STATE OF WISCONSIN

DEFORE INS WISCONSIN EMPLOIMEN	T RELATION	5 COMMISSION
SHERRY PESCH AND WEYAUWEGA EDUCATION	:	
ASSOCIATION,	• • •	
Complainants,	:	
VS.	:	Case II No. 20183 MP-578 Decision No. 14373-C
WEYAUWEGA JOINT SCHOOL DISTRICT NO. 2; BOARD OF EDUCATION OF WEYAUWEGA JOINT	•	
SCHOOL DISTRICT NO. 2,	:	
Respondents.	:	
	:	

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ORDER DENYING OBJECTIONS AND SETTING BRIEFING SCHEDULE

The Commission having, on October 15, 1976, issued an order wherein it appointed Ellen J. Henningsen as an Examiner to issue Findings of Fact, Conclusions of Law and Order in the above-entitled matter, pursuant to Sections 111.70(4) and 111.07, Stats.; and said Examiner having, on June 17, 1977, issued her Findings of Fact, Conclusions of Law and Order in the matter, wherein she found that the above-named Respondents had not committed any prohibited practices as alleged; and the Complainants' attorney having, on July 5, 1977, timely filed a petition for review of said Findings of Fact, Conclusions of Law and Order, pursuant to Section 111.07(5), Stats., but having failed to timely file a copy of same on the Respondents' attorney, pursuant to ERB 12.09(1) Wis. Admin. Code; and Complainants' attorney having requested the opportunity to file a brief in support of their petition and that they be given until August 15, 1977 in which to do so; and the Respondents, by their attorney, having objected to the Commission's consideration of said petition because a copy thereof was not timely served on them as required by the Commission's rules; and Respondents having further objected to the Complainants' request that they be given until August 15, 1977 in which to file their brief; and the Commission having considered said objections and being fully advised in the premises, makes and issues the following

ORDER

1. The Respondents' objection to the Commission's consideration of the Complainants' petition for review because of the Complainants' failure to comply with ERB 12.09(1) is hereby denied.

2. The Complainants shall have until August 15, 1977 in which to file a brief in support of their petition; and

3. The Respondents are hereby given until August 26, 1977 in which to file a reply brief if they so desire.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

wreynon By Morris Slavney, Chairman lerb Charles D. Hoornstra, Commissioner

WEYAUWEGA JOINT SCHOOL DISTRICT NO. 2, II, Decision No. 14373-C

ORDER DENYING OBJECTIONS AND SETTING BRIFFING SCHEDULE

On July 5, 1977, the Commission received a copy of the Complainants' Petition for Review. The transmittal letter indicated that a copy had been sent to Counsel for the Respondents. On July 13, 1977, Counsel for the Respondents received their copy of the petition which had apparently been delayed in the mails due to missing postage. In the meantime, the Respondents objected to the Complainants' failure to comply with ERB 12.09(1), which requires simultaneous service of petitions for review on all parties to the proceeding 1/ and the Respondents have not withdrawn said objection.

The requirement that a copy of any petition for review be simultaneously served on other parties is not jurisdictional. Section 111.07(5) Stats. merely requires that the petition be filed with the Commission within 20 days after the mailing of the Examiner's order and the Complainants have complied with that statutory requirement. The requirement in ERB 12.09(1) that all other parties be served with a copy of any petition for review is intended to give other parties of record notice that such a petition has been filed and to advise them as to the content of any such petition. The Respondents have not alleged that they were in any way prejudiced by the untimely receipt of a copy of the Complainants' petition. When a petition for review is filed under Section 111.07(5), the Commission is obligated to review the evidence submitted in determining whether to affirm, reverse, set aside or modify the Examiner's findings The Respondents are not bound by the findings or order of the or order. Examiner any more than the Commission is bound by such findings or order. Therefore, the failure of the Respondents to file a petition, to the extent that such failure was attributable to lack of notice as to the Complainants' petition, has not in any way prejudiced the Respondents' rights.

The Respondents' objection to the Complainants' request that they be given until August 15, 1977 to file a brief is based on the effect granting such a request would have on the Commission's ability to act on such petition "within 45 days after the filing of such petition". Apparently, it is the Respondents' assumption that said provision is mandatory rather than directory, and that granting such a request would not have the effect of tolling the 45-day period. The Commission is satisfied that the provision in question is directory rather than man-

1/ "ERB 12.09 Review of findings of fact, conclusions of law and order issued by single member or examiner. (1) RIGHT TO FILE, TIME. Within 20 days from the date that a copy of the findings of fact, conclusions of law and order of the single member or examiner was mailed to the last known address of the parties in interest, any party in interest, who is dissatisfied with such findings of fact, conclusions of law and order, may file a written petition with the commission, and at the same time cause copies thereof to be served upon the other parties, to review such findings of fact, conclusions of law and order. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings of fact, conclusions of law and order, it may extend time another 20 days for filing the petition for review." datory 2/ The Commission has always granted reasonable requests for the filing of written arguments in support of petitions filed under Section 111.07(5) and the subsequent enactment of Section 227.09(2) obligates it to do so. Consequently, we have granted the Complainants' request that they be given until August 15, 1977 in which to file their brief.

Dated at Madison, Wisconsin this 19th day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ILONA Lavre By Slavney, Chairman

Commissioner

2/ Cf. Muskego-Norway School District No. 9, 32 Wis. 2d 478 (1967).