

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**TOWN OF BROOKFIELD  
PROFESSIONAL FIRE FIGHTERS ASSOCIATION**

Involving Certain Employees of the

**TOWN OF BROOKFIELD**

Case 16  
No. 69081  
ME-4216

**Decision No. 28034-B**

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**Appearances:**

**Ryan Scharnhorst**, Representative, Town of Brookfield Professional Fire Fighters Association, 4455 South Hillview Court, New Berlin, Wisconsin 53146, appearing on behalf of the Town of Brookfield Professional Fire Fighters Association.

**Gene Gowey**, Business Representative, Teamsters Local No. 695, 1314 North Stoughton Road, Madison, Wisconsin 53714-1226, appearing on behalf of Teamsters Union Local No. 695.

**Kyle J. Gulya**, von Briesen & Roper, S.C., Attorneys at Law, Suite 1000, Tenney Plaza, Three South Pinckney Street, Madison, Wisconsin 53703, appearing on behalf of the Town of Brookfield.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER GRANTING MOTION TO DISMISS**

On July 24, 2009, the Town of Brookfield Professional Fire Fighters filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Town of Brookfield wish to be represented for the purposes of collective bargaining by the Fire Fighters or to continue to be represented by Teamsters Union Local No. 695 or to be unrepresented.

No. 28034-B

On September 8, 2009, Teamsters filed a motion to dismiss the petition as untimely and that motion was supported by the Town in a September 21, 2009 submission. Additional argument in support of and in opposition to the motion was filed-the last of which was received on October 13, 2009.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. The Town of Brookfield, herein the Town, is a municipal employer. The Town provides emergency services to its citizens.

2. Teamsters Union Local No. 695, herein Teamsters, is a labor organization that serves as the collective bargaining representative of certain Town employees who provide emergency services.

3. The Town of Brookfield Professional Fire Fighters Association, herein Fire Fighters, is a labor organization.

4. The Town and Teamsters were party to a collective bargaining agreement that expired by its terms on December 31, 2006. In March 2009, the parties reached agreement on the following two collective bargaining agreements:

- (1) An agreement with a term of January 1, 2007-December 31, 2009.
- (2) An agreement with a term of January 1, 2010-December 31, 2012.

Those agreements contained the following language:

This Agreement shall become effective when signed, only wages retroactive to January 1, 2007, 2008 and 2009, respectively, unless otherwise stated in this Agreement, and shall remain in full force and effect through December 31, 2009. The Parties agree to a successor collective bargaining agreement containing these same terms which shall be effective from January 1, 2010 and shall remain in full force and effect through December 31, 2012. This Agreement shall be automatically renewed from year to year thereafter, unless a notice