

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
ELLEN LYONS :
Involving Certain Employees of : Case 38
MENOMINEE COUNTY : No. 42649 ME-2928
(HUMAN SERVICES DEPARTMENT) : Decision No. 26236
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Appearances:
Ms. Ellen Lyons, P.O. Box 23, Keshena, Wisconsin, 54135, on her own behalf.
Mr. Eugene Hayman, Attorney at Law, Lindner & Marsack, S.C., 411 East Wisconsin Avenue, Milwaukee, Wisconsin, 53202, for the County.
Mr. Thomas A. Bauer, Representative, 206 South Arlington Street, Appleton, Wisconsin, 54911, for Labor Association of Wisconsin, Inc.

ORDER GRANTING MOTION TO HOLD ELECTION PETITION
IN ABEYANCE PENDING RESOLUTION OF COMPLAINT

Ellen Lyons having on August 3, 1989, filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of Menominee County in an existing bargaining unit wished to continue to be represented for the purposes of collective bargaining by Labor Association of Wisconsin, Inc. (LAW); and LAW having on September 27, 1989 filed a complaint with the Wisconsin Employment Relations Commission alleging that Menominee County had committed prohibited practices; and LAW having on September 29, 1989 filed a motion with the Commission requesting that the election petition filed by Lyons be held in abeyance pending resolution of the complaint filed by LAW; and the County having on October 13, 1989 filed written argument in opposition to the motion; and the Commission having considered the matter and advised the parties telephonically and by letter dated October 13, 1989 that it had granted LAW's motion and that an election hearing scheduled for October 17, 1989 was therefore cancelled; and the Commission having further advised the parties that a formal order would subsequently be issued confirming the Commission's decision;

NOW, THEREFORE, it is

ORDERED

That the Motion to hold the election petition in abeyance pending resolution of the complaint is granted.

Given under our hands and seal at the City of Madison, Wisconsin this 15th day of November, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

MENOMINEE COUNTY (HUMAN
SERVICES DEPARTMENT)

No. 26236

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION
TO HOLD ELECTION PETITION IN ABEYANCE
PENDING RESOLUTION OF COMPLAINT

In School District of Platteville, Dec. No. 21645-A, (WERC, 6/84) we set forth the following as to the circumstances in which a complaint will "block" the processing of an election petition:

The Commission has long adhered to the policy of refusing to proceed with the processing of an election petition during the pendency of a related unfair labor practice/prohibited practice complaint absent an express waiver by the complainant of the effects of the alleged unlawful conduct on the outcome of the election. 2/ Where it has been discussed in Commission cases, the purposes ascribed to the policy have been twofold: (1) insuring that the election environment is free of any coercive effects of alleged unfair labor practices before employee preferences are tested through the election process 3/; and (2) avoiding the known risk that a second election and perhaps a second election hearing could become necessary depending on the outcome in the related complaint proceeding and in the first election. 4/

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- 2/ Compare Coronet Printing Co., 6799 (7/64) and Cedar Lakes Home for the Aged, supra, with Morris Resnick, Inc., 343 (1/42); Evangelical Deaconess Society, 472 (2/43); S and R Cheese Co., 1338 (6/47); Sheboygan Dairyman's Co-op Assn., 1482 (11/47) and 1482-A (12/47); St. Francis Hospital, 4737 (4/58); and Kress Packing Co., Inc., 5581 (8/60).
- 3/ See, e.g., Evangelical Deaconess Society, supra,, at pp 3-4. ("Until such unfair labor practice or practices and the effect have been completely eradicated, the freedom of choice essential to the employees' uncoerced expression of their desire for a continuance of or a change in bargaining agent, is not possible.")
- 4/ Thus, in Cedar Lake Home, supra, it was stated at p. 4, "Part of the justification for subjecting the Petitioner to lengthy delay . . . is to avoid the necessity and expense of conducting multiple hearings involving the same issues and conducting more than one election." The Association's emphasis on statements in that decision, to the effect that the complaint filing alone ought not delay a related election, overlooks the fact that the case was decided in a context wherein the union was willing to waive the effect of the alleged unfair labor practice on the election outcome and it was the employer who was objecting that employee free choice would nonetheless remain intolerably affected until the complaint allegations were fully heard and decided. The decision, however, held that given the Union's waiver, the filing of the complaint, per se, would not warrant delaying the election.

In our view, that policy remains a viable means of pursuing those objectives and one that is consistent with the underlying purposes of MERA.

Moreover, that policy appears entirely applicable to the circumstances at issue herein. It constitutes an appropriate basis for denying both the request to unconditionally proceed with the election and the alternative request to unconditionally proceed to fully hear the representation issues before holding that matter in abeyance. For, the instant complaint involves an allegedly unlawful threat to subcontract work being performed by employees within the bargaining unit as to which the election was being sought. (Footnote omitted.) Absent a waiver of the effects of the complaint on the election, the resolution of the merits of the complaint could obviously affect the viability of the results of any election conducted before the complaint is heard and any violations cited therein remedied. Moreover, it is by no means certain that our granting the Association's alternative request for unconditional conduct of the representation hearing would produce a record that deals with all or only issues that would need to be decided once the complaint proceeding was finally resolved.

Here, as in Platteville, we are persuaded that if the allegations of unlawful conduct set forth in LAW's complaint 1/ turn out to be meritorious, the viability of the results of an election conducted during the pendency of the complaint could be affected. Therefore, we granted LAW's motion.

Dated at Madison, Wisconsin this 15th day of November, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

1/ A copy of the complaint is attached hereto as Appendix A.