

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN P. KING,	:	
	:	
Complainant,	:	
vs.	:	Case II
	:	No. 20638 Ce-1679
ALBERT P. KELLER ^{1/} AND	:	Decision No. 14768-B
WISCONSIN HUMANE SOCIETY.	:	
	:	
Respondents.	:	
	:	

Appearances:

Podell & Ugent, Attorneys at Law by Mr. Alvin R. Ugent, for Complainant.
 Foley & Lardner, Attorneys at Law, by Mr. Michael I. Paulson, for Respondents.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

John P. King having filed a complaint on July 6, 1976^{2/} with the Wisconsin Employment Relations Commission; alleging that Albert P. Keller, herein Respondent Keller, and Wisconsin Humane Society, herein Respondent Employer, have committed unfair labor practices within the meaning of Section 111.06 of the Wisconsin Employment Peace Act, and the commission having appointed Stanley H. Michelstetter II, a member of its staff, to act as Examiner and to make and issue findings of fact, conclusions of law and orders as provided in Section 111.07(5) thereof; and hearing on said complaint having been limited to Respondents' affirmative defenses; and said hearing having been held at Milwaukee, Wisconsin, on November 4, 1976, before the examiner; and the parties having filed briefs the last of which was received November 12, 1976; and the examiner having considered the evidence and arguments of the parties, makes and files the following Findings of Fact, Conclusion of Law and Order

FINDINGS OF FACT

1. That Complainant John P. King is an individual who resides at 800 South 32nd Street, Milwaukee, Wisconsin.

^{1/} During the course of the hearing, pursuant to Complainant's agreement thereto, the examiner dismissed the instant complaint with respect to Respondent Keller.

^{2/} During the course of hearing, Complainant abandoned the changed allegations of its Amended Complaint.

2. That Respondent Wisconsin Humane Society is an employer within the meaning of the Wisconsin Employment Peace Act and that at all relevant times Respondent Albert P. Keller was its agent.

3. That at all relevant times prior to July 3, 1975, Respondent employed Complainant and that on July 3, 1975 it discharged him.

4. That pursuant to discussions between Complainant and his representative, Nick Ballas, Ballas caused the complaint cited in Finding of Fact 6, below, to be prepared and delivered to Complainant for his execution; that upon delivery thereof to Complainant, Ballas instructed him to return the executed complaint to Ballas by Friday, July 2, 1976 in sufficient time to have the same mailed before midnight at the end of July 2, 1976; that Complainant executed said complaint on July 2, 1976 and returned same to Ballas at 7:30 p.m. on the same date; that at 8:00 p.m. of the same day Ballas caused said complaint to be deposited in the United States mails, addressed to the Wisconsin Employment Relations Commission, at its Madison, Wisconsin office.

5. That all of the offices of the Wisconsin Employment Relations Commission closed at 4:30 p.m. on Friday, July 2, 1976 and did not reopen until 7:45 a.m., Tuesday, July 6, 1976; that on July 6, 1976 agents of the Wisconsin Employment Relations Commission in its Madison, Wisconsin office stamped the complaint cited in Finding of Fact 6, below, as having been received July 6, 1976.

6. That on July 6, 1976 Complainant filed with the Wisconsin Employment Relations Commission a complaint alleging that Respondents committed unfair labor practices by having discharged Complainant on July 3, 1975 for unlawful purposes.

CONCLUSION OF LAW

That since Complainant did not proceed within one year of the specific act or unfair labor practice he has alleged, Complainant no longer has a right to proceed with respect to said matters by virtue of Section 111.07(14) of the Wisconsin Employment Peace Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the examiner makes and files the following

ORDER

IT IS ORDERED, that the complaint filed by John P. King in the instant matter be, and the same hereby is, dismissed.

Dated at Milwaukee, Wisconsin, this 24th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER

The facts set forth in the findings of fact are undisputed, except for Finding of Fact 6, and will not be restated herein. Hearing on November 4, 1976 was limited to Respondent's affirmative defense that the instant complaint should be dismissed because it was filed more than one year after the alleged underlying occurrence. Respondent admits the instant complaint was received by the Commission on July 6, 1976, but essentially argues that it should be viewed as having been filed on the date of its mailing, July 2, 1976.^{3/}

Section 111.07(14)^{4/} provides as follows:

"The right of any person to proceed under this section shall not extend beyond one year from the date of the specific act of unfair labor practice alleged."

The foregoing limits all actions before this commission for unfair labor practices (prohibited practices under Section 111.70). Its purpose is to insure the prompt processing of complaints for violation of said statutes, thereby avoiding the litigation of stale issues. The method of administration selected is the establishment of an arbitrary one year time limit extinguishing the right to proceed^{5/} all of which matters have long since been stale. Thereunder, all risks of failure to "proceed" are allocated to the complaining party.

Neither party herein has challenged, and the examiner is satisfied, that the commission's long standing selection^{6/} of the date of filing of a complaint is appropriately considered the date of commencement of proceedings. Said selection properly preserves the statutory allocation of risks. Instead Complainant relies on Wis.

^{3/} Complainant also sought to have the commission apply ERB 10.08(1); however, said provision does not by its terms apply to interpretation of statutory time limits.

^{4/} All citations are to Wis. Rev. Stat. (1973), unless otherwise noted.

^{5/} Staats vs. Rural Mutual Casualty Insurance Company of Wisconsin
271, Wis. 543, @ pages 547-8.

^{6/} See for example Oscar Mayer & Co., Inc. (4051) 9/55, at page 5;
cf. Section 893.48.

Admin. Code Sec. ERB 10.08(4)^{7/} as the commission's policy for determining date of filing under Sec. 111.07(14). Assuming, without deciding, that the commission, for good cause shown might deem a complaint filed on the date of mailing for Section 111.07(14) purposes, it is clear the class of factors constituting "good cause" should be narrowly construed to comport with the statutory method of administration. Under the instant circumstances no cause whatsoever has been shown for Complainant's delay in seeking to commence action. Although not fully established, the record suggests that Ballas had been contacted prior to the close of the commission offices on July 2, 1976. It appears that both Complainant and Ballas were misinformed concerning when action is commenced for statutory purposes. No reason has been shown why the instant complaint could not otherwise have been timely filed. Certainly, both Complainant and Ballas knew or should have known on what dates or times the commission offices would have been open. Since all of the foregoing risks are properly allocated to Complainant under Section 111.07(14), no "good cause" exists. Accordingly, the instant complaint is today dismissed.

Dated at Milwaukee, Wisconsin, this 24th day of November, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
Stanley H. Michelstetter II
Examiner

^{7/} Wis. Admin. Code Sec. ERB 10.08(4) provides:

"Papers required by Section 111.70, Wis. Stats., these rules, or order of the commission, to be filed with the commission or its agent, or with a fact finder, shall be deemed filed upon actual receipt at the place specified for such receipt and must be received before the close of business of the last day of the time allowed for such filing or will not be accepted as timely filed unless good cause be shown warranting waiver, in which case the commission or fact finder, as the case may be, may upon receipt, deem the document filed at the time it was deposited in the United States mail or with a telegraph office."