STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of LAKEWOOD UNISERV COUNCIL/WEAC Involving Certain Employes of MUKWONAGO SCHOOL DISTRICT	Case 38 No. 38356 ME-2678 Decision No. 24600

Appearances:

Mulcahy & Wherry, S.C., Attorneys, by Mr. Mark L. Olson, 815 East Mason Street, Suite 1600, Milwaukee, Wisconsin 53202, appearing on behalf of Mukwonago School District.

Lawton & Cates, S.C., Attorneys, by Mr. Richard V. Graylow, 214 West Mifflin Street, Madison, Wisconsin 53703, appearing on behalf of Intervenor AFSCME.

Ms. Leigh Barker, VTAE Consultant/Organizer, Wisconsin Education Association Council, 101 West Beltline Highway, Madison, Wisconsin 53708, and Mr. James H. Brenner, Executive Director, Lakewood UniServ Council-West, 4620 West North Avenue, Milwaukee, Wisconsin 53208, appearing on behalf of Petitioner.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Lakewood UniServ Council/WEAC having, on February 11, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, in a claimed appropriate bargaining unit consisting of all regular full-time and regular part-time (working 20 hours or more per week) employes of Mukwonago School District, excluding casual, supervisory, managerial, executive or confidential employes, to determine whether said employes desire to be represented for the purpose of collective bargaining by Petitioner; and Local 1101, AFSCME, AFL-CIO having intervened; and a hearing having been held on April 16, 1987 in Mukwonago, Wisconsin, before Examiner Christopher Honeyman, a member of the Commission's staff; and both labor organizations having filed briefs, and the record having been closed on May 12, 1987; the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Mukwonago School District, herein referred to as the District, is a municipal employer and maintains its principal offices at 432 Division Street, Mukwonago, Wisconsin 53149.

2. That Lakewood UniServ Council/WEAC, herein referred to as the Petitioner, is a labor organization and has its offices located at 4620 West North Avenue, Milwaukee, Wisconsin 53208.

3. That Local 1101, AFSCME, AFL-CIO, herein referred to as the Intervenor, is a labor organization and has its offices c/o Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719.

4. That the District and Intervenor have been parties to 1983-85 and 1985-87 collective bargaining agreements which specify that the Intervenor represents the following certified unit of employes: All regular full-time and regular part-time (working 20 hours or more per week) employes of the Board, excluding casual,

supervisory, managerial, executive or confidential employes; and that at the hearing all parties stipulated that said bargaining unit is the appropriate unit for the election herein.

5. That the Intervenor, contrary to the Petitioner, contends that the instant petition is blocked both by the 1985-87 collective bargaining agreement and by a petition for mediation-arbitration filed on August 13, 1985, which resulted in an arbitrator's award determining the content of said 1985-87 agreement; and that the District takes no position on this issue.

6. That on August 13, 1985 the Intervenor filed a petition for mediation-arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., with respect to the bargaining unit identified in Finding of Fact 4 above; that following an investigation by the Commission, on January 23, 1986 the Commission ordered that mediation-arbitration be initiated; that on July 9, 1986, a hearing was held before the mediator-arbitrator; that by December 4, 1986, all briefs had been exchanged between the parties; that the 1983-85 agreement between the District and the Intervenor provided that the Union submit its initial proposals for a successor contract to the Board by February 15, 1985; that the District and Intervenor, in a stipulation of agreements reached on December 11, 1985, provided that the agreement to be arbitrated would be a two-year agreement commencing on July 1, 1985, and expiring on June 30, 1987, and containing a reopening date of February 15, 1987; that on February 3, 1987, the Intervenor wrote to the District seeking to reopen the 1985-87 agreement to negotiate a successor; that at that time no arbitration award specifying the terms of the 1985-87 agreement had yet been issued; that the instant petition was filed on February 11, 1987; and that the award of the mediator-arbitrator specifying the terms of the 1985-87 agreement was issued on February 23, 1987.

Upon the basis of the foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the petition for election filed herein is timely.

2. That all regular full-time and regular part-time (working 20 hours or more per week) employes of the Board, excluding casual, supervisory, managerial, executive or confidential employes and employes in other bargaining units, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

3. That a question concerning representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act, exists within the collective bargaining unit set forth in Conclusion of Law 2.

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive 1/ in the collective bargaining unit consisting of all regular full-time and regular part-time (working 20 hours or more per week) employes of the Board, excluding casual, supervisory, managerial, executive or confidential employes or employes in other bargaining units, who were employed by Mukwonago School District on June 22, 1987 except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a

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1/ As this date will place the election during the District's summer recess, at which time it is possible some employes will be unavailable, we note that the parties may by mutual agreement postpone the election until after the beginning of the ensuing school year.

majority of said employes desire to be represented by Lakewood UniServ Council/WEAC, or by Local 1101, AFSCME, AFL-CIO, or by neither of said organizations, for the purpose of collective bargaining within Mukwonago School District concerning wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Stephen Schoenfeld, Chairman

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Herman Torosian, Commissioner

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Danae Davis Gordon, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

At the the hearing the parties stipulated to the description of the bargaining unit (which we have modified slightly to make clear the distinction between the instant support staff bargaining unit and the existing unit of teachers and related personnel) and also stipulated to a current list of eligible voters. The sole issue is the timeliness of the petition in light of the mediation-arbitration proceeding pending at the time the election petition was filed.

THE PARTIES' POSITIONS:

The Intervenor argues that the Commission has previously held that a petition for election is untimely when filed subsequent to a petition for mediation-arbitration. In this respect the Intervenor cites City of Prescott (Police Department) 2/ and City of Cudahy. 3/ The Intervenor argues that these cases establish that the policy in favor of stability of collective bargaining relationships, which operates when a current contract is in force, also operates when a new contract is inevitable, its terms only to be defined by a pending mediation-arbitration proceeding. In the alternative, the Intervenor contends that the request to reopen the petition filed by the Intervenor with the Board triggered a new round of collective bargaining even though the prior agreement's terms had not been finally determined, and that the new demand to bargain independently warrants barring the petition for election which was subsequently filed.

The Petitioner contends that the Commission has recognized an exception to the rule that a mediation-arbitration proceeding will bar an election, in that in Oconto County 4/ and Marinette County 5/ the Commission held that where the pending mediation-arbitration proceeding (or interest arbitration proceeding) covered an agreement which was already expired by its own terms, no analogy to the principle of contract bar existed, and an election petition was appropriate. The Petitioner also argues that were the Commission to find otherwise under the circumstances of this case, the rival union would be precluded from filing any petition for a four-year period extending from the beginning of the 1985-87 agreement to the termination of a putative 1987-89 agreement.

The District took no position with respect to the disputed issue.

DISCUSSION

Determinations as to the timelinesss of election petitions seeking to change or eliminate the existing bargaining representative require that we balance competing interests and rights. 6/ On the one hand, we have the interest of encouraging stability in collective bargaining relationships which enhances the potential for labor peace. 7/ On the other hand, we have the statutory right of employes to bargain collectively through representatives of their own choosing, which right necessarily includes the right to change or eliminate a chosen

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2/ Decision No. 18741, (WERC, 6/81).

3/ Decision No. 21887, (WERC, 8/84).

4/ Decision No. 21847, (WERC, 7/84).

5/ Decision No. 22101, (WERC, 11/84).

6/ Durand Unified Schools, Dec. No. 13552, (WERC, 4/75).

7/ Secs. 111.70(4)(c) and 111.70(1)(a), Stats.

representative. 8/ 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. 9/ 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. 10/ However, mindful of the statutory rights of municipal employes 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. 11/ Our holdings provided municipal employes 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.

The instant case requires that we decide when the guaranteed but limited time for timely filing an election petition should be when an interest arbitration award is issued prior to the expiration of the contract which was arbitrated but after the commencement of the 60-day window period.

The answer posited by WEAC in this case would conclude that if the contract issues being arbitrated do not include the reopener date or contract duration, a petition would be timely even if filed during the pendency of interest arbitration petition so long as it was filed during the 60 day period prior to the undisputed reopener date. We find such a rule troublesome because it would have no applicability in situations where the reopener date or the duration of the agreement are in dispute in the arbitration proceeding, it presumes that agreed-upon reopener dates are common knowledge during the pendency of interest arbitration, and it could create situations in which we would be faced with the equally undesirable choices of either conducting an election before the arbitration award was issued or delaying the election until the award was issued.

We conclude that the best balance of competing interests and rights in situations such as that before us herein is to conclude that election petitions cannot be timely filed during the pendency of an interest arbitration petition, but that a petition can be timely filed during the 60-day period following the date the award is issued. Such a holding will be generally and understandably applicable by all parties in varying fact situations and will allow the employes to receive a timely election while being fully informed as to the result which the interest arbitration proceeding produced.

Thus, the Commission's rule with respect to timeliness of election petitions during the pendency of an interest arbitration proceeding is as follows: In those cases where an arbitration proceeding is pending, an election petition filed will be deemed untimely in all cases except where the pending arbitration proceeding

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8/ Secs. 111.70(2) and 111.70(4)(d)5, Stats. Municipal employers are also able to raise questions concerning the continuing majority status of an incumbent union under Sec. 111.70(4)(d)5, Stats.

9/ Wauwatosa Board of Education, Dec. No. 8300-A, (WERC, 2/68) aff'd (CirCt Dane, 8/68).

10/ Dunn County, Dec. No. 17861, (WERC, 6/80); City of Prescott, supra.

11/ Oconto, supra; Marinette, supra.

involves an agreement which has already expired by its own term. In such cases an election petition can timely be filed any time after expiration of the agreement and up to 60 days following issuance of the arbitration award. 12/ In all other cases a petition is timely only if filed after issuance of award, and if filed: (1) during the 60-day period before the reopener date in the agreement if the issuance of the award is prior to such 60-day period, or (2) during the 60 days after the issuance of the award if the award is issued during or after the 60-day period prior to the reopener date in the agreement.

As stated earlier herein, the balance between the competing interests and rights at stake has been and now continues to be struck in a manner which guarantees a limited period prior to the commencement of bargaining on a successor agreement when election petitions can be timely filed. Because we had not previously determined when a petition could be timely filed in the circumstances involved herein and because dismissal of WEAC's petition as untimely would deprive the municipal employes of the right to determine whether they wish to elect a different representative prior to bargaining a successor agreement, we find it appropriate to deem the WEAC petition timely even though it was prematurely filed under our new rule.

Dated at Madison, Wisconsin this 22nd day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Stephen Schoenfeld, Chairman

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Herman Torosian, Commissioner

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Danae Davis Gordon, Commissioner

12/ This further clarifies our rulings in Oconto and Marinette by establishing a time period after the issuance of an award in which a petition can be timely filed.