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**DISTRICT II**

June 30, 2021

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You are hereby notified that the Court has entered the following opinion and order:

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2020AP959                      Racine County Board of Drainage Commissioners v.  
State of Wisconsin Department of Workforce Development  
(L.C. #2020CV837)

Before Reilly, P.J., Gundrum and Stark, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

The Racine County Board of Drainage Commissioners (the “Board”) appeals an order dismissing as untimely its petition seeking judicial review of a Department of Workforce Development (“DWD”) decision regarding the applicability of the prevailing wage law to two of the Board’s projects. The Board argues its petition was timely filed because DWD’s determination was not final until DWD issued a clarification of the phrase “for the reasons indicated below” after rendering its initial decision. Based upon our review of the briefs and

record, we conclude at conference that this case is appropriate for summary disposition. We reject the Board's arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup>

DWD decided the prevailing wage issue against the Board on April 12, 2018, articulating its rationale in a two-page order. Soon thereafter, the Board requested that DWD review that initial decision. Nearly two years later, on January 16, 2020, DWD, by the director of its hearings division, issued a determination letter that affirmed DWD's initial decision. In relevant part, the determination letter stated as follows: "I have reviewed all information and argument provided by both parties and, for the reasons indicated below, affirm the initial decision. That decision, attached to this letter, is incorporated into this decision." The determination letter then concluded with a "Department Order" section that specified how the Board was to obtain compliance with the prevailing wage law.

The Board's attorney claimed he was confused by the "for the reasons indicated below" language in the determination letter. On January 27, 2020, amongst other objections, he requested that the director explain the "reasons indicated below" to which he was referring. The director replied by email on January 28 that he had meant to say, "for the reasons indicated in the initial decision, I affirm it." The Board filed a petition seeking judicial review on February 14, 2018. DWD was served with the petition on February 21, 2018. The circuit court granted DWD's motion to dismiss, concluding the petition was untimely and it therefore lacked competency to proceed.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

WISCONSIN STAT. § 227.53(1)(a)2m. states that petitions for review like the one here “shall be served and filed within 30 days after personal service or mailing of the decision by the agency.”<sup>2</sup> Failure to comply with the mandatory time limitation results in the loss of the circuit court’s competency to proceed. *See Wisconsin Power & Light Co. v. PSC*, 2006 WI App 221, ¶11, 296 Wis. 2d 705, 725 N.W.2d 423. Whether a circuit court possesses statutory competency is a question of law. *State v. Sanders*, 2018 WI 51, ¶16, 381 Wis. 2d 522, 912 N.W.2d 16. Where a statute provides a direct method of judicial review of an agency decision, that method is generally exclusive and strict adherence to the statutory requirements is necessary. *Schiller v. DILHR*, 103 Wis. 2d 353, 355, 309 N.W.2d 5 (Ct. App. 1981).

It is undisputed that DWD was served with the Board’s petition for judicial review more than thirty days after DWD’s January 16, 2020 determination letter. The Board argues, however, that DWD’s determination was not final until the director sent his January 28, 2020 email clarifying what “for the reasons indicated below” meant. Absent this information, the Board argues it was “left with the reasonable impression that the [d]etermination omitted essential findings and conclusions,” and therefore its attorney “could not fully and finally consider his client’s legal options and consult with it as to the propriety of judicial review.”

While it is true that only final agency orders are eligible for WIS. STAT. ch. 227 judicial review,<sup>3</sup> a final order is merely one that determines the legal rights of a party without

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<sup>2</sup> WISCONSIN STAT. § 227.53(1)(a)2m. applies to petitions for review “in cases other than contested cases.” We presume the statute is applicable here, as neither party has argued otherwise.

<sup>3</sup> The Board improperly cites to an unpublished per curiam opinion for this proposition of law, in violation of WIS. STAT. RULE 809.23(3). We admonish counsel that future violations of the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83(2).

contemplation of further proceedings. See *Sierra Club v. DNR*, 2007 WI App 181, ¶¶13-15, 304 Wis. 2d 614, 736 N.W.2d 918. The finality of an order presents a question of law, and we focus on the substance of the agency’s order and not its form or label. *Id.*, ¶¶13-14. It is not necessary for the agency to “indulge in the elaborate opinion procedure of an appellate court.” *State ex rel. Harris v. Annuity & Pension Bd., Emp. Ret. Sys. of Milwaukee*, 87 Wis. 2d 646, 661, 275 N.W.2d 668 (1979).

Although the Board asserts it acted reasonably based on what it perceived as “indisputably ambiguous and confusing language” in the order, the Board cites no authority for the proposition that the time for seeking judicial review under WIS. STAT. § 227.53(1)(a)2m. is tolled while a party seeks clarification of language contained in an agency decision. Further, the appellate record demonstrates the Board tacitly admitted the finality of DWD’s January 16, 2020 order. The Board’s petition stated it was seeking review of that order, not a different order produced nearly two weeks later following clarification. The Board’s petition represented that the January 16 order was an “administrative decision under [WIS. STAT.] § 227.52, subject to judicial review.” And the Board asserted that DWD’s January 16 order “rendered a decision on the Request for Review” by affirming the initial decision and incorporating that decision’s rationale.

Moreover, even if there was some arguably ambiguous language in the order—a proposition of which we are skeptical—we agree with DWD that the order was clear enough to put the Board on notice that DWD had rejected the appeal on its merits. An agency decision is sufficient “if the findings of fact and conclusion of law are specific enough to inform the parties and the courts on appeal of the basis of the decision.” *Harris*, 87 Wis. 2d at 661. Here, the January 16 order clearly stated that DWD was affirming its initial decision using the rationale

stated in its April 12, 2018 order, which was attached to and expressly incorporated as part of the January 16 determination.

We reject the Board’s reliance on *Lutheran General Health Care System v. Department of Revenue*, 595 N.E.2d 1214 (Ill. App. 1992). In that case, the copy of the agency decision sent to the litigant was missing a page, and the court therefore found the decision was “insufficient to inform them of what claims should be addressed in their complaint for administrative review.” *Id.* at 1220. The Board makes a similar argument here. As explained above, the determination letter was not incomplete and the Board had clear notice of the reasons for DWD’s determination.

The Board failed to timely comply with the service requirements of WIS. STAT. § 227.53(1)(a)2m. Accordingly, the circuit court lacked competency to adjudicate the Board’s appeal and properly dismissed its petition for judicial review.

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*