

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
VILLAGE OF DEERFIELD :
Involving Certain Employees of : Case 3
VILLAGE OF DEERFIELD : No. 42263 ME-2906
Decision No. 26168
- - - - -

Appearances:
DeWitt, Porter, Hugget, Schumacher & Morgan, S.C., Attorneys at Law,
Manchester Place, 2 East Mifflin Street, Suite 600, Madison,
Wisconsin 53703, by Ms. Constance L. Anderson, appearing on behalf of
the the Village.
Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf
of the Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW
DIRECTION OF ELECTION

Village of Deerfield having, on May 25, 1989, filed a petition with the Wisconsin Employment Relations Commission seeking an election pursuant to Sec. 111.70(4)(d), Stats., in a unit described in the petition as: "All regular full-time and regular part-time employees of the Village of Deerfield, excluding supervisory, managerial, confidential, professional and craft employees and law enforcement employees with the power of arrest. Seasonal employees are excluded from the bargaining unit"; and hearing on the petition having been held on June 30, 1989, in Deerfield, Wisconsin before Examiner Coleen A. Burns; and the parties thereafter having submitted written argument, the last of which was received on July 21, 1989; and the Commission having reviewed the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Village of Deerfield, hereinafter the Village, is a municipal employer having its offices at 4 North Main Street, Deerfield, Wisconsin 53531.
2. That Dane County, Wisconsin Municipal Employees, Local 60, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization having its principal offices at 5 Odana Court, Madison, Wisconsin 53719.
3. That on April 15, 1988, the Village and the Union entered into a Stipulation for Election Involving Municipal Employees in which, inter alia, the parties agreed to the following voter eligibility list:

Elizabeth McCredie
Elena Opris
Allen Eberhardt
Dennis Lowrey
Wayne Scheel
Kenneth Gunderson
Kaia Fry
Kathleen Colwell
Margaret Sracic

that pursuant to this stipulation for election, an election was conducted by the Wisconsin Employment Relations Commission on Tuesday, May 24, 1988; that on May 24, 1988, following the election, a Union Representative and a Village Representative each received a copy of the WERC tally sheet which indicated that six of the nine ballots cast were votes for representation by the Union; that

the Village did not contest the results of this election; that on May 26, 1988, the Village received a May 25, 1988 letter from Union Representative Darold O. Lowe which stated as follows:

The employees of the Village of Deerfield represented by Local 60, AFSCME, AFL-CIO, are preparing for negotiations with the employer. In order for the bargaining unit to submit a complete proposal, please provide me with the following information:

1. A copy of all personnel policies that the employe has relating to wages, hours and conditions of employment of the workers in the bargaining unit;
2. Job descriptions for all classifications in the unit;
3. The current wage schedule or wage rates of all workers in the unit;
4. A copy of all insurance policies:
 - a) Hospital and surgical insurance;
 - b) Health maintenance plan;
 - c) Dental insurance;
 - d) Salary continuation insurance;
 - e) Vision care insurance;
 - f) Life insurance. (Does it have special indemnity, dismemberment and disability provisions?)

In the near future, Local 60 will notify you on the unit's officers and bargaining committee.

Please let us know when the employer is prepared to meet in negotiations.

that the Village responded in a letter of June 10, 1988 which stated as follows:

Enclosed is the information that is available for the employees in the bargaining unit in the Village of Deerfield. The Village Board is meeting on June 13, 1988, and Personnel committee will determine the job descriptions of the employees in the bargaining unit at that time. That information will be sent to your (sic) as soon as possible.

Enclosed are copies of the material that you requested.

