

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 GARY R. ZUEHLKE : Case 11
 : No. 49974 ME-3361
 Involving Certain Employes of : Decision No. 27396-B
 :
 NEW LONDON SCHOOL DISTRICT :
 :

Appearances:

Mr. Gary R. Zuehlke, 9699 County H, Fremont, Wisconsin 54940, on his own behalf.

ORDER DISMISSING ELECTION PETITION

On October 20, 1992, the Wisconsin Employment Relations Commission certified the Wisconsin Education Association Council as the collective bargaining representative of certain non-professional employes of the New London School District.

On September 24, 1993, Wisconsin Education Association Council filed a petition for interest arbitration pursuant to Sec. 111.70(4)(cm), Stats., as to this non-professional bargaining unit.

On October 15, 1993, Gary R. Zuehlke filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether the employes in said bargaining unit wished to continue to be represented for the purpose of collective bargaining by the Wisconsin Education Association Council. By letter dated October 18, 1993, the Commission advised Zuehlke that his petition appeared to be untimely, but invited Zuehlke to submit written argument. Zuehlke filed written argument on October 28, 1993.

Having considered the matter, the Commission is persuaded that the election petition is untimely.

NOW, THEREFORE, it is

The election petition filed by Gary R. Zuehlke is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 29th day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(footnote continued on Page 3.)

1/ (footnote continued from Page 2.)

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

NEW LONDON SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING
ORDER DISMISSING ELECTION PETITION

Background

By letter dated October 18, 1993, the Commission advised Mr. Zuehlke as follows:

Your petition for an election was received by the Commission on October 15, 1993. A petition for interest arbitration, covering the same bargaining unit which your petition covers, was filed on September 24, 1993. Thus, your petition for an election appears to be untimely filed under current case law (Mukwonago School District, Decision No. 24600), a copy of which I have enclosed. If you wish to make written argument to the Commission as to why your petition should not be dismissed, such written argument must be received on or before November 1, 1993. A copy of your petition is enclosed to each of the other parties.

On October 28, 1993, the Commission received the following letter from Mr. Zuehlke:

I have received your letter and the current case law Mukwonago School District, Decision No (sic) 24600. As I am not a lawyer, I do not understand exactly what the document is saying and what the circumstance was at Mukwonago School District.

I do however, wish to make a written argument to the Commission to allow our Petition for Election. Since I made that first phone call to you on Sept (sic) 20, 1993 many things have happened. In the process I have learned that there are many other employees who feel just as strongly about this matter as I do. For this reason I will continue in this effort.

The filing of the Interest Arbitration Petition by WEAC Union Representatives on Sept. 23, 1993 still has me puzzled. Our Representatives have not gotten down to any serious negotiations. What is there to arbitrate?

The things that concern me much more is what is happening to fellow employees. Employees should not be threatening and harassing each other. It is hard enough for an individual to try to do a good job and also try to get along with one's associates.

We feel that there are forty six reasons to honor our request for another election. Therefore, once again we respectfully request your favorable consideration of our Petition for Election.

Discussion

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. 2/ On the one hand, we have the interest of encouraging stability in collective bargaining relationships which enhances the potential for labor peace. 3/ 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 representative. 4/

When balancing these competing interests, we have held that an election petition cannot be timely filed during the year following the date we certified a union. 5/ Here, Wisconsin Education Association Council was certified on October 20, 1992, and Zuehlke's petition was filed October 15, 1993. Thus, his petition is untimely because it was filed during the "certification year."

Further, in September, 1993, prior to Zuehlke's petition, Wisconsin Education Association Council had filed an interest arbitration petition as to negotiations for an initial contract between WEAC and the District for the non-professional unit. When balancing the competing interests noted earlier herein, we have generally held that we will not process an election petition filed after a petition for interest arbitration is filed. 6/ Zuehlke's

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

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

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

5/ Village of Deerfield, Dec. No. 26168, (WERC, 9/89).

6/ Mukwonago School District, Dec. No. 24600, (WERC, 6/87); Marinette County, Dec. No. 22102, (WERC, 11/84); Oconto County, Dec. No. 21847, (WERC, 7/84); Dunn County, Dec. No. 17861, (WERC, 6/80).

petition is also untimely given the presence of the interest arbitration petition.

Although we have dismissed Zuehlke's petition, it should be clear that he is guaranteed the right to timely file an election petition after the parties have either voluntarily reached agreement on an initial contract or the terms of the initial contract are established by an interest arbitrator. For instance, such a petition can be timely filed during the 60 day period prior to the date in the initial contract for reopening negotiations on a successor agreement. If the first contract is still pending before an interest arbitrator during the 60 day period prior to the reopening date, a petition can be timely filed during the 60 day period following the date the award is ultimately issued. Further, a petition can be timely filed if the contract pending before an arbitrator (under either party's offer) has already expired.

Thus, we are satisfied that Zuehlke's interests can ultimately be met by our result.

Dated at Madison, Wisconsin this 29th day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner