

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

CITY OF DETROIT (DEPARTMENT OF TRANSPORTATION),
Respondent-Public Employer in Case No. C97 B-32

-and-

**DEPARTMENT OF TRANSPORTATION FOREMEN'S
ASSOCIATION, CHAPTER 337,**
Respondent-Labor Organization in Case No. CU97 B-5

-and-

JEFFREY D. BOYD,
Individual Charging Party

APPEARANCES:

For the Public Employer: Bruce A. Campbell, Esq., City of Detroit Law Department

For the Labor Organization: William Bonds, President

For the Charging Party: James W. McGinnis

**ORDER DENYING MOTION TO SET ASIDE
DECISION AND ORDER**

On August 12, 1998, a hearing was conducted at Detroit, Michigan, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. This hearing was conducted pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 & 423.216, MSA 17.455(10) & 17.455(16), and a Notice of Hearing and Order to Show Cause issued July 20, 1998. As stated in the notice of hearing, the purpose of the hearing was to determine whether Charging Party had good cause for failing to file

his exceptions in a timely manner or comply with Commission Rule 67(3), R 423.467.¹ Based upon the record made at this hearing and a motion filed by Charging Party on July 6, 1998, we find as follows.

Facts:

On May 29, 1998, Administrative Law Judge Stern issued her Decision and Recommended Order in this case recommending that charges filed by Jeffrey D. Boyd against the City of Detroit (Department of Transportation) and against the Department of Transportation Foremen's Association, Chapter 337, be dismissed in their entirety. A letter signed by the Bureau's Interim Director accompanied this decision. This letter included the following information:

Pursuant to Section 16 of Act 336 of the Public Acts of 1947, as amended, any party to the proceedings may file written exceptions to the Recommended Order with the Michigan Employment Relations Commission, at the above (Detroit) address or at the Commission office located at 201 N. Washington Square, P.O. Box 30015, Lansing, Michigan 48909. Exceptions in this case must be received at a Commission office by the close of business on June 22, 1998. An original and four copies of the exceptions must be filed with the Commission and a copy served on the opposite party or parties. A statement of services must accompany the exceptions.

...

If no exceptions are filed within the above period, or within such further period as the Commission may authorize, the Recommended Order will become the Order of the Commission.

A copy of the letter and decision were mailed on May 29 to both Charging Party and his counsel at their addresses of record.

Exceptions filed by counsel on Charging Party's behalf were received in our Detroit office on June 24, 1998. Accompanying the exceptions was a proof of service indicating that the exceptions had been mailed on June 23. On June 25, 1998, we issued a Decision and Order pursuant to Section 16(b) of PERA adopting the recommended order of the Administrative Law Judge on the grounds that we had received no timely exceptions. On July 6 Charging Party filed a motion for reconsideration requesting that the June 25 order be set aside and that we consider its exceptions. Respondents neither concurred in nor opposed Charging Party's motion. Thereafter, as noted above,

¹ A request for extension of time in which to file exceptions or briefs or both shall be in writing and filed with the commission before expiration of the required time for filing, except for good cause shown, and, at the same time, copies thereof shall be served on each of the other parties.

a hearing was conducted to determine whether Charging Party had good cause for failing to either to file his exceptions in a timely manner or to make a timely request for an extension of time. Charging Party's counsel appeared and testified. Neither Respondent had a representative present at the hearing.

Charging Party's counsel testified that sometime near the end of May 1998 he made a decision to move his offices. The decision was made suddenly, and he did not submit a change of address card to the U.S. Postal Service immediately. He also did not immediately notify the Administrative Law Judge of his new address. The Administrative Law Judge's Decision and Recommended Order was mailed to Charging Party's counsel at his old office address. Counsel did not receive a copy of the Decision and Recommended Order until Saturday, June 13, 1998. After receiving the decision he contacted his client to determine whether his client wished to file exceptions. Charging Party told his counsel that he wanted to go forward with the case, but that he (Charging Party) had some financial difficulties. Charging Party and his counsel eventually reached agreement, and Charging Party's counsel mailed the exceptions to us on the following day.

Discussion and Conclusions of Law:

Commission Rule 66(1), R 423.466, reads:

Within 20 days after service of the proposed report and recommended order, a party may file with the commission an original and 4 copies of a statement in writing, setting forth exceptions thereto or to any other party of the record or proceedings, including rulings upon motions or objections, and a brief in support thereof may be filed with the commission; at the same time copies of these documents shall be served on each party to the proceedings.

Commission Rule 71(2), R 423.471, states:

The date of service on any party other than the commission, administrative law judge, or other agent shall be the day when the matter served is deposited in the United States mail or is otherwise effected as provided in this rule. In computing the time from that date, the provisions of this rule apply.

Commission Rule 72(1), R 423.472, includes the following statement:

Whenever a party has the right or is required to do some act or take some proceedings with a prescribed period after service or a notice of other paper upon him, and the notice or paper is served on him by mail or by telegraph, 3 days shall be added to the prescribed period.

Copies of an administrative law judge's decision and recommended order are routinely served on the parties to a proceeding by regular mail. In accord with Commission Rule 71(2), the date of

service of the decision on the parties is the date it is mailed to them. In computing the date by which exceptions must be filed, three days is added to the 20 days to comply with Rule 72(1). Because the date exceptions are mailed to the Commission is not the date of service upon us under Rule 71(2), under the rules exceptions must be in our office within 23 days after the date the administrative law judge's decision and recommended order is mailed. In order to help parties file their exceptions on time, the cover letter to the decision and recommended order sets out the due date and also indicates that the exceptions must be filed in a Commission office by that date.

Rule 67(3) (See footnote 1 above) allows us to grant extensions of time to file exceptions, if the request is in writing and filed with us before the exceptions are due. Rule 67(3) also permits us to grant a party permission to file a late request for an extension of time if it is able to show good cause. Parties are alerted to their right to request an extension of time by language in the cover letter stating that we will adopt the administrative law judge's order if no exceptions are filed within the stated period, "or within such further period as the Commission may authorize."

In this case the decision and recommended order was mailed to the parties on Friday, May 29, 1998. Charging Party's counsel did not receive his copy until June 13. Although the exceptions were filed within 20 days of the date he received the decision, this does not make them timely. First, as noted above the date the exceptions were mailed to Charging Party's counsel, and not the date he received them, was the date of service under the rules. Second, there is no indication in the record as to when Charging Party received his copy of the decision; his mailing address has not changed during the course of this proceeding.

The issue here, however, is not really whether Charging Party's exceptions were timely. Clearly, they were not. Charging Party's counsel could have requested an extension of time to file. The real issue before us is whether Charging Party had good cause for his failure to request an extension in writing before the date the exceptions were due. The record indicates that although Charging Party's counsel received his copy of the decision and recommended order late, he did receive it before the due date for exceptions, June 22. Charging Party and his counsel took some time deciding whether exceptions would be filed. However, Charging Party could have requested an extension of time to file even if he later decided not to go forward. Charging Party has offered no explanation for why he failed to request an extension between June 13 and June 22.

For reasons set forth above, we conclude that Charging Party has failed to show good cause for his failure to file his exceptions in a timely manner or to request an extension of time to file.

ORDER

Charging Party's motion for reconsideration and request to set aside our Decision and Order dated June 25, 1998 is hereby denied.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____