

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EUGENE A. HEM,

Complainant,

vs.

MILWAUKEE BOARD OF SCHOOL DIRECTORS,
and MILWAUKEE TEACHERS' EDUCATION
ASSOCIATION,

Respondent.

Case 279

No. 49157 MP-2725

Decision No. 27698-C

Appearances:

Mr. Eugene A. Hem, 43 West Grand, Chilton, Wisconsin 53014, appearing pro se.
Perry, Lerner & Quindell, S.C., by Mr. Richard Perry, 823 North Cass Street, Milwaukee,
Wisconsin 53202, appearing on behalf of Respondent Association.

Mr. Thomas Beamish, Assistant City Attorney, 800 City Hall, 200 East Wells Street,
Milwaukee, Wisconsin 53202, appearing on behalf of Respondent Board.

NOTICE OF COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PURSUANT TO SECTION 111.07(5), STATS.

On December 16, 1994, Examiner Christopher Honeyman issued Findings of Fact, Conclusions of Law and Order Granting Motions to Dismiss in the above matter. The Examiner's decision was mailed to the parties that same day. By operation of Sec. 111.07(5), Stats., the deadline for filing a petition for review was January 5, 1995.

On January 5, 1995, the Wisconsin Employment Relations Commission received the following document by facsimile transmission:

Dear Mr. Hempe:

Mr. Honeyman had denied me the right to examine the documents
Mrs. Kuehn had which were subpoena for. I know she had them

No. 27698-C

because I had seen carry them in her arms of the underground passageway between city hall and another city building. Perry had made an immature wisecrack about having X-ray eyes. The matter about the documents had been mentioned at the first and second hearing but the Examiner had brushed it off with an air of indifference with the intention of cover up the city attorney mistake advising Kuehn she didn't have to show them. Perry didn't know anything about them but he had everything ready to go with his black book which the Examiner had verbally forced to me.

The two attorneys and Examiner at the second hearing had agreed the Complainant would have an administrator produce records and testify about the inside maneuvering (sic) of the administration. Then came the third hearing, all of the attorneys back down on the subpoena.

At the fourth hearing, the Examiner had complained (sic) about the documents he had to go through. he had an indifferent demeanor about him. He wasn't in control of the hearing Perry was because he wanted the hearing to be limited to only the third and fourth. The Examiner had prevented me from questioning Nancy Costello about her relationship with Nancy Berg. Once again Perry had persuaded the Examiner to do this because it would bring out the collusion of MPS and MTEA.

You have on your file an appeal of the hearing. He wants to cover up his mistakes at the hearings by resorting to contemptuous sections. When Perry kept on interrupting me, the Examiner just sat there in a stupor stage and said nothing.

If Mr. Honeyman, had swung his decision in my favor his career would had been in jeopardy and politically he would have been ostracized from the Republican Party. In essence, a judge should have sat at the hearing not an attorney.

These lawyers may know their statutes but they have no idea what the educational world is like at the secondary level in MPS especially at the administration level.

Sincerely

Eugene A. Hem

No. 27698-C

The Commission then sought argument from all parties as to whether the January 5, 1995, document was a petition for review and, if so, whether the petition could be filed by facsimile transmission. The parties filed such argument, the last of which was received April 12, 1995.

Having considered the matter, the Commission is persuaded that a petition for review cannot be filed by facsimile transmission. Therefore, assuming the document in question is a petition for review, it was not properly filed.

Based upon the foregoing, the Commission issues the following:

NOTICE 1/

By operation of Sec. 111.07(5), Stats., Examiner Honeyman's Findings of Fact, Conclusions of Law and Order became the Commission's Findings of Fact, Conclusions of Law and Order on January 5, 1995.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of April, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(footnote 1 continued on page 4)

(footnote 1 continued from page 3)

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing.

The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MILWAUKEE BOARD OF SCHOOL DIRECTORS

MEMORANDUM ACCOMPANYING
NOTICE OF COMMISSION'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
PURSUANT TO SECTION 111.07(5), STATS.

Section 111.07(5), Stats., (which is applicable to this proceeding by virtue of Sec. 111.70(4)(a), Stats.) states the following regarding petitions for review.

(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.

ERC 12.09(1) provides in pertinent part:

ERC 12.09 Review of findings of fact, conclusions of law and order issued by single member or examiner. (1) RIGHT TO FILE, TIME. Within 20 days from the date that a copy of the findings of fact, conclusions of law and order of the single member or examiner was mailed to the last known address of the parties in interest, any party in interest, who is dissatisfied with such findings of fact, conclusions of law and order, may file a written petition with the commission, and at the same time cause copies thereof to be served upon the other parties, to review such findings of fact, conclusions of law and order. 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 of fact, conclusions of law and order, it may extend time another 20 days for filing the petition for review. (emphasis added)

Both Sec. 111.07(5), Stats., and ERC 12.09 existed in their present form well before the advent of facsimile transmission technology or the Commission's subsequent acquisition of a facsimile transmission machine in the early 1990's. Nonetheless, it is the statute and administrative rules which govern this dispute.

ERC 12.09(1) creates an obligation on a party to serve "copies" of a petition for review on the other parties to the case. The "copies" are presumably of the original petition filed with the

Commission.

ERC 10.09 provides in pertinent part:

ERC 10.09 Form of documents other than correspondence. (1) TITLE. Documents shall clearly show the title of the proceeding and the docket number.

(2) WHERE TO FILE. All documents and papers filed prior to hearing shall be filed with the commission at its Madison office. During the course of the hearing, all matters shall be filed with the commission agent conducting the hearing. After the close of the hearing, all matters shall be filed with the commission at its Madison office.

(3) NUMBERS OF COPIES; FORM. Except as otherwise provided in these rules, any document or paper filed with the commission, prior to or after hearing shall be submitted with 3 copies in addition to the original. All matter filed with the commission shall be printed, typed or otherwise legibly duplicated. (emphasis added)

(4) SIGNATURE. The original of each document filed shall be signed by an attorney or representative of record for the party, or in case of a party not so represented, by the party, or by an officer of the party if it is a corporation or an unincorporated association. (emphasis added)

From the content of ERC 10.09(3) and (4), and 12.09(1), we conclude that a petition for review filed with the Commission must be an "original" petition and that an "original" petition must have an "original" signature. Because a facsimile transmission does not have an "original" signature, we conclude a facsimile transmission is not a valid means by which to file a petition for review. Thus, assuming Hem's facsimile transmission was a petition for review, it was not properly filed. Therefore, Examiner Honeyman's decision became the Commission's decision by operation of Sec. 111.07(5), Stats.

Dated at Madison, Wisconsin, this 11th day of April, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

A. Henry Hempe /s/
A. Henry Hempe, Commissioner