

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case II
No. 20183 MP-578
Decision No. 14373-C

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING OBJECTIONS AND SETTING BRIEFING 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requires simultaneous service of petitions for review on all parties to the proceeding 1/ and the Respondents have not withdrawn said objection.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 or order. The Respondents are not bound by the findings or order of the 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

By Morris Slavney
Morris Slavney, Chairman

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

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