

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH IV

MILWAUKEE COUNTY

CITY OF MILWAUKEE and
HAROLD A. BRIER,

Petitioners,

Case No. 512-912

-vs-

DECISION & ORDERWISCONSIN EMPLOYMENT RELATIONS
COMMISSION and MILWAUKEE
POLICE ASSOCIATION,

Respondents.

Decision No. 16602-B

On January 9, 1980, the Wisconsin Employment Relations Commission issued an order affirming a hearing examiner's decision that the petitioners violated the Municipal Employment Relations Act. That same day, the Commission served its decision and order on all parties.

On February 15, 1980, petitioners filed their summons and complaint, seeking review of the decision. Recognizing that they were outside the 30-day time limit, on February 18, 1980, they also filed a motion to extend time to file the appeal on the grounds that their failure to timely file was due to an oversight in their office docketing procedure.

The respondents have each filed a motion to dismiss on the grounds that this Court lacks subject matter jurisdiction.

Sec. 227.16(1)(a), Stats., provides:

"Proceedings for review shall be instituted by serving a petition therefor . . . upon the agency and by filing the petition in the office of the circuit court . . . within 30 days after service of the decision of the agency upon all parties."

As the Supreme Court has noted, petitioners' failure to comply with the time limit deprives the circuit court of subject matter jurisdiction. See Cudahy v. Dept. of Revenue, 66 Wis. 2d 253 (1974); Kegonsa Jt. Sanit. Dist. v. City of Stoughton, 87 Wis. 2d 131 (1979).

Relying upon Sec. 801.15(2), Stats., the petitioners seek an order extending their time on grounds of excusable neglect. Whether Chapter 801 Rules of Civil Procedure are applicable to Chapter 227 Reviews is, at best, doubtful. See Wis. Environmental Decade v. Public Service Comm., 79 Wis. 2d 161 (1977); Chicago & N.W.R.R. v. Labor & Ind. Rev. Comm., 91 Wis. 2d 462, (Wis. App. 1979). However, Sec. 801.15(2)(c), Stats., specifically provides: "The time for appeal under s. 808.04 . . . may not be enlarged." It is unlikely the legislature would intend to bar enlargement of time for appeals under Sec. 808.04 but not under Chapter 227.

Assuming Sec. 801.15(2)(a), Stats., nevertheless applies, it is clear from the case law that once the appeal time has run, a reviewing court cannot extend statutory limits for filing, since that court lacks jurisdiction to take any action in the case. See Cudahy v. Dept. of Revenue, *supra*, 66 Wis. 2d at 253; Monahan v. Dept. of Taxation, 22 Wis. 2d 164, 169 (1963).

Finally, even without statutory or case law prohibitions against the extension of time, this Court could not find that an oversight in the city attorney's docketing procedure constitutes "excusable neglect" justifying enlargement of the filing time. See Giese v. Giese, 43 Wis. 2d 456 (1969).

Accordingly, the respondents' motion to dismiss for lack of subject matter jurisdiction must be granted.

O R D E R

For the reasons set forth in the foregoing decision,

IT IS HEREBY ORDERED that, for lack of subject matter jurisdiction, this action be, and the same hereby is, DISMISSED.

Dated at Milwaukee, Wisconsin, this 21st day of January, 1981.

BY THE COURT:

Leah M. Lampone /s/

Leah M. Lampone
Circuit Judge