

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MICHAEL LANGIN

Involving Certain Employees of

ST. CROIX COUNTY

Case 13
No. 55972
ME-924

Decision No. 12271-D

Appearances:

Mr. Michael Langin, AODA Counselor, St. Croix County Health Department, 1101 Carmichael Road, Hudson, Wisconsin 54106, appearing on his own behalf.

Mr. Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin 54751, appearing on behalf of AFSCME Local 576A.

Ms. Debra Kathan, Personnel Director, St. Croix County, 1101 Carmichael Road, Hudson, Wisconsin 54106, appearing on behalf of St. Croix County.

ORDER DISMISSING PETITION FOR ELECTION

On February 21, 2003, the Wisconsin Employment Relations Commission received a petition for election and showing of interest by facsimile transmission from St. Croix County AODA Counselor Michael Langin asking that the Commission conduct an election to determine whether the AODA Counselors employed by St. Croix County wish to continue to be represented by Local 576A, AFSCME, AFL-CIO for the purposes of collective bargaining with St. Croix County.

On February 24, 2003, the Commission received the original of the petition for election and showing of interest.

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On March 6, 2003, the Commission received a letter from Local 576A asserting that the petition was untimely, barred by an interest arbitration petition, and not supported by a sufficient showing of interest.

On April 1, 2003, Langin filed written argument in opposition to Local 576A's position.

The County has taken no position as to the petition.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of April, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

St. Croix County

**MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION FOR ELECTION**

On November 26, 2002, AFSCME Local 576A filed a petition for interest arbitration covering a bargaining unit of certain St. Croix County employees -- including AODA Counselors. 1/

1/ By letter dated March 19, 2003, the Commission advised the parties that pursuant to Sec. 227.45(3), Stats., it intended to take notice of this petition and asked the parties for their comment on said intention. No objection was received from any party and we hereby take notice of the interest arbitration petition.

On February 24, 2003, Langin filed 2/ his petition and showing of interest seeking an election in a proposed bargaining unit of St. Croix County AODA Counselors for the purposes of determining whether the Counselors wished to continue to be represented for the purposes of collective bargaining by Local 576A.

2/ On February 21, 2003, we received Langin's petition for election and showing of interest by facsimile transmission. ERC 11.02 (2) requires that an "original and 5 copies" of an election petition be filed. The Commission has interpreted "original" to mean a document that has an original signature. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27698-C (WERC, 4/96). Thus, because the petition bearing Langin's original signature was not received until February 24, 2003, the Langin petition was not filed until that date.

The Commission has consistently held that where, as here, a petition for interest arbitration has been filed before an election petition is filed, the pendency of the interest arbitration petition renders the election petition untimely. WAUKESHA COUNTY, DEC. NO. 14157-E (WERC, 4/02); MUKWONAGO SCHOOLS, DEC. NO. 24600 (WERC, 6/87); DUNN COUNTY, DEC. NO. 17861 (WERC, 6/80).

As the Commission stated in MUKWONAGO:

Determinations as to the timeliness of election petitions seeking to change or eliminate the existing bargaining representative require that we balance competing interests and rights. On the one hand, we have the interest of encouraging stability in collective bargaining relationships which enhances the potential for labor peace. On the other hand, we have the statutory right of employees to bargain collectively through representatives of their own choosing, which right necessarily includes the right to change or eliminate a chosen representative. Historically, we have balanced these competing interests and rights by concluding that there should be a guaranteed but limited time prior to commencement of bargaining for a successor agreement when an election petition can be timely filed. Thus, our contract bar policy provides that during the 60-day period prior to the reopening date for commencement of negotiations on a successor agreement, an election petition can be timely filed. The interests of stability have caused us to conclude that a petition filed during the term of a contract and prior to or after this 60-day period is untimely.

Where no election petition has been timely filed during the 60-day period prior to the reopener date, and the union and/or employer have invoked the statutory interest arbitration procedures in an effort to reach a successor agreement, we have held that the interests of stability warrant finding an election petition filed during the pendency of an interest arbitration petition to be untimely. However, mindful of the statutory rights of municipal employees and municipal employers to raise questions as to representation, we have also concluded that this interest arbitration bar is extinguished once the term of the contract being arbitrated (under either party's offer) has expired. Our holdings provided municipal employees and employers with the guaranteed time prior to the commencement of bargaining on a successor (to the contract being arbitrated) agreement when questions concerning representation could be timely raised. (Footnotes omitted). (Emphasis added).

Here, Langin does not generally take issue with the balance we have historically struck between the rights of municipal employees to raise questions as to representation and the need for stability in collective bargaining relationships. Rather, he argues that we should modify how we establish the timeliness of an election petition in relation to an interest arbitration

petition. Instead of using the date on which the respective petitions are filed with us (i.e. the date we receive them), Langin asserts the critical dates for determining timeliness should be: (1) the date a party contacts the WERC to express interest in filing an election petition; and (2) the date a party who has previously filed an interest arbitration petition decides to proceed to interest arbitration because hopes for a voluntary settlement have ended. Using these dates, Langin asserts his petition is timely because on February 20, 2003, he telephonically advised the Commission of his interest in filing an election petition and because Local 576A did not decide to proceed to arbitration until later that same day when a contract offer from St. Croix County was rejected.

We reject Langin's proposed method for determining timeliness. As the Commission noted in MUKWONAGO, one advantage of our existing approach is that it is ". . . generally and understandably applicable to all parties in varying fact situations . . ." Langin's approach would require a fact specific analysis in each case that would, in turn, produce undesirable delay and uncertainty of result for all affected parties. Therefore, we conclude that it is appropriate to continue to apply the MUKWONAGO methodology to disputes as to the timeliness of election petitions. Under MUKWONAGO, Langin's petition is untimely because of the pending interest arbitration petition. Therefore, we have dismissed the petition.

Dated at Madison, Wisconsin, this 25th day of April, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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