Please inform me if you have any further requests.

that on June 13, 1988, the Commission certified the Union as the exclusive bargaining representative of the collective bargaining unit consisting of all regular full-time and regular part-time employes of the Village of Deerfield, excluding supervisory, managerial, confidential, professional, craft employes, law enforcement employes with the power of arrest, and seasonal employes; that in a letter dated July 20, 1988 the Village presented further information to the Union and stated, inter alia, that "the Board is in the process of determining when negotiations will start and you will be notified as soon as they reach a decision"; that in August 1988, the Union and the Village first met for the purpose of bargaining the initial collective bargaining agreement for the bargaining unit represented by the Union;

4. That on February 15, 1989, the Commission received a Petition for Election Involving Municipal Employees in which the petitioners alleged that they believed a majority of people in the bargaining unit represented by the

Union no longer wished to be represented by the Union; and that the face of the Petition was signed by the following employees of the Village:

Kaia M. Fry
Kathleen Colwell
Margaret Sracic
Elizabeth McCredie
Elena Opris

that, at the time of the filing of the petition, all of the employees who signed the petition were members of the collective bargaining unit represented by the Union and constituted a majority thereof; that at all times material hereto, Cynthia L. Gotthart, has been employed by the Village as the Village Clerk/Treasurer; that following the Commission's receipt of the February 15, 1989 petition for an election, the Commission's Coordinator of Elections, Douglas V. Knudson, sent a letter dated February 17, 1989 to Gotthart advising her that the Commission had received a petition for election; that the February 15, 1989, petition for election was forwarded to Gotthart as an attachment to Knudson's letter of February 17, 1989; that Fry and Lowe received copies of said letter; that Gotthart had not seen the petition prior to receiving a copy from the Commission; that following the filing of the February 15, 1989 petition for election, Gotthart was contacted by Examiner Ed Bielarczyk, who advised Gotthart that he would be handling the petition for election; that Kaia Fry was contacted by Commission staff member Bielarczyk who suggested that she write a letter to him withdrawing the petition for an election on the basis that it was untimely; that on March 13, 1989, the Commission received a letter from Kaia M. Fry, Kathleen Colwell, and Margaret Sracic, in which the three employees advised the Commission that they would like to withdraw their petition for election on the basis that they understood that the petition had not been filed in a timely manner; and that on March 21, 1989, the Commission issued an Order of Dismissal which was sent to Fry, Lowe and Gotthart in which it dismissed the Petition for Election which had been filed on February 15, 1989.

5. That on April 20, 1989, Village employees Kaia M. Fry, Kathleen Colwell, Margaret Sracic, Elena Opris, and Elizabeth McCredie, filed a second Petition for Election Involving Municipal Employees wherein it was alleged that petitioners believed that a "majority of the people in the bargaining unit no longer with (sic) to be represented by the Union"; that said petition was not processed further by the Commission; that, thereafter, Gotthart was advised by employee Elizabeth McCredie that a second petition for election had been filed by five Village employees in April, 1989; and that as of the date of hearing in this matter, Gotthart had not received a copy of this second petition;

6. That the Village, on May 25, 1989, filed with the Commission a Petition for Election Involving Municipal Employees wherein the Village alleged that there is a question regarding majority status of the Union; in an attachment to the Petition, the Village stated that its conclusion that there was a question regarding majority status of the Union was based upon the following:

1. On February 8, 1989, four members of the bargaining unit filed a petition for election with the WERC. The petition was dismissed by the WERC, but nonetheless indicates that nearly half of the members of the bargaining unit are interested in another election.
2. It is the Village's understanding that another Petition was subsequently filed with the WERC and was similarly dismissed as untimely.
3. There has been turnover among the employees in the bargaining unit. Specifically, Allen Eberhardt resigned from his position in the Public Works Department on January 3, 1989. The union was advised of Mr. Eberhardt's resignation in February 1989. A new employee, John Klein, has been hired in the Public Works Department.
4. Similarly, there has been turnover among employees outside of the bargaining unit who supervise members of the bargaining unit. Robert Doren, Village Engineer and Director of the Public Works Department, resigned from his position on January 9, 1989. (Mr. Doren was excluded from the unit because he was a professional and a supervisor.) The Village does not intend to hire another Village Engineer, but has

instead decided to revert to contracting out for its engineering services. (Contracting out for engineering services has been the Village's practice prior to hiring Mr. Doren.) In order to meet the supervisory needs of the Department, the Village has also created a new supervisory position entitled "Public Works Supervisor." Wayne Scheel, who worked in the Public Works Department, was promoted to the position of Public Works Supervisor. The union was notified of Mr. Scheel's promotion in February, 1989.

