

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
 :  
 In the Matter of the Petition of :  
 :  
 WISCONSIN EDUCATION :  
 ASSOCIATION COUNCIL : Case 242  
 : No. 37765 SE-93  
 Involving Certain Employes of : Decision No. 24111-A  
 :  
 DEPARTMENT OF EMPLOYMENT :  
 RELATIONS (PROFESSIONAL-ED) :  
 :  
 -----

Appearances:

Mr. Steven Pieroni, Staff Counsel, and Ms. Mary Matthias, Law Clerk, appearing on behalf of Wisconsin Education Association Counsel.  
 Schneidman, Myers, Dowling & Blumenfield, by Mr. Timothy E. Hawks, appearing on behalf of Local 3271, Wisconsin Education Professionals, WFT, AFT, AFL-CIO.  
Ms. Barbara Buhai, Attorney, Division of Collective Bargaining, Department of Employment Relations, appearing on behalf of the State Employer.

ORDER DISMISSING PETITION

On October 31, 1986, Wisconsin Education Association Council (herein WEAC) having filed a petition for election in the professional education unit of State of Wisconsin employes currently represented by Local 3271, Wisconsin Educational Professionals, WFT, AFT, AFL-CIO (herein Local 3271); and WEAC having accompanied said petition with a proposed showing of interest consisting of authorization cards signed by at least 30 percent of the eligibles in the bargaining unit as reflected in the State's payroll list for the payroll period ending October 26, 1986, as provided at the Commission's request by the State Department of Employment Relations; and said proposed showing of interest consisting of less than 30 percent of the eligibles if cards dated in and before September, 1985, were excluded as stale; and said showing of interest also consisting of less than 30 percent of the eligibles if cards dated on and before October 15, 1985, were excluded as stale; and on December 2, 1986, the Commission having issued an order holding WEAC's petition in abeyance pending a determination by the Commission of whether and to what extent authorization cards must be dated and current in order to be counted toward a showing of interest under SELRA; and the Commission having invited the parties to submit written arguments on that question; and WEAC and Local 3271 having submitted written arguments in the matter, the last of which was received on January 21, 1987; and the Commission being satisfied that cards signed prior to the October 15, 1985 filing of WEAC's untimely 1985 petition are stale and therefore cannot properly be counted toward meeting the 30 percent showing of interest requirement under Secs. 111.825(4) and 111.83(6), Stats., as regards the instant October 1986 petition; and the Commission being further satisfied that WEAC's petition should therefore be dismissed because it was not accompanied by a sufficient number of current signed authorization cards;

NOW, THEREFORE, the Commission hereby issues the following

ORDER

DEPARTMENT OF EMPLOYMENT RELATIONS (PROFESSIONAL-ED)

MEMORANDUM ACCOMPANYING  
ORDER DISMISSING PETITION

The pertinent background information is contained in the preface to our Order.

POSITION OF WEAC

WEAC argues that either on a case-by-case basis or upon adoption of an appropriate general policy regarding staleness of authorization cards, WEAC must be deemed to have supported its October 1986 petition with an adequate showing of interest.

The Commission's dismissal of WEAC's October 15, 1985 petition on grounds that such a petition could only be timely filed in October of an even-numbered year could not have reasonably been anticipated by WEAC. Hence, WEAC's adequate October 1985 showing of interest must be deemed sufficient to support the October 1986 petition. For, the postponement of petition processing from October 1985 to October 1986 was through no fault of WEAC in the circumstances. Citing Northern Trust Co., 69 NLRB 652, 18 LRRM 1252 (1946). Speculation about why some 1985 signers did not resubmit signed authorization cards in 1986 is not a legitimate basis on which to conclude that such employees are no longer interested in representation by WEAC.

In the alternative, it is appropriate to supplement 1986 cards with the requisite small number of cards signed in 1985 after and before the filing of the October 1985 petition because any solicitations of cards made in 1985 and 1986 were all part of a single organizational campaign. Citing, Blade-Tribune Publishing Co., 161 NLRB 1512, 63 LRRM 1484 (1966). The 1985 and 1986 card solicitations were "substantially contemporaneous." Treating them as parts of a single organizational campaign is especially justified in the context of the inherent difficulties in contacting the instant group of some 700 employees who are dispersed throughout the State in small groups.

For any and all of those reasons, the Commission ought not, again, defeat this employe group's desire to express its choice of representative by means of a secret ballot election.

POSITION OF LOCAL 3271

SELRA requires dismissal of a petition for election unless a petitioner establishes evidence that at least 30 percent of a bargaining unit support the petitioner's representation. Stale evidence of employe interest is by its nature unreliable and of no assistance to the agency in assessing the need for an election. Rather, a showing must be of current employe interest. Other jurisdictions have defined stale cards as those signed and dated one, three, six or twelve months before the date of the petition involved. No jurisdiction has an expressed cut-off of greater than twelve months. The WEAC petition is not supported by a 30 percent showing of cards signed within twelve months of the October 1986 petition. It is therefore not supported by a current showing of interest and must be dismissed.

