

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**LOCAL 1486, AFFILIATED WITH MILWAUKEE
DISTRICT COUNCIL 48, AFSCME, AFL-CIO**

To Initiate Arbitration Between Said Petitioner and

MAPLE DALE – INDIAN HILL SCHOOL DISTRICT

Case 25
No. 58617
INT/ARB-8966

Decision No. 29933-A

Appearances:

Podell, Ugent, Haney & Miszewski, by **Attorney Matthew J. Miszewski**, 611 North Broadway Street, Suite 200, Milwaukee, Wisconsin 53202-5004, appearing on behalf of Local 1486, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO.

Davis & Kuelthau, S.C., by **Attorney Daniel Vliet**, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of Maple Dale – Indian Hill School District.

ORDER DENYING PETITION FOR REHEARING

On June 27, 2000, the Wisconsin Employment Relations Commission (Commissioner Hempe dissenting) issued an Order Granting Motion to Dismiss in the above matter.

On July 18, 2000, District Council 48 filed a petition for rehearing asking that the Commission reverse its June 27, 2000 Order.

On July 28, 2000, the District filed a statement in opposition to the petition.

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To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Section 227.49, Stats., requires that a petition for rehearing be filed within 20 days of the date of service of the agency decision. The date of service of our Order was June 27, 2000. The date of filing is the date of actual receipt by the Commission – in this case July 18, 2000. Because the petition for rehearing was not received within 20 days of the date of service of our decision, we have no jurisdiction over the petition. Therefore, we make and issue the following

ORDER

The petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

I concur.

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Maple Dale – Indian Hill School District

CONCURRING OPINION OF COMMISSIONER A. HENRY HEMPE

Although I believe the Commission would benefit from reconsideration of the majority's original decision in this matter (from which I dissented), given the untimeliness of the motion for rehearing, I do not believe the Commission has the authority to reopen.

As is the case with most Commission decisions and orders, the decision and order of the Commission majority in the instant matter was served by mail on both of the parties. Under that circumstance, ERC. 10.08(2), ostensibly applicable to “. . . all proceedings involving municipal employment relations before the Wisconsin Employment Relations Commission . . .”^{1/} seems to suggest a different conclusion:

1/ ERC 10.01.

ERC 10.08 Time for Filing Papers Other than Letters

(1) . . .

(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 the 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.

However, Sec. 227.49, Stats., gives no such 3-day leeway:

227.49 Petitions for Rehearing in Contested Cases.

(1) A petition for rehearing shall not be a 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 authority. An agency may order a rehearing 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 under this subsection in any contested case. 2/

2/ In its letter of transmittal accompanying its decision, the Commission specifically quotes this subsection as applicable.

Service of a decision is complete on the date of its mailing, regardless of its receipt by the addressee. [In Re PROPOSED ANNEXATION OF PEWAUKEE, 72 WIS.2D 593 (1976)].

Even if provisions of the Wisconsin Administrative Code were deemed to stand on an equal footing with provisions of the Wisconsin Statutes, application of the rules of statutory construction resolves the apparent conflict between the ERC 10.08(2) and Sec. 227.49, Stats. In such cases, it is well-established that the terms of the specific are superior to those of the general. [CITY OF WAUWATOSA V. GRUENWALD, 18 WIS.2D. 83, 87 (1962); MAIER V. RACINE COUNTY, 1 WIS.2D 384, 387 (1957)].

In the instant matter it is clear that Sec. 227.49, Stats., specifically applies to motions for rehearing of adverse administrative decisions. No such specificity can be attached to the provisions of ERC 10.08. Hence, the provisions of the former prevail. Measured against those provisions, the Union's petition for rehearing was filed with the Commission a day late.

Under the circumstance and consistent with its practice, [CRAIG MARCHANT V. DEPARTMENT OF EMPLOYMENT RELATIONS (UW HOSPITAL AND CLINICS) and COUNCIL 24, WSEU LOCAL 1942, AFSCME, AFL-CIO, DEC. NO. 29093 (WERC, 12/98)], the Commission has no alternative but to dismiss the motion herein.

Dated at Madison, Wisconsin this 21st day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

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