

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**THE WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME,
COUNCIL 24, AFL-CIO, LOCAL 509, Complainants,**

vs.

**STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS, Respondents.**

Case 657
No. 64117
PP(S)-348

Decision No. 31193-C

Appearances:

Kurt Kobelt and **Richard Thal**, Lawton & Cates, Attorneys at Law, Ten East Doty Street, Suite 400, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of the Wisconsin State Employees Union (WSEU), AFSCME, Council 24, AFL-CIO, Local 509.

David J. Vergeront, Chief Legal Counsel, and **Lynn Weiser**, Chief Labor Relations Specialist, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the State of Wisconsin, Department of Corrections.

ORDER DENYING PETITION FOR REHEARING

On February 23, 2006, Examiner David E. Shaw issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above-entitled matter determining that Respondent had committed unfair labor practices within the meaning of Secs. 111.84(1)(d), Stats. He ordered Respondent State to take certain remedial action.

The Examiner further concluded that Respondent State had not committed other alleged unfair labor practices within the meaning of Secs. 111.84(1)(d) and (e), Stats.

Within the 20 day period following issuance of the Examiner's decision, no petition for review was filed and neither the Commission nor the Examiner took any action. Therefore, by operation of Sec. 111.07(5), Stats., the Examiner's decision became the Commission's decision on March 16, 2006.

Dec. No. 31193-C

On March 17, 2006, the Commission received a petition for review from the Complainants.

On March 20, 2006, the Commission issued a Notice of Commission's Findings of Fact, Conclusions of Law and Order advising the parties that Examiner Shaw's decision had become the Commission's decision by operation of Sec. 111.07(5), Stats., and that Complainant's petition was untimely filed. As required by Sec. 227.48(2), Stats., the cover letter accompanying the Notice advised the parties that they had the right to file a petition for rehearing and right to file a petition seeking judicial review.

On April 10, 2006, Complainants timely filed a petition for rehearing with the Commission.

On April 13, 2006, Respondent State filed a statement in opposition to the petition arguing that where, as here, no timely petition for review was filed, no petition for rehearing could be filed.

Having reviewed the record and being fully advised in the premises, the Commission concludes that Complainants have a statutory right to file a petition for rehearing in the instant matter but that the petition for rehearing should be denied on its merits because the Commission's decision does not contain any material errors of law or fact.

NOW, THEREFORE, it is

ORDERED

The petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of May, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

DOA-OFFICE OF STATE EMPLOYMENT RELATIONS

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR REHEARING

We begin with a consideration of Respondent State's argument that the Complainants have no statutory right to file a petition for rehearing.

Section 111.07(5), Stats., provides in pertinent part that where, as here, no petition for review is filed within the 20 day period following the mailing of an examiner's "findings and order" to the parties and neither the examiner nor the Commission take any action within that same 20 day period, the examiner's "findings or order shall be considered the findings or order of the commission as a body. . ." Thus, in circumstances such as those presented here, Sec. 111.07(5), Stats., clearly provides that the Commission has now issued "findings or order."

Section 227.49(1), Stats., provides in pertinent part that:

Any person aggrieved by a final order may, within 20 days after service of the order, file a petition for rehearing. . .

Because the Commission's "findings or order" in this matter provided a final disposition of the complaint, Sec. 227.49 (1), Stats., entitled Complainants to file a petition for rehearing.¹

Given the foregoing, we reject Respondent State's claim that there is no right to rehearing in this matter. There is no support in the applicable statutory language for Respondent's argument that the right to rehearing is lost if a party failed to timely take its first "bite of the apple" by filing a petition for review with the Commission. To the extent Respondent argues that a Commission decision was somehow not created by Sec. 111.07(5), Stats., because we had no choice/made no affirmative decision when the Examiner's decision became the Commission's, the language of Sec. 111.07(5), Stats., discussed above makes this argument unpersuasive. Further, because Sec. 111.07(5), Stats., gives us the right to act on our own motion to "set aside, reverse or modify" an examiner's decision within 20 days of the date it was mailed to the parties, we did have the choice of intervening in the matter and our choice not to do so was an affirmative act. Thus, Respondent is in error in this regard as well.

¹ Section 227.48(2), Stats., provides that the period for filing a petition for rehearing does not start to run until notice of the right to file is provided to the parties. Here, such notice accompanied our March 20, 2006 Notice and because the 20 day period for filing a petition expired on a Sunday (April 9, 2006), the petition was timely filed upon its receipt on April 10, 2006.

Turning to the merits of the petition for rehearing, Complainants argue that we made material errors of law and fact in our decision. We have reviewed the matter and concluded that we did not make such errors. Thus, we have denied the petition.

Dated at Madison, Wisconsin, this 10th day of May, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

