

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 469,)	CASE NO. 6073-U-85-1137
)	
Complainant,)	DECISION 2387-A - PECB
)	
vs.)	
)	
CITY OF YAKIMA,)	ORDER GRANTING
)	MOTION TO FILE
Respondent.)	PETITION FOR REVIEW
)	
)	

Durning, Webster & Lonquist, by Judith A. Lonquist, attorney at law, appeared on behalf of the complainant.

Syrdal, Danelo, Klein, Myre & Woods, by Otto G. Klein III, attorney at law, appeared on behalf of the respondent.

This case is now before the Commission on a "Motion For Leave To File Petition To Review Previously Submitted But Not Received" filed by the union on March 10, 1986. International Association of Firefighters, Local 469, filed a complaint charging unfair labor practices on October 29, 1985, alleging that the City of Yakima had refused to bargain, in violation of RCW 41.56.140(4), by making a unilateral change of the criteria for appointment to the position of fire chief. The Executive Director issued a preliminary ruling under WAC 391-45-110 on January 30, 1986, dismissing the complaint as failing to state a cause of action. The case was closed in the absence of either a petition for review filed on or before February 19, 1986 or action by the Commission on or before March 3, 1986.

The union alleges that, on February 14, 1986, it prepared and caused to be mailed a petition seeking review of the Executive Director's January 30, 1986 ruling. The petition never reached the Commission's offices, although a copy was timely received by opposing counsel. Copies of those documents, including the union's brief on the merits of the case, were supplied with the union's motion.

In support of its motion, the union urges us to: 1) rule that a "mailing" is equivalent to a "filing", or 2) waive the time limits for filing an appeal. The employer does not oppose this motion, and, in fact, has filed a brief on the merits of the case.

WAC 391-08-120(1) and (3) distinguish the "service" of papers on other parties from the "filing" of such documents with the Commission. The rule states that "service" is accomplished when the papers are deposited in the U. S. Mail, while "filing" occurs only when they are actually received at the Commission's office. Significantly, our rule is identical to WAC 10-08-110, which is part of the uniform procedural rules applicable to all Washington state administrative agencies. A ruling in this case that the filing occurred when the petition for review was deposited in the U. S. Mail would contravene the plain language of both the Commission's own procedural rules and the uniform procedural rules.

With respect to the time for filing an appeal, WAC 391-45-350 states that a decision may be appealed to the Commission by filing a petition for review within 20 days of a ruling issued by the Executive Director (see WAC 391-45-110) or an examiner. The Commission itself may review such a ruling on its own motion within 30 days of a ruling's issuance. The rule further states:

. . . In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission.

In this case, neither a review petition's filing or a Commission motion occurred within the specified time periods.

The time periods for the filing of petitions for review exist in order to provide a certain, final date for agency decisions. Such certainty and finality are essential bases for any further proceedings or actions taken pursuant to Commission rulings. In past cases, we have consistently refused to extend the period for obtaining review. E.g., Spokane School District No. 81, Decision 310-A (EDUC, 1978); Seattle Public Health Hospital, Decision 1710-B (PECB, 1984); Fort Vancouver Regional Library, Decision 2350-B (PECB, 1986).

On the other hand, we believe that we have the discretion to extend the appeal period.¹ We are reluctant to do so, because extensions will take away the certainty and finality that

¹ Filing a court appeal within the requisite time period is considered jurisdictional. E.g., Mackey v. Champlin, 68 Wn.2d 398 (1966) (deposit in U. S. Mail not sufficient to perfect an appeal), but this jurisdictional rule may be waived by the courts on occasion. See: Weeks v. Chief of Washington State Patrol, 96 Wn.2d 893 (1982) (notice of appeal filing in wrong place; respondent had actual, timely notice); Moore v. Burdman, 84 Wn.2d 408 (1974) (jurisdictional bar waived in deprivation proceeding where "sacred right" of child custody involved; also court was partially to blame for late filing).

accompanies the expiration of the appeal period, and in most cases, will prejudice the responding party. We make an exception in this case because, and only because, the responding party has indicated its desire to proceed with the case on the merits.

The union's motion is granted. The Commission will proceed with determination of the petition for review based on the briefs already filed by the parties.

ISSUED at Olympia, Washington, this 2nd day of July, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson
JANE R. WILKINSON, Chairman

Mark C. Endresen
MARK C. ENDRESEN, Commissioner

Joseph F. Quinn
JOSEPH F. QUINN, Commissioner