

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RONALD BERBY and TOMAHAWK  
EDUCATION ASSOCIATION,

Complainants,

vs.

UNIFIED JOINT SCHOOL DISTRICT  
NO. 1, CITY OF TOMAHAWK, BOARD  
OF EDUCATION, UNIFIED JOINT  
SCHOOL DISTRICT NO. 1, CITY  
OF TOMAHAWK,

Respondent.

Case XXII  
No. 27883 MP-1212  
Decision No. 18670-B

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Appearances:

Mr. Stephen G. Katz, Kelly and Haus, Attorneys at Law, Suite 202, 302 East  
Washington Avenue, Madison, WI 53703, appearing on behalf of the  
Association.

Mr. D. J. Weis, Korth, Rodd, Mouw, Johnson & Mustacci, S.C., Attorneys at  
Law, P.O. Box 757, Rhinelander, WI 54501, appearing on behalf of the  
District.

ORDER DENYING MOTION TO DISMISS

Ronald Berby, an individual, and the Tomahawk Education Association, a labor organization, herein Complainant, having, on April 27, 1981, filed a complaint of prohibited practices with the Wisconsin Employment Relations Commission, wherein it is alleged that the Unified Joint School District No. 1, City of Tomahawk; Board of Education, Unified Joint School District No. 1, City of Tomahawk, herein Respondent, has committed certain prohibited practices within the meaning of Section 111.70(3)(a)5, Wis. Stats., and the Commission, on May 8, 1981, having appointed William C. Houlihan, a member of its staff, to act as Examiner in the matter; and evidentiary hearings having been conducted on July 21 and 22, September 8, 9, and 10, November 2, 3, and 4, 1981 and January 14, 1982; that following the hearing a briefing schedule was established but that there were a number of extensions of the original timetable, ultimately resulting in a dispute as to whether the Complainants brief, filed on July 13, 1982, was submitted in a timely fashion; that on July 13, 1982 Respondent moved for an order dismissing the complaint on the basis that sixty days had passed since the fact finding hearing and argument; and the Complainant having opposed the Motion by letter received July 15, 1982; and the Examiner, for the reasons outlined in the Accompanying Memorandum, believing that he continues to have jurisdiction over the matter pursuant to Section 111.07(4) Wis. Stats; makes and issues the following

ORDER

Denying Respondent's Motion to Dismiss.

Dated at Madison, Wisconsin this 29th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C Houlihan  
William C. Houlihan, Examiner

MEMORANDUM ACCOMPANYING ORDER DENYING MOTION TO DISMISS

As noted in the text of the Order Denying Motion to Dismiss, the evidentiary hearing was concluded on January 14, 1982. A briefing schedule was established, and numerous extensions of that timetable were provided. The District filed its brief on April 5, 1982 and the Association filed its brief on July 13, 1982. The Association contends its brief was timely filed. The District contends that the Association brief was filed more than sixty days after the agreed upon deadline. The District filed a Motion to Dismiss on July 13, 1982 alleging that the Commission lacked jurisdiction over the matter. In the alternative the District sought dismissal for failure to prosecute the matter.

The complaint alleges a violation of Section 111.70(3)(a)(5) Wis. Stats. Section 111.70(4)(a) incorporates Section 111.07, Wis. Stats. as procedurally governing in prohibited practice actions arising under Section 111.70(3). Respondent's Motion is premised upon Section 111.07(4), which provides as follows:

(4) Within 60 days after hearing all testimony and arguments of the parties the commission shall make and file its findings of fact upon all of the issues involved in the controversy, and its order, which shall state its determination as to the rights of the parties. Pending the final determination by it of any controversy before it the commission may, after hearing, make interlocutory findings and orders which may be enforced in the same manner as final orders. Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights, immunities, privileges or remedies granted or afforded by this subchapter for not more than one year, and require him to take such affirmative action, including reinstatement of employees with or without pay, as the commission deems proper. Any order may further require such person to make reports from time to time showing the extent to which he has complied with the order.

The Commission has historically regarded the sixty day provision contained within Section 111.07(4) as directory, and not mandatory. 1/ The Commissions view in this regard has been affirmed in the courts. 2/ The passage of sixty days does not operate to remove the Commission's jurisdiction. 3/

Accordingly, the Motion has been denied.

Dated at Madison, Wisconsin this 29th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By William C. Houlihan  
William C. Houlihan, Examiner

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- 1/ Green Bay Jt. School District No. 1, (9095-E) 9/77 aff. Brown Co. Cir. Ct. 12/72, School Dist. of Drummond, (17251-B), 6/82.
  - 2/ Muskego-Norway C.S.J.S.D. No. 9 v. WERB, 32 Wis 2d 478 (1967).
  - 3/ Chicago and N.W. Railroad v. LIRC, 91 Wis 2d 462 aff Wis. Sup. Ct. 98 Wis 2d 592.