

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

UNITED PROFESSIONALS FOR QUALITY
HEALTH CARE,

Complainant,

vs.

STATE OF WISCONSIN,

Respondent.

Case CLVIII
No. 27300 PP(S)-80
Decision No. 18397-B

[WERC is using the following
electronic file name:
18397-C]

ORDER DENYING REQUEST TO SET ASIDE NOTICE OF
COMMISSION'S FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

The Wisconsin Employment Relations Commission having on May 18, 1982 issued a Notice wherein it noted that no petition for review of the Examiner's Findings of Fact, Conclusion of Law and Order, issued April 26, 1982, had been filed within the twenty day statutory period set forth in Sec. 111.07(5), Stats., and that no intervening order had been issued by the Examiner or the Commission within said statutory period, and that therefore the Examiner's Findings of Fact, Conclusion of Law and Order became the Commission's Findings of Fact, Conclusion of Law and Order on May 17, 1982 by operation of Sec. 111.07(5), Stats.; and on May 18, 1982 the Commission having received Respondent State of Wisconsin's petition for review of the Examiner's decision via the United States mail; and the Commission having on May 24, 1982 received a request from Respondent State of Wisconsin asking that the aforementioned Notice be set aside; and Complainant United Professionals for Quality Health Care having on June 1, 1982 filed a statement in opposition to said request; and the Commission having reviewed said request and the arguments of the parties and being satisfied that said request should be denied,

NOW, THEREFORE, it is

ORDERED 1/

That the request of the State of Wisconsin, that the Commission set aside the Notice of Commission's Findings of Fact, Conclusion of Law and Order in the above-entitled matter, be, and the same hereby is, denied.

Given under our hands and seal at the City of
Madison, Wisconsin this 25th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

1/ See page two.

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- 1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING ORDER DENYING REQUEST
TO SET ASIDE NOTICE OF COMMISSION'S FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The Examiner rendered his decision in this case on April 26, 1982. Pursuant to Commission practice, a copy was served on the parties by mail on the same date. A return receipt, signed by an individual on behalf of the State's attorney, reflects that the State's copy was received on April 28, 1982.

Sec. 111.07(5) Stats. states in relevant part "If no petition is filed within 20 days from the date that a copy of the findings or order of the examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the Commission as a body, unless set aside, reversed or, modified by such . . . examiner within such time." Section 111.07(6) provides, in part, that the Commission "may on its own motion, set aside, modify or change any order, findings or award . . . at any time within 20 days from the date thereof if it shall discover any mistake therein, or upon the grounds of newly discovered evidence." It is undisputed that neither the Examiner nor the Commission took any action to set aside, modify, or change the decision. As the 20th day after the Examiner's decision was mailed to the parties fell on a Sunday, May 16, Sec. 990.001(4)(c), Stats., made Monday, May 17 the last date on which a petition for review could be timely filed.

The State's petition for review was dated and mailed by presorted first class U.S. mail on May 14. The State argues that it had a legitimate expectation that the petition would be received by the Commission on May 17. It further contends that ERB 20.08(2) provides for an automatic 3 day extension of the time for filing the petition. It then asks that the Commission find the petition to be timely filed and to set aside the aforementioned Notice. The Union asserts that the State's petition for review must be filed within the 20 day period set forth in Sec. 111.07(5), Stats., and ERB 12.09(2) and that where, as here, no petition is timely filed, the Commission ceases to have subject matter jurisdiction over the case. It contends that ERB 20.08(2) only operates to extend time periods in the absence of the designation of a specific date and thus that said rule is inapplicable here. The Union therefore requests that the State's request be denied.

The rule relied upon by the State appears in Chapter ERB 20, Wis. Adm. Code, and governs the general procedure to be followed in Commission proceedings under SELRA. Section ERB 20.04 states that "In any conflict between a general rule in Chapter ERB 20 and a special rule in another chapter applicable to a particular type of proceeding, the special rule shall govern." Therefore even assuming that Section ERB 20.08(2) could be interpreted to cover time periods established by statute, as opposed to those "prescribed by these rules or by order",^{3/} the specific rule established by Section ERB 22.09(1) must govern.^{4/} That rule states in pertinent part that "Within 20 days from the date that a copy of the findings of fact, conclusions of law and order . . . was mailed to the last known address of the parties in interest, any party in interest . . . may file a written petition with the Commission . . ." This specific rule tracks with the language of Sec. 111.07(5), Stats., which was intended to establish a day certain on which the

2/ ERB 20.08(2) Additional Time After Service By Mail. Whenever a party has a right or is required to do some act within an initially prescribed period after service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period, provided, however, that such additional time shall not be added if the initial period has been extended, and further provided that specific date has not been designated upon which the right is to be exercised or the act is to be performed.

3/ See ERB 20.08(1).

4/ See Sinclair Refining Company (8526-B) 3/69; Albert J. Janich (8165-B) 1/68.

decision of an Examiner is deemed final. Further, even if the provisions of ERB 20.08(2) were deemed applicable to the facts in this case, there would be a serious question as to the validity of such application since such application would appear to be in conflict with the unambiguous intent of Sec. 111.07(5) Stats. In this regard we note that the Legislature did see fit to establish a narrow exception to the 20 day rule, not applicable to the facts in this case, whereby the Commission may extend the 20 day period for another 20 days if it is satisfied that a party in interest has been prejudiced because of an exceptional delay in receipt of a copy of any findings. 5/

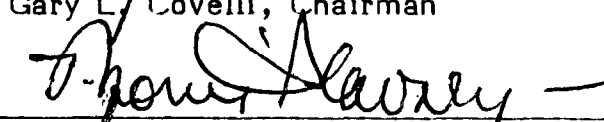
Since the application of the provisions of Sec. 111.07(5) Stats. involve a matter of the finality of Commission decisions, they affect the Commission's jurisdiction and therefore we do not believe that the requirements of that section, or the parallel rule (ERB 22.09(1)), Wis. Adm. Code), can be "waived" by the Commission either under the rule cited by the State Section ERB 20.08(4), Wis. Adm. Code, or under the general rule dealing with Commission waiver of its rules, Section ERB 20.01, Wis. Adm. Code. We agree with the State that there was poor mail service provided by the United States Post Office in this case. Nevertheless deadlines involving the finality of decisions must be adhered to in the interest of putting an end to litigation by establishing a date certain on which any appeal must be taken.

Dated at Madison, Wisconsin this 25th day of June, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

5/ See the last sentence of Section 111.07(5), Stats. Other statutory "exceptions", not applicable to the facts in this case, are found at Section 990.001, Stats., dealing with the situation when the 20th day falls on a Saturday, Sunday or legal holiday.