

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

JOSEPH GITTENS,

Complainant,

vs.

JANESVILLE SCHOOL DISTRICT,

Respondent.

Case 47

No. 51895 MP-2969

Decision No. 28288-B

ORDER DENYING RECONSIDERED MOTION TO MAKE  
COMPLAINT MORE DEFINITE AND CERTAIN

On February 22, 1995, Examiner Jane B. Buffett issued an order denying the motion of the Wisconsin Association of School Boards (herein, "WASB") that Complainant Gittens (herein, "Complainant") be ordered to make the complaint more definite and certain. On March 1, 1995, WASB filed a motion for reconsideration with supporting memorandum. The Examiner, having considered the matter, makes and issues the following

ORDERS

1. The reconsidered motion to order Complainant to make the complaint more definite and certain is denied.

2. The time for WASB to enter a response to Complainant's motion to amend and the Janesville School District's motion to dismiss is hereby extended to March 17, 1995.

Dated at Madison, Wisconsin this 2nd day of March, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/  
Jane B. Buffett, Examiner

JANESVILLE SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER DENYING RECONSIDERED MOTION  
TO MAKE COMPLAINT MORE DEFINITE AND CERTAIN

Wisconsin Association of School Boards argues that the Examiner failed to properly apply ERC 10.08(2) which provides:

**ERC 10.08 Time for filing papers other than letters.**

...

(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 the party and the notice or paper is served upon the party 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 a specific date has not been designated upon which the right is to be exercised or the act is to be performed.

The Examiner is satisfied that the three additional days should not be applied to the time for counting days in this case in which the complaint was not served by regular mail, but rather by certified mail. This is not a case of regular mail in which delivery is uncertain and the three additional days must be added to assure that a respondent has the prescribed time in which to act. With certified mail there is no uncertainty as to date of delivery. In this case, certification of receipt assured that WASB had the full five days provided by ERC 12.03(3). Accordingly, the undersigned concludes that the earlier ruling appropriately applies the administrative rule providing for the filing of a motion to make more definite and certain. That ruling remains undisturbed.

At the same time, WASB's position was arguable and not frivolous, and therefore it is proper to modify the time allowed for WASB to respond to the Complainant's motion to amend and the District's motion to dismiss. This extension will offset the time elapsed during the pendency of the motion for reconsideration. That time has been extended one week and is now set for March 17, 1995.

Dated at Madison, Wisconsin this 2nd day of March, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Jane B. Buffett /s/  
Jane B. Buffett, Examiner