5. There has been a change in the Village Board. Since last May, the Village President and three Village board members have been replaced.
6. There is no valid collective bargaining agreement between the Village and the union. Consequently, there is no contract bar to the holding of an election at this time.
7. It has been one year from the date of the conduct of the last election regarding representation of these employees. Pursuant to Wis. Stats., Sec. 111.70(2) and 111.70(4)(d), municipal employees have the right to choose a representative for collective bargaining and questions as to representation may be raised by the municipal employer or any municipal employee. Furthermore, given that one year has passed from the date of the conduct of the initial election, the request does not violate the WERC's policy of ordinarily not conducting more than one election with respect to given employees in any one year. Milwaukee Area Technical College, WERC Dec. No. 11755, page 3 (April 1973).

7. That when the Union and the Village commenced negotiations on their initial agreement, the Chair of the Village's Personnel Committee was Herbert Redmund; that the Union and the Village had approximately five or six negotiation sessions with the Redmund committee commencing in August of 1988; that at least two or three other negotiation sessions were cancelled by the Village; that Osterlie succeeded Redmund as Chair of the Village Personnel Committee; that the Union and the Osterlie committee had two bargaining sessions, the last of which was held May 30, 1989; that another bargaining session was scheduled for June 27, 1989; that on June 5, 1989, the Union filed with the Commission a Petition for Arbitration Pursuant to Sec. 111.70(4)(cm)6, Wis. Stats., on behalf of the Village employees in the collective bargaining unit represented by the Union; and that, in a letter of June 26, 1989, Assistant Village Attorney Constance L. Anderson, advised Union Representative Darold Lowe that the Village was cancelling the June 27, 1989 bargaining session because the Union's Petition for Arbitration indicated that the Union believed that the Village and the Union had reached an impasse in negotiations and, that, given this position, the Village saw little reason to proceed with the negotiation session scheduled for June 27, 1989.

8. That at hearing on the Village's Petition for Election held on June 30, 1989, the parties agreed that if the Commission were to determine that it was appropriate to conduct an election in the bargaining unit represented by the Union, the following employees would be eligible to vote in such an election:

Elizabeth McCredie - Deputy Clerk-Treasurer
Dennis Lowrey - Water Utility Manager
Kenneth Gunderson - General Worker
John Klein - Sewer Utility Manager
Kathleen Colwell - Assistant Librarian
Margaret Sracic - Second Assistant Librarian
Elena Opris - Cleaning Personnel

that the parties were in agreement that Michelle Mack, identified as an LTE clerical, was appropriately excluded from the bargaining unit on the basis that she is a seasonal employee; that the parties have agreed that Kaia Fry, identified as the Library Director, is appropriately excluded from the bargaining unit on the basis of either supervisory and/or professional status and that Wayne Scheel, identified as the Public Works Supervisor, is

appropriately excluded from the bargaining unit on the basis that he is supervisory; and that Allen Eberhardt has resigned from Village employment.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the collective bargaining unit of Village employees, currently represented by the Union, and consisting of all regular full-time and regular part-time employees of the Village of Deerfield, excluding supervisory, managerial, confidential, professional, craft employees, law enforcement employees with the power of arrest and seasonal employees is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. That the Village of Deerfield has demonstrated, by objective considerations, that it has reasonable cause to believe that the Union has lost its majority status since its certification on June 13, 1989.

3. That the Petition for Election Involving Municipal Employees filed by the Village of Deerfield on May 25, 1989 is timely.

4. That a question concerning representation within the meaning of Sec. 111.70(4)(d)3, Stats., exists within the collective bargaining unit set forth in Conclusion of Law 1 and that there is sufficient reason, within the meaning of Sec. 111.70(1)(4)(d)5, Stats., to conduct another election in said bargaining unit.

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

DIRECTION OF ELECTION

It is directed that an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five days from the date of this directive, in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Village of Deerfield, excluding supervisory, managerial, confidential, professional, craft employees, law enforcement employees with the power of arrest and seasonal employees who were employed by the Village of Deerfield on September 20, 1989, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees desire to be represented by Dane County, Wisconsin Municipal Employees, Local 60, AFSCME, AFL-CIO, for the purpose of collective bargaining on wages, hours and conditions of employment, or whether such employees desire not to be so represented by said labor organization.

Given under our hands and seal at the City of
Madison, Wisconsin this 20th day of September,
1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

VILLAGE OF DEERFIELD

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

POSITIONS OF THE PARTIES

Village

Although neither the Municipal Employment Relations Act, nor the Wisconsin Administrative Code (ERB 11) specify a time frame for filing subsequent petitions for an election, the WERC has adopted a policy of not conducting more than one election in one year and of computing this one year period from the date of the previous election. Applying this policy to the instant case, a subsequent petition for an election would be timely if filed on or after May 25, 1989. The Village's petition was filed on May 25, 1989 and, therefore, is timely.

The policy adopted by the WERC is reasonable. What is challenged by the filing of a Petition for Election is the majority status of the Union. This status was determined at the time of the previous election. Therefore, there is a rational basis for tying the timeliness of a subsequent election petition to the date on which the previous election occurred. There is no similar reason to tie the timeliness of a subsequent election petition to the date of certification. Since the administrative code requires the Commission to issue a certification of election results following a valid election, the certification of unchallenged election results is a purely ministerial act by the WERC. The Village did not challenge the May 24, 1988 election tally. By its own actions, the Union acted as the representative of the employees in the bargaining unit on the day after the election when it forwarded to the Village the May 25, 1988 letter stating that the employees were represented by Local 60 and seeking information that the Union needed in order to prepare its collective bargaining proposals. The Village did not respond to this letter by challenging the Union's representation prior to certification. On the contrary, the Village acknowledged representation and responded to the request for information prior to the June 13, 1988 certification date.

Assuming arguendo, that the WERC were to determine that it would prefer to change its policy and compute the one year time period from the date of certification rather than date of election, it would be inappropriate to apply the new ruling to the instant case. Through its previous decisions, the WERC has established a policy of having the one year period run from the date of election, rather than the date of certification. The Village relied upon this policy when filing its petition. Given that the Union responded to the Village's petition for election by filing a petition for arbitration on June 5, 1989, the Village would be prejudiced by the application of any change in the Commission's policy.

The Village had an objective basis to file a petition for election because a majority of the represented employees questioned the majority status of the Union by filing unsolicited petitions in February, 1989 and again in April 1989, and because there had been a significant turnover in represented employees, supervisors and Village Board members over the past year. Section 111.70(4)(d)5, Stats., clearly grants the Village, as the municipal employer, the right to question continued representation by the Union, if it appears that there is "sufficient reason" for another election to be held. There have been several Commission decisions interpreting the employer's burden when filing a petition for election and describing what constitutes a "sufficient reason" for the employer to question the Union's majority status.

In Durand Unified Schools, Dec. No. 13552-A (WERC, 4/75) the Commission discussed the "burden of proof" that an employer must meet when filing a petition for an election. The Commission stated that, although the petitioner/employer clearly has the burden of going forward and presenting evidence to establish that its claim is not "insubstantial," it is inappropriate to apply the traditional concept of burden of proof in this setting.

Therefore, the Village need only present evidence that its claim is not "insubstantial" in order to prevail.

