respondent an opportunity to file a brief with respect to any such items; and the Commission having, on May 7, 1976, issued an Order 2/ denying said Motion to Strike and granting, in part, the Motion in the Alternative; and the Respondent having, on May 11, 1976, filed a Motion to Reconsider, wherein it alleged that the Commission had acted beyond its statutory authority by staying the decision of its Examiner and that the opportunity to file a brief in the matter was meaningless without a delineation of the matters under review by the Commission; and the Commission being satisfied that said Motion to Reconsider be denied;

NOW, THEREFORE, it is

ORDERED

1. That the Motion to Reconsider filed by the Respondent herein be, and the same hereby is, denied; and

1/ Decision No. 13828-B 4/21/76.

2/ Decision No. 13828-C 5/7/76.

2. That the Complainant and Respondent shall have until on or before May 31, 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 20th  
day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Herman Torosian*  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER DENYING MOTION TO RECONSIDER

It is the Respondent's contention that when an Examiner appointed by the Commission, pursuant to Section 111.07(5), Wisconsin Statutes, issues Findings of Fact, Conclusions of Law and Order, the Commission has no authority to review said Findings of Fact, Conclusions of Law and Orders and must accept said Findings of Fact, Conclusions of Law and Orders as its own unless a Petition to Review said Findings of Fact, Conclusions of Law or Order is filed by a party to the proceeding, or unless the Commission is satisfied that the provisions of 111.07(6) apply because of a mistake or newly discovered evidence. In denying the Respondent's Motion to Strike the Commission's Notice of Review, the Commission attempted to make it clear that, contrary to the Respondent's theory that the Commission is without such authority, the Commission acted pursuant to its statutory responsibility to insure that the decision of one of its Examiners correctly applied the law to the facts presented. If the Respondent's theory of the limitations on the Commission's powers is correct, the Commission would be required to adopt as its own decision, the decision of an Examiner and presumably defend same in court, even if it did not believe that the Examiner correctly applied the law to the facts presented. Therefore, we do not so interpret the statutory provisions in question.

In the Memorandum Accompanying our Order denying the Respondent's Motion to Strike, the Commission identified that aspect of the Examiner's decision which was the source of the Commission's concern. In the first full paragraph on page eight of the Examiner's Memorandum, the Examiner makes certain statements which raise the possibility that there is an inconsistency between his rationale and the conclusion that the Respondent did not act discriminatorily in its decision to layoff the Complainant. Upon review of the entire record, the Commission will be in a position to determine whether the Examiner correctly applied the law to the facts presented.

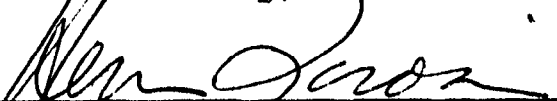
Dated at Madison, Wisconsin this 20th day of May, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner