

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOHN P. KING, :
 :
Complainant, :
 :
vs. : Case II
 : No. 20638 Ce-1679
 : Decision No. 14768-D
ALBERT P. KELLER AND :
WISCONSIN HUMANE SOCIETY, :
 :
Respondents. :
 :

ORDER DENYING MOTION AND
SCHEDULING FURTHER HEARING ON MERITS

The examiner having set aside previously issued Findings of Fact, Conclusions of Law and Order in the above-entitled matter and having afforded the parties an opportunity for further argument; and Respondent having filed its argument December 10, 1976 and Complainant having not filed further argument; and the examiner having determined that pursuant to S. 990.001 of the Wisconsin Statutes, the instant complaint was filed within the appropriate time under Section 111.07 (14) of the Wisconsin Statutes.

NOW, THEREFORE, it is

ORDERED

1. That Respondent's motion to dismiss be, and the same hereby is, denied.

2. That hearing in the above-entitled matter be resumed Monday, January 10, 1977 at 9:00 a.m. in Room 960 of the Milwaukee State Office Building, 819 North Sixth Street, Milwaukee, Wisconsin for the purpose of hearing all remaining issues thereon.

Dated at Milwaukee, Wisconsin, this 22nd day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO DISMISS AND
SCHEDULING FURTHER HEARING

On November 24, 1976, the examiner by Findings of Fact, Conclusion of Law and Order (Decision No. 14768-B) dismissed the instant complaint on the basis that it had not been timely commenced as required by Sub-section 111.07 (14)^{1/}. Thereafter, the existence of Section 990.001^{2/}

1/ All citations are to Wis. Rev. Stat. (1973) unless otherwise noted. Unless otherwise noted all statutes cited were in effect at all times since July 2, 1975. Section 111.07 (14) states:

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

2/ Section 990.001 as amended by Ch. 10, Laws of 1975 effective June 8, 1975, states in relevant part:

"CONSTRUCTION OF LAWS; RULES FOR. In construing Wisconsin laws the following rules shall be observed unless construction in accordance with a rule would produce a result inconsistent with the manifest intent of the legislature:

. . .

(4) TIME, HOW COMPUTED. (a) The time within which an act is to be done or proceeding had or taken shall be computed by excluding the first day and including the last; and when any such time is expressed in hours the whole of Sunday and of any legal holiday, from midnight to midnight, shall be excluded.

(b) If the last day within which an act is to be done or proceeding had or taken falls on a Sunday or legal holiday the act may be done or the proceeding had or taken on the next secular day.

(c) When the last day within which a proceeding is to be had or taken or an act done, which consists of any payment to or the service upon or the filing with any office, agent, agency, department or division of the state or of any county, city, village, town, school district or other subdivision of the state, of any money, return, statement, report, notice or other document, falls on a Saturday and the daily established official office hours of such payment is to be made or upon which such service is to be made or with which such return, statement, report, notice or other document is required to be filed, do not include any office hours thereof on such Saturday, said proceeding may be had or taken or such act may be done on the next succeeding day that is not a Sunday or a legal holiday.

(d) Regardless of whether the time limited in any statute for the taking of any proceeding or the doing of an act is measured from an event or from the date or day on which such event occurs, the day on which such event took place shall be excluded in the computation of such time.

(e) "Legal holiday" as used in this section means any statewide legal holiday provided in s. 256.17. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section.

was brought to the examiner's attention as possibly applying to the instant matter. On December 1, 1976 the examiner issued Order Setting Aside Findings of Fact, Conclusion of Law and Order (Decision No. 14768-C) and, by correspondence of the same date, provided both parties with ten days in which to respond to the aforementioned communication. The Findings of Fact previously rendered form the factual basis for determination of the instant motion and will not be unnecessarily restated herein.

On Tuesday, July 6, 1976 Complainant filed his complaint alleging Respondent had discharged him July 3, 1975 for unlawful purposes. The common law rule for calculating time periods varied, depending on whether the period was computed from a date or an event. If computed from a date, the day of the date was excluded and the last day included. If computed from an event, the day of the event was included and the last day excluded. Thus, under the common law rule, the close of business, Friday, July 2, 1976 would have been the last point in time for filing the instant complaint.^{3/} Subsection 990.001 (4) (a) and (d) taken together change the common law rule;^{4/} thereunder, the last date for filing would have been Saturday, July 3, 1976.