The WERC has introduced a policy of requiring a municipal employer to have a good faith basis for filing a petition for an election. (cite omitted)

There is no evidence in the record that the Village's petition for election was not filed in good faith or that it was filed to improperly interfere with the collective bargaining relationship between the Village and the Union. The record indicates that there were several negotiation sessions between the Union and the Village and that the Village was willing to proceed with negotiation sessions while the petition for election was pending. The Village only became unwilling to proceed with negotiations when the Union responded to the petition for an election by filing a petition for arbitration and stating that the negotiations had reached an impasse.

The record in this case contains substantial evidence of the Village's good faith basis for filing the petition for an election. First, the record substantiates that the Village had a good faith doubt as to the majority of the status of the Union because of the two unsolicited petitions filed by a majority of represented employees. Second, the record indicates that the Village knew that there had been turnover among the represented employees, supervisors of the represented employees, and Village Board members, and acknowledged that this turnover may also affect the majority status of the Union. Unsolicited petitions for elections filed by a majority of eligible employees, with the most recent filed less than six weeks before the employer filed its petition, provide a sufficient good faith basis for an employer to question the majority status of a union.

In Wauwatosa Board of Education, Dec. No. 8300-A (WERC, 2/68), the Commission found that a "good faith doubt" as to majority status was not established based on day to day conversations of the school administration with school employees, despite the Employer's argument that such conversations were the best information that could be obtained under the circumstances. When confirming the WERC's decision, the Circuit Court specifically noted that such employees had a right to submit their own petitions for an election and could have done so if they questioned the Union's majority status. The court apparently sees a true measure of whether employees no longer want to be represented by a union to be whether the employees themselves filed a petition for an election.

In the Village's case, the employees did submit petitions for an election: twice. These unsolicited petitions are objective evidence that there is a question of the Union's majority status. The employees' petitions were filed recently and by a majority of the represented employees. One petition was filed in February, 1989 and the other as little as six weeks before the Village filed its petition for an election. Of the nine employees in the unit, five signed the petitions. Of those five, one has been removed from the eligibility list that will be used for the instant election. The four remaining employees still constitute a majority of the seven employees contained in the current eligibility list. Therefore, the Village of Deerfield has a good faith and an objective basis upon which to question the majority status of the Union.

The Commission has held that an extremely high turnover rate, particularly when combined with evidence of a declining interest in the union and unsolicited statements that employees no longer wish to be represented by the Union, is enough to establish a sufficient basis for questioning the majority status of the Union, Wausau Hospitals, Inc., Dec. No. 11343 (WERC, 11/82). The turnover in the Village, when combined with the filing of two unsolicited petitions by employees, is a sufficient objective basis for the Village's filing of a petition for an election.

The Village properly submitted a petition for election by filing the petition more than one year from the date of the previous election. In addition, the Village did so in good faith and for reasons that are sufficient under Sec. 111.70(4)(d), Stats. The Village has a good faith doubt as to the majority status of the Union because a majority of the employees recently filed two unsolicited petitions for an election. Furthermore, there has been a significant turnover among employees, supervisors and Village Board members which may have affected the majority status of the Union. The Village respectfully requests that the May 25, 1989 Petition for Election be found to be timely and with sufficient basis, and that an election among the agreed upon eligible employees be scheduled as soon as possible.

Union

The petition of May 25, 1989 was filed by the Village President one year and one day from the original election for representation which was conducted on May 24, 1988. On May 25, 1988, the Union requested information related to the wages, hours and conditions of employment of the bargaining unit employees.

The Employer did not respond to the request until June 10, 1988, or fifteen days later. The information that was sent was incomplete and the Union was notified that the additional information would be forthcoming. The WERC did not issue its Certification of Representation until June 13, 1988. The parties

met for their first collective bargaining session on August 3, 1988 and met five additional times prior to the filing of the election petition by the Village President.