Furthermore, since some 1985 signers did not sign cards in 1986, it follows that those employees have implicitly revoked their prior expression of interest in representation by WEAC. It would be unfair and inappropriate to unconditionally bind 1985 signers to their authorization cards executed more than 12 months back. In addition, WEAC's failed attempt to establish a fresh 30 percent showing in 1986 also undercuts WEAC's claim of continuing support from at least 30 percent of the bargaining unit.

Absent the requisite current 30 percent showing of interest, there exists no question concerning representation in the instant bargaining unit.

## DISCUSSION

As we stated in our December 2, 1986, Order Holding Petition in Abeyance, this case presents the "novel and substantial question of law . . . as to whether and to what extent authorization cards must be dated and current in order to be counted toward a showing of interest under SELRA." Dec. No. 2411 (WERC, 1986).

In our opinion, the WEAC petition must be dismissed on the basis that it was not accompanied by a sufficiently current set of authorization cards to constitute a "showing of interest" within the meaning and purpose of Sec. 111.825(4), Stats., or to constitute the requisite "proof that at least 30% of the employees in the collective bargaining unit desire a change or discontinuance of existing representation" within the meaning and purpose of Sec. 111.83(6), Stats.

In our view, it would be inconsistent with the underlying purposes of the SELRA showing of interest requirement for the Commission to count cards regardless of their age. The object of the showing of interest requirement appears to be to reserve the Commission's election machinery to those instances in which there is a substantial enough interest in a change in representative to warrant the expense, time and disruption entailed by an election. Although WEAC has accompanied its petition with a 30 percent showing of interest in the form of signed authorization cards, it has achieved the 30 percent figure only by including a number of cards that are dated prior to the October 11, 1985 filing date of WEAC's prior petition for election in this unit which was held untimely. While the language of Secs. 111.825(4) and 111.83(6) Stats., does not expressly require that the cards be dated or that they be current, and while the Commission's rules in ERB 21 provide no guidance in that regard, it is our view that the requirement of a "showing of interest" and of "proof that . . . employees . . . desire a change" inherently conveys a requirement that the showing be reasonably current.

Requirements by rule or case law that showings of interest be current are common if not universal in labor relations practice, with both the NLRB in NLRA cases and the Commission in Municipal Employment Relations Act (MERA) cases having imposed such a requirement for many years. Werman & Sons Co., 114 NLRB 629, 37 LRRM 1021, 1022 (1955); Wauwatosa Board of Education, Dec. No. 8300-A (WERC, 2/68) at 19-20. In a more recent MERA case, the Commission dismissed the petition as untimely and stated that while the petitioner had the right to timely file another petition approximately one year after the untimely petition was filed, any such subsequent petition would need to be supported by a "fresh" showing of interest. Marathon County, Dec. No. 23286 (WERC, 2/86) at 5.

The purpose of requiring a fresh showing in such circumstances is to assure that the showing of interest accompanying the new petition reflects the current sentiments of the requisite percentage of the eligibles rather than the sentiments of those individuals at some remote point of time in the past.

In our opinion, that purpose is equally applicable in SELRA election proceedings. Especially so where, as here, the cards filed in support of the petition filed in October of 1985 were gathered in support of a petition that was untimely filed and prior to the settlement of the latest agreement between the State and the incumbent representative organization.

Contrary to WEAC's contentions, we do not view this case either as one involving a delay in the processing of a petition due to matters beyond WEAC's control or as one involving a single continuous campaign for authorization cards. WEAC's October 1985 petition was dismissed as untimely. While that decision involved a question of first impression, it is hardly parallel to the situation in Northern Trust Co., *supra*, wherein the processing of the union's petition was delayed as a result of court proceedings initiated by the NLRB to enforce subpoenas served upon the employer and others. Furthermore, we find that the dates of the cards submitted in support of the October, 1986 petition reflect two distinct card solicitations separated by several months of nonactivity, rather than one continuous campaign solicitation.

For those reasons, at a minimum, we are treating as stale all cards signed prior to the October 15, 1985 submission of the 1985 WEAC petition. When that is done, WEAC's showing of interest is insufficient to meet the 30 percent requirement.

We have therefore dismissed the instant petition for election on that basis.

Dated at Madison, Wisconsin this 14th day of February, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

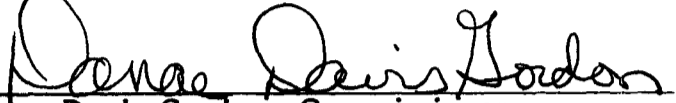
By



Herman Torosian, Chairman



Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner