

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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|--|---|----------------------|
| In the Matter of the Petition of | : | |
| | : | |
| DISTRICT COUNCIL 48, AFSCME, AFL-CIO | : | Case LXX |
| | : | No. 20318 ME-1308 |
| For Clarification of a Bargaining | : | Decision No. 14494-B |
| Unit Consisting of Certain Employes of | : | |
| | : | |
| MILWAUKEE BOARD OF SCHOOL DIRECTORS | : | |
| | : | |

ORDER DENYING MOTION TO REOPEN AND FOR REHEARING

The commission, on December 9, 1976, having issued an Order Clarifying Bargaining unit in the above-entitled matter 1/ wherein it ordered that the collective bargaining unit represented by intervenor, Milwaukee Teachers Education Association, consisting of all school accountants employed by the Board of School Directors of the City of Milwaukee excluding supervisors, be clarified to include the position of school bookkeeper (junior high school); and the petitioner having by counsel filed a motion to reopen and for rehearing with the commission on January 7, 1977; and the commission being fully advised in the premises and being satisfied that said motion was not timely filed pursuant to the provisions of sec. 227.12, Stats., and should therefore be denied;

NOW, THEREFORE, it is

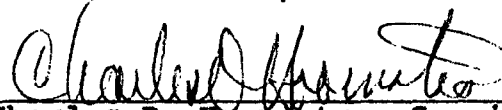
ORDERED

That the motion to reopen and for rehearing filed by the petitioner shall be, and hereby is, denied.

Given under our hands and seal at the City of Madison, Wisconsin this 20th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

1/ Decision No. 14494-A.

MEMORANDUM ACCOMPANYING ORDER DENYING
MOTION TO REOPEN AND FOR REHEARING

The petitioner sets out three grounds in support of its motion which read as follows:

"1. At the hearing held in the matter on May 20, 1976 Respondent, Milwaukee Board of School Directors, and Intervenor, Milwaukee Teachers Education Association were represented by legal counsel, but Petitioner, Milwaukee District Council 48, AFSCME, AFL-CIO was not so represented and Petitioner was therefore at a disadvantage in said hearing;

"2. That the record is replete with testimony to the effect that many of the duties involved in the newly created position of School Bookkeeper had not yet actually been performed, but were merely speculative and that therefore the commission's findings and Order are erroneously based on speculative facts (ZAKS, TR. 57-59)

"3. The Commission's findings are contrary to the weight of the evidence presented during the hearing on May 20, 1976."

The motion was filed in the commission's Milwaukee office, notwithstanding the provisions of ERB Sec. 10.09(2) which indicate that the motion should have been filed in the commission's Madison office. Pursuant to the provisions of ERB sec. 10.01, however, the commission finds that filing the motion in the commission's Milwaukee office on January 7, 1977, constituted substantial compliance with the intent of its rules. There being no showing of prejudice by the petitioner's selection of the place of such filing, the commission hereby waives strict compliance with the requirements of ERB sec. 10.09(2).

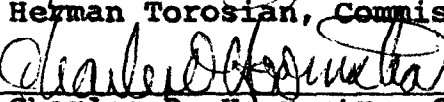
Section 227.12, Stats., 2/ requires that petitions for rehearing be filed within twenty days after the entry of an order. The instant petition was filed some twenty-nine days after the entry of the commission's order, and, therefore, is untimely. We have therefore dismissed the motion to reopen and for rehearing. 3/

Dated at Madison, Wisconsin this 20th day of January, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

2/ As amended by ch. 414, Laws of 1975.

3/ Our dismissal of the motion herein should not be construed to constitute a determination that any of the grounds set out in the motion, if true, would support the granting of rehearing pursuant to sec. 227.12, Stats., if the motion had been timely filed.