The Union understands that the current Commission policy on conducting elections is that the Commission will not conduct more than one election or referendum with respect to given employees in any one year. The one year does not run from the date of the certification of results, but rather from the date of the conduct of the election referendum. This policy is unfair to bargaining representatives because it does not provide adequate time for negotiations based upon the failure of an employer to provide needed information to the Union and does not take into account what happens if there is a challenge to the election which could delay certification by the Commission. Both parties have five days from the election to object to the conduct of such elections. If an objection is filed, the Commission will not certify the results until the objections are settled or ruled upon. No employer will meet in negotiations as it relates to wages, hours and conditions of employment until the Commission has certified the results of the election.

In this case, it took the Commission 18 days to certify the results of the election. If the Commission wants to establish rules that will provide the parties with an opportunity to reach a voluntary agreement, it must not limit the time for bargaining because of red tape, the time it takes to do clerical and technical work at the Commission, and employers who take three to four weeks to provide information that should take a day or two.

The Union believes that the proper date for the Commission to set the one year rule is from the date of certification. Both parties at that time understand that the stamp of approval has been provided by the Commission and the parties can then proceed to bargain on their first contract. Based upon the Union's reasonable position, the Commission should rule that the Village of Deerfield's petition is untimely filed because it is filed less than one year from the date of the certification of the original election. It is now time for the Commission to amend its rule to provide a longer time for collective bargaining between the parties.

DISCUSSION

Section 111.70(4)(d), 5, Stats., provides as follows:

5. Questions as to representation may be raised by petition of the municipal employer or any municipal employe or any representative thereof. Where it appears by the petition that a situation exists requiring prompt action so as to prevent or terminate an emergency, the commission shall act upon the petition forthwith. The fact that an election has been held shall not prevent the holding of another election among the same group of employes, if it appears to the commission that sufficient reason for another election exists.

As the Village argues, Sec. 111.70(4)(d)5, Stats., expressly provides a municipal employer, such as the Village, with the right to raise a question of representation by filing a petition for election. However, where, as here, an election has been conducted among a group of employes, the Commission will not entertain a petition for another election unless, as set forth in Sec. 111.70(4)(d)5, Stats., "it appears to the Commission that sufficient reason for another election exist."

To prevail in the argument that there is "sufficient reason for another election," a petitioning municipal employer must comply with the following requirement, first enunciated in Wauwatosa Board of Education, Dec. No. 8300-A (WERC, 2/68): 1/

An employer petitioning for an election in an existing unit must demonstrate to this agency at the hearing, by objective considerations, that it has reasonable cause to believe that the incumbent organization has lost its majority status since its certification or the date of voluntary recognition. This objective evidence must not have been obtained by the employer through prohibited means.

In arguing that it has a good faith doubt as to the Union's majority status, the Village relies, inter alia, upon its belief that, at the time the Village filed the petition for election, a majority of employees in the Union's

1/ Aff'd. Dane County Circuit Court (8/68). See also: Douglas County, Dec. No. 8433 (WERC, 3/68); Joint School District #1, Dec. No. 9719 (WERC, 6/70); Durand Unified Schools, Dec. No. 13552 (WERC, 4/75); School District of Delavan-Darien, Dec. No. 21159 (WERC, 11/83).

bargaining unit had filed a decertification petition in February, 1989 and then again in April, 1989. The Union's understanding of the earlier decertification petition was based upon a communique from the Commission, which provided the Village with a copy of the February 15, 1989 petition. The February 15, 1989 petition, on its face, alleges that the five petitioning employees believed that a majority of the people in the bargaining unit no longer wished to be represented by the Union. At the time of the filing of the Village's petition, Village representatives had not seen the April, 1989 petition. Rather, one of the five petitioning employees had informed a Village official of the April petition.

The record demonstrates that the Commission did receive petitions for election on February 15, 1989, and, April 20, 1989, respectively, in which a majority of the employees in the Union's collective bargaining unit indicated that they believed a majority of the people in the bargaining unit no longer wished to be represented by the Union. 2/ The record does not demonstrate that either petition was solicited or encouraged by any Village representative. 3/

The Commission is satisfied that, at the time the Village filed its election petition with the Commission, the Village had a reasonable basis to believe that a majority of employees in the Union's bargaining unit had filed a decertification petition on February 15, 1989 and, again, in April, 1989. Two petitions seeking to decertify the Union, filed with the preceding fourteen week period and signed by a majority of the Union's bargaining unit members, do constitute "objective considerations" which provide reasonable cause to believe that the Union has lost its majority status since its certification. 4/

Timeliness

Initially, we note that as the parties had not reached agreement on a new contract when the instant petition was filed and as no interest arbitration petition was pending, we are not confronted with contract or interest arbitration petition bar issues.

At issue is whether the election petition filed more than one year after the conduct of the election, but less than one year after the certification of results of the election, is timely. The Village argues that the Commission has adopted a policy of not conducting more than one election in one year, with the computation of the one year period commencing from the date of the conduct of the election. The Village argues that applying this policy to the present case, a subsequent petition for election would be timely if filed on or after May 25, 1989. The Union does not take issue with the Village's characterization of the Commission's policy, but rather, argues that the policy should be changed. Specifically, the Union argues that this policy does not give consideration to the fact that there may be challenges to the election which significantly delay the certification of the results of the election. The Union asserts that no employer will meet to negotiate on wages, hours and conditions of employment until the Commission has certified the results of the election. The Union maintains, therefore, that to enforce a one-year election bar policy, rather than a one-year certification bar policy, deprives the certified bargaining representative of a reasonable period of time in which to bargain an initial contract.

In the City of Greenfield, 5/ the Commission stated that it normally applies a "one year rule" in conducting a second election. The Commission further stated that "Under such rule the Commission will not normally conduct an election within one year of the date on which a previous election has been conducted." In adopting election policies, such as the one enunciated in City

2/ At the time of the initial election, in May of 1988, there were nine employees in the bargaining unit. As the record demonstrates, prior to hearing in this matter, one employee resigned. It is not clear whether there were eight or nine employees in the bargaining unit at the time that the February and April election petitions were filed. In either case, five employees would constitute a majority of the bargaining unit. Of these five employees, one has been removed from the unit pursuant to an agreement reached by the parties at hearing. The remaining four, however, constitute a majority of the seven employees in the current voter eligibility list.

3/ At hearing, the parties agreed to exclude one of the petitioning employees from the bargaining unit on the basis that the employee was professional and/or supervisory. However, at the time of the employee's petition, the employee was a member of the bargaining unit.

4/ We do not deem it necessary to determine whether the Village is correct when it argues that turnover among represented employees, supervisors of the represented employees and Village Board members also provided the Village with a good faith doubt as to the Union's majority status.

5/ Decision No. 18303-B (2/81).

of Greenfield, the Commission balances competing interests and rights. 6/ On the one hand, the Commission has an interest in encouraging stability in collective bargaining relationships which enhances the potential for labor peace. 7/ 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. 8/ As the Union argues, a bargaining representative selected in a valid representation election should be given a reasonable period of time in which to negotiate a collective bargaining agreement without threat of challenge to its majority status. Not only does the existence of such a time period encourage labor relations stability, but it also serves the interests of employee free choice by providing the employees' chosen representative with a reasonable opportunity to fulfill the purpose for which it was chosen, i.e., to bargain with the employer on matters affecting the employees' wages, hours and working conditions.

Here, the Union asserts that the one year following the election did not provide a reasonable period for bargaining a first contract, citing delays in the Commission's issuance of the certification and in the receipt of information from the Village. We do not find the Union arguments persuasive. The record demonstrates that even prior to issuance of our certification, the Village had already begun responding to the Union's information requests. Further, the record does not establish a nexus between the fact that the Village did not complete its response to the Union's information request until July 20, 1988 and the fact that the parties had not reached agreement by May 25, 1989 when the Village filed its petition. Thus, as we are satisfied that the parties had a reasonable period to bargain a first contract and as more than one year had passed between the date of the election and the filing of the Village's petition, we find the petition to be timely. Thus, we have directed the election sought by the Village.

