

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

AFSCME, DISTRICT COUNCIL 48
and its affiliated LOCAL 594, Complainant,

vs.

MILWAUKEE COUNTY, Respondent.

Case 493
No. 58857
MP-3647

Decision No. 30334-A

Appearances:

Podell, Ugent & Haney, S.C., by **Attorney Adam C. Benson**, 611 North Broadway, Suite 200, Milwaukee, Wisconsin 53202-5004, appearing on behalf of AFSCME, District Council 48 and its affiliated Local 594.

Attorney Timothy R. Schoewe, Deputy Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, Room 303, 901 North Ninth Street, Milwaukee, Wisconsin 53233, appearing on behalf of Milwaukee County.

ORDER

On May 3, 2002, the Wisconsin Employment Relations Commission issued the following Order:

AFSCME, District Council 48, and its affiliated Local 594 having, on May 11, 2000, filed a complaint with the Wisconsin Employment Relations Commission alleging that Milwaukee County had committed prohibited practices within the meaning of Sec. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act by unilaterally altering the hours of W-2 workers and refused to bargain the matter or its impact; and the Examiner assigned the matter having by letters of August 30, 2001 and October 15, 2001, attempted to schedule the matter for hearing; and having received no response from Complainant, the Examiner, by certified letter of April 4, 2002, notified Complainants that the matter would be assumed settled and the complaint dismissed unless the Complainants notified the Commission within twenty-one (21) days that the matter was not settled; and the Commission having received no response from Complainants to date, being satisfied the complaint should be dismissed;

Dec. No. 30334-A

NOW, THEREFORE, it is

ORDERED

That the complaint filed in the instant matter be, and the same hereby is, dismissed.

On July 10, 2002, the Commission received the following letter from Complainant:

We have been in contact with WERC today regarding the above cases that were closed. Unfortunately, Alvin Ugent the attorney listed for the above cases was out of the country for an extended period of time and inadvertently his mail was misplaced so we did not receive the notification regarding the closing of these cases. For that reason, we would respectfully request that both cases be reopened and allowed to proceed. Thank you in advance for your assistance in this matter. Please contact me if you have any questions or concerns, as I will be proceeding with these matters on behalf of AFSCME, AFL-CIO and its affiliated locals.

On August 14, 2002, the Commission received the following letter from Respondent:

It is Milwaukee County's position that the rulings of the Commission dismissing the above matters should stand. These matters have been languishing for several years. Prior to the action of dismissal, the Commission had published several notices advising as to the desire to pursue the matter or not. Finally, the parties were given notice that if no action or response was had, the Commission would take the action dismissing the complaints that it, in fact, ordered on May 3, 2002. While Attorney Ugent was, in fact, briefly out of the city, none of that explains the several years of inaction nor the better than two months it took for the union to finally respond in any fashion to the May order. Given the delays indicated in the record, no cause is shown for a vacation of the order and the dismissal should stand.

On August 23, 2002, the Commission received the following letter from Complainant:

I am in receipt of Attorney Schoewe's letter to you dated August 13th, 2002 and must take issue with the characterization portrayed by Attorney Schoewe of the Union's reason for the delay.

It should be understood that the Union was expecting the County to work with them in terms of attempting to settle these matters. In aid of that, the prosecution of the above cases was slowed. It has always been the goal of the Union to be reasonable and willing to settle any issues that arise. Often to the Union's detriment, the County has dug its heels and that makes progress difficult. It is especially arbitrary for the County to place all fault on the Union

when often the Union attempts to accommodate the County's scheduling conflicts. While Attorney Ugent was out of the country the dismissal occurred and upon learning of this, we requested that these be re-opened. To that end, we again request your assistance in allowing these cases to be re-opened.

The Examiner's April 4, 2002 letter is the critical document in this matter. Sent by certified mail to Complainant's attorney of record and signed for by another attorney in the law firm, that letter put Complainant on notice that the complaint would be presumed settled and dismissed unless Complainant notified the Commission within 21 days from the date of the April 4, 2002 letter. There was no response to the April 4, 2002 letter within the 21 day response period. On May 3, 2002, the Commission's Order dismissing the complaint was issued.

Complainant asserts that it did not respond to the April 4, 2002 letter because the letter was misplaced after being received. We are satisfied that misplacing mail does not provide a persuasive basis for reopening this matter. Where, as here, the critical document was received, both the Commission and Respondent were entitled to presume and rely on the absence of a response as constituting Complainant's voluntary assent to the dismissal.

NOW, THEREFORE, it is

ORDERED

Complainant's request that the complaint be reopened is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner