

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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WISCONSIN STATE EMPLOYEES :  
UNION (WSEU), AFSCME, :  
COUNCIL 24, AFL-CIO, :  
Complainant, :  
vs. :  
STATE OF WISCONSIN, DEPARTMENT :  
OF EMPLOYMENT RELATIONS, :  
Respondent. :  
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Case 239  
No. 37231 PP(S)-131  
Decision No. 23885-C

Appearances:  
Lawton & Cates, Attorneys at Law, 214 West Mifflin Street, Madison,  
Wisconsin 53703, by Mr. Richard V. Graylow, appearing on behalf of  
Complainant.  
Mr. Thomas E. Kwiatkowski, Attorney, Division of Collective Bargaining,  
Department of Employment Relations, 137 East Wilson Street, Madison,  
Wisconsin 53707-7855, appearing on behalf of Respondent.

ORDER DENYING MOTION TO DISMISS PETITION

Examiner Coleen Burns having, on September 23, 1987, issued Findings of Fact, Conclusions of Law and Order in the above matter; and Complainant WSEU having, on October 9, 1987, filed a Petition for Review 1/ with the Wisconsin Employment Relations Commission; and the Commission having, on October 13, 1987, established a briefing schedule in the matter; and the State of Wisconsin having, on October 19, 1987, filed a Motion to Dismiss Petition for Review asserting that the WSEU failed to comply with ERB 12.09(2) 2/ and thereby denied effective notice to the State of the issues on appeal; and the Commission having considered the matter and concluded that the motion should be denied as Complainant has minimally complied with ERB 22.09(2) and will further define its position in its brief on review;

NOW, THEREFORE, it is

ORDERED

That the motion to dismiss petition for review is denied.

Given under our hands and seal at the City of  
Madison, Wisconsin this 22nd day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman  
Herman Torosian  
Herman Torosian, Commissioner

1/ The petition for review stated:

Appeal is taken from all adverse Findings and Conclusions. By way of illustration, rather than limitation the Examiner concluded that independent State agencies were

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1/ (continued)

not bound by an Arbitration Award rendered against the State Historical Society. This conclusion is preposterous. It is prejudicial, reversible error. It overlooks the uncontroverted testimony in the record.

Substantial questions of law and policy are raised by the instant litigation.

- 2/ ERB 12.09(2) is inapplicable herein as said rule applies to petitions for review under the Municipal Employment Relations Act. ERB 22.09(2) is the applicable rule under the State Employment Labor Relations Act and states:

(2) PETITION FOR REVIEW; BASIS FOR AND CONTENTS OF. The petition for review shall briefly state the grounds of dissatisfaction with the findings of fact, conclusions of law and order, and such review may be requested on the following grounds:

(a) That any finding of material fact is clearly erroneous as established by the clear and satisfactory preponderance of the evidence and prejudicially affects the rights of the petitioner, designating all relevant portions of the record.

(b) That a substantial question of law or administrative policy is raised by any necessary legal conclusions in such order.

(c) That the conduct of the hearing or the preparation of the findings, conclusions of law, or order involved a prejudicial procedural error, specifying in detail the nature thereof and designated portions of the record, if appropriate.