

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LARRY J. ROBINSON, Complainant,

vs.

**MILWAUKEE PUBLIC SCHOOLS AND MILWAUKEE
TEACHERS' EDUCATION ASSOCIATION**, Respondents.

Case 369
No. 56811
MP-3457

Decision No. 29482-H

Appearances:

Mr. Larry Robinson, 9906 West Magnolia Street, Milwaukee, Wisconsin 53224, appearing on his own behalf.

Attorney Grant Langley, Milwaukee City Attorney, 200 East Wells Street, Milwaukee, Wisconsin 53202, by **Attorney Donald L. Schriefer**, Assistant City Attorney, appearing on behalf of the Respondent Milwaukee Public Schools.

Perry, Shapiro, Quindel, Saks & Lerner, S.C., by **Attorney Richard Perry**, 823 North Cass Street, Milwaukee, Wisconsin 53202, appearing on behalf of the Respondent Milwaukee Teachers' Education Association.

ORDER

On December 6, 2000, Examiner Daniel J. Nielsen issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled matter wherein he concluded that Respondents had not committed any prohibited practices within the meaning of the Municipal Employment Relations Act. He therefore dismissed the complaint.

The cover letter accompanying the Examiner's decision advised the parties among other matters that pursuant to Sec. 111.07(5), Stats., any petition for review had to be filed within 20 days of the date the decision was mailed to them. The cover letter advised the parties that the decision had been mailed to them on December 6, 2000. Complainant Robinson received his copy of the decision on December 8, 2000.

Dec. No. 29482-H

On December 28, 2000, we issued a Notice in the above matter that advised the parties that Complainant Robinson had filed his petition for review one day after the end of the 20 day review period and that Examiner Nielsen's Findings of Fact, Conclusions of Law and Order had become the Commission's by operation of Sec. 111.07(5), Stats.

On January 9, 2001, Complainant Robinson filed a request with the Commission asking that his petition be treated as timely filed.

On January 22, 2001, Respondents filed position statements opposing Complainant's request.

We have considered the matter and conclude that where, as here, there was no exceptional delay in the receipt of the Examiner's decision, we have no statutory authority to extend the time period for filing a petition for review. Therefore, we make the following

ORDER

The request for reversal of the December 28, 2000 Notice is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Milwaukee Public Schools

MEMORANDUM ACCOMPANYING ORDER

Section 111.07(5), Stats., is applicable to this proceeding by virtue of Sec. 111.70(4)(a), Stats., and states the following:

(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.

Complainant argues that he placed his petition for review in the mail on December 23, 2000 and that the petition should be treated as timely filed because it should have been received on or before December 26, 2000.

We reject Complainant's position because under Sec. 111.07(5), Stats., we only have statutory authority to extend the statutory deadline for receipt of a petition for review where there has been "exceptional delay in the receipt of a copy" of the Examiner's decision. Here, Complainant received the Examiner's decision two days after it was placed in the mail and thus there was no "exceptional delay."

Given the foregoing, we must reject Complainant's request that his petition be treated as timely filed. Our decision in this regard is consistent with prior Commission's decisions in STANLEY-BOYD SCHOOLS, DEC. No. 12504-C (WERC, 4/76); OZAUKEE COUNTY, DEC. No. 18384-C, (WERC, 9/81); and SAUK COUNTY, DEC. No. 23849-C (WERC, 12/87).

Dated at Madison, Wisconsin this 2nd day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner