

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ROBERT L. ALBRIGHT, CARL E. AUSTIN,
LLOYD W. BRIGGS, MARVIN J. KAMMER,
HAROLD P. KLEIN, ELLINGTON H. LANDSOWNE,
KEITH F. LAWLER, RAYMOND A. MARTINSON,
AND JAMES C. OLSON,

Complainants,

vs.

CITY OF MADISON, LOCAL 311 OF THE
INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS AFL-CIO, BOARD OF TRUSTEES
OF THE FIRE PENSION FUND OF THE CITY
OF MADISON, PAUL SOGLIN, HOWARD
GALLAGHER, PAUL REILLY, ELTON MAGINNIS,
PAUL G. McCALLUM, DARRELL FLEMING AND
RICHARD HAACK, INDIVIDUALLY AND IN THEIR
CAPACITY AS MEMBERS OF THE BOARD OF
TRUSTEES OF THE FIRE PENSION FUND OF THE
CITY OF MADISON, AND CHARLES R. MERKLE,
INDIVIDUALLY AND AS PRESIDENT OF
LOCAL 311 OF THE INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL-CIO,

Respondents.

Case XLVII
No. 21058 MP-685
Decision No. 15079-E

ORDER DENYING MOTION FOR SUMMARY AFFIRMANCE

Examiner Thomas L. Yaeger having, on January 6, 1978, issued his Findings of Fact, Conclusions of Law and Order in the above-entitled matter, and also in the matter involving a complaint filed by one Oscar Petry, wherein the City of Madison and Local 311 of the International Association of Firefighters, AFL-CIO were named as the Respondents (City of Madison, Case XLIX); that in said Findings of Fact, Conclusions of Law and Order the Examiner dismissed the complaints filed in both matters on January 6, 1978; that the Complainants in the above-entitled matter on January 26, 1978, timely filed a petition requesting the Commission to review the Examiner's Findings of Fact, Conclusions of Law and Order issued in the above-entitled matter; that said petition for review is presently pending before the Commission; that no petition for review was filed in the case involving the complaint filed by Oscar Petry (City of Madison, Case XLIX), and thereafter and on February 14, 1978, in the latter case the Commission issued an Order wherein it considered the Examiner's decision to be that of the Commission; thereafter and on February 22, 1978, Local 311 of the International Association of Firefighters, AFL-CIO and Charles R. Merkle, two of the Respondents in the above-entitled matter, filed a motion with the Commission requesting the Commission to summarily affirm the decision of the Examiner as it affected the Respondents named in the instant proceeding, premising such motion on the Commission's affirmance of the Examiner's decision as it affected the complaint filed by Oscar Petry; and the Commission having considered the motion and being fully advised in the premises makes and issues the following


No. 15079-E

ORDER

That Respondents' motion for summary affirmance be, and the same hereby is, denied.

Given under our hands and seal at the
City of Madison, Wisconsin, this 27th
day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION FOR SUMMARY AFFIRMANCE

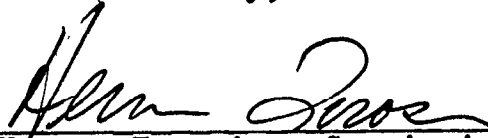
The motion is premised on the assumption that the Commission had "affirmed" the Examiner's decision in the Petry case, which was a companion case heard and decided by Examiner Yaeger along with the instant case and involving some similar issues. While the caption of the Commission's order in that case characterized it as an order "affirming" the Examiner's decision, the Commission did not affirm the decision based on a review of the record and arguments in that case. The actual order, as opposed to the caption describing the order,^{1/} merely reflects the operation of Section 111.07(5), Wisconsin Statutes. According to that provision, the decision of the Examiner with respect to the Petry complaint became the Commission's decision twenty days after the Examiner's order was mailed to the parties since no petition for review was filed within said period, and the Commission did not act to set aside or review the decision within such period. Inasmuch as a timely petition for review was filed in the instant matter and since the parties have not filed their briefs, and further since the Commission has not as yet reviewed the record, the motion is denied.

Dated at Madison, Wisconsin, this 27th day of February, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

^{1/} Cf. Pasch v. Department of Revenue, 58 Wis. 2d 346, at 356 (1973).