However, this case does present us with an opportunity to evaluate whether we should prospectively change our existing election bar policy under the Municipal Employment Relations Act.

As the Union argues, challenges to an election may result in a significant delay between the conduct of the election and the certification of the results of the election. Inasmuch as the municipal employer's duty to bargain under Sec. 111.70(3)(a)4, Stats., commences with the certification of the bargaining representative, rather than the conduct of the election, we are persuaded that, in cases where the election results in the certification of a bargaining representative, the relevant one-year period for insulating the incumbent bargaining representative from a challenge to its majority status should be the one year period following the date of the certification of the bargaining unit representative. In reaching this conclusion, we are cognizant of the fact that the Commission has previously refused to adopt a certification bar policy. 9/ However, in refusing to adopt such a policy, the Commission relied heavily upon the fact that it had too little experience in the administration of the Municipal Employment Relations Act to determine whether such a policy would be appropriate. 10/ In the more than twenty years which have passed since the Commission's rejection of a certification bar policy, the Commission has had sufficient experience to conclude that such a policy would effectuate the purposes of the Municipal Employment Relations Act. The wisdom of such a certification bar policy has long been recognized by the Commission in the administration of the Wisconsin Employment Peace Act 11/ and by the NLRB in the administration of the National Labor Relations Act. 12/

The policy considerations favoring the adoption of a one year certification bar policy are not present in cases where the election does not

6/ Wauwatosa Board of Education, Dec. No. 8300-A (WERC, 2/68); Mukwonago School District, Dec. No. 24600 (WERC, 6/87).

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

8/ Sections 111.70(2) and 111.70(4)(d)5, Stats.

9/ City of Menomonie, Dec. No. 8730 (WERC, 10/68); City of Kenosha Board of Education Dec. No. 8031 (WERC, 5/67); Milwaukee Board of School Directors, Dec. No. 8030 (WERB, 5/67).

10/ Ibid.

11/ The language which gave rise to the certification bar rule in the Wisconsin Employment Peace Act is identical to the language of Sec. 111.70(4)(d)5. See St. Lukes Hospital, Dec. No. 7007 (WERB, 1/65); Antigo Milk Products Co., Dec. No. 1308 (WERB, 5/47); Garton Toy Co., Dec. No. 1238 (WERB, 2/47).

12/ Brooks v. NLRB, 348 U.S. 96 (1954).

result in the certification of a bargaining representative. In such cases, there is no existent bargaining relationship to foster and, thus, the paramount interest is the employees' statutory right to bargain collectively through representatives of their own choosing. In such cases, the purposes of the Municipal Employment Relations Act are best served by applying the one-year election bar policy recognized in City of Greenfield. The wisdom of such an election bar policy has long been recognized by the Commission in the administration of the Wisconsin Employment Relations Act 13/ and by the NLRB in the administration of the National Labor Relations Act. 14/

In summary, in the future, where a valid election is conducted and the employees do not elect to be represented for the purposes of collective bargaining, the Commission will not normally entertain a petition for a subsequent election until one year after the date of the conduct of the original election. Where a valid election is conducted and a bargaining representative is certified, the Commission will not normally entertain a petition for a subsequent election until one year after the date of the certification of results of the election.

Dated at Madison, Wisconsin this 20th day of September, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

13/ Adelman Laundry, Dec. No. 5799 (WERB, 8/61); City of Menomonie, Dec. No. 8730 (WERC, 10/68).

14/ Mallinckrodt Chemical Works, 84 NLRB 291 (1949); Palmer Mfg. Co., 103 NLRB 336, (1953).