Respondent apparently concedes that Paragraph 990.001 (4) (c), if applicable, extends the time limit of Subsection 111.07 (14) from Saturday, July 3, 1976 to the date the complaint was actually filed, Tuesday, July 6, 1976. Instead, Respondent contends that Paragraph 990.001 (4) (c) does not apply to statutes limiting the right to proceed on statutory rather than common law causes of action. Alternatively, it argues Subsection 111.07 (14) does not require a proceeding to be had or taken or an act done. If it does, then it argues the act required or proceeding required to be had or taken does not consist of the enumerated items. If by its terms the paragraph could apply, it nonetheless urges that it conflicts with the policy implicit in the nature of the kind of limitation selected by the legislature.

By its terms Section 990.001 applies to all "Wisconsin laws . . . unless construction in accordance with a rule would produce a result inconsistent with the manifest intent of the legislature." Subsection 111.07 (14) is a "Wisconsin law." Since a potential complaining party loses a valuable right if he fails to proceed within the time specified

^{3/} Sidney vs. Jacob Dudenhoefer Co., 178 Wis. 191, at page 195, 188 N.W. 610 (1922) Estate of Brust 252 Wis. 528, at page 531, 32 N.W. 2d. 349 (1948).

^{4/} Pick Industries, Inc. vs. Gebhard-Berghammer, Inc., 264 Wis. 353, at pages 356-7, 59 N.W. 2d. 798 (1952), modified on other grounds 264 Wis. 357a, 60 N.W. 2d. 254.

by Subsection 111.07 (14), the Subsection in essence "requires" potential parties to "proceed." In Pick Industries, supra., the Wisconsin Supreme Court applied what is now in essence Paragraph 990.001 (4)(a) to the computation of the one year limitation specified by Section 298.09^{5/} on the right of a party to seek enforcement of an arbitration award rendered under Chapter 298. In so doing the Court implicitly found Section 298.09 created a "time within which an act is to be done or proceeding had or taken." (emphasis supplied.) The examiner is satisfied Paragraph 990.001 (4)(c) on its face applies to the interpretation of Subsection 111.07 (14)^{6/}.

Nor does said application produce a result which is inconsistent with the manifest intent of the legislature. Statutes like Subsection 111.07 (14) balance the taking of meritorious actions against the avoidance of stale actions. The method which the legislature selected is the establishment of an arbitrary deadline, allocating almost all of the risks of commencing the action on time to the complaining party. Application of Subsection 990.001 (4)(c) would reallocate certain specific risks, but does not interfere with the purpose or the basic means selected. Thus, applying the statute would not be inconsistent with the manifest intent of Subsection 111.07 (14), while the failure to apply the specific reallocation of risks might very well be inconsistent with the manifest intent of the legislature in enacting Subsection 990.001 (4)(c).

Applying Paragraph 990.001 (4)(c) to the instant facts, since the last day for filing would have been Saturday, July 2, 1976, and since the Wisconsin Employment Relations Commission has no regular Saturday hours, said paragraph extends the time to file by successive applications to Tuesday, July 6, 1976, when the complaint was in fact filed. Therefore, the instant complaint is timely filed within the meaning of Subsection 111.07 (14).

^{5/} Section 298.09 which is unchanged since Pick states:

"Court confirmation award, time limit. At any time within one year after the award is made any party to the arbitration may apply to the court in and for the county within which such award was made for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified or corrected as prescribed in the next two sections. Notice in writing of the application shall be served upon the adverse party or his attorney 5 days before the hearing thereof.

^{6/} Subsections 111.07 (1) and (2)(a) make it clear the proceeding required to be taken consists of filing a "statement . . . or other document" with the Wisconsin Employment Relations Commission.

Dated at Milwaukee, Wisconsin, this 22nd day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stanley H. Michelstetter II
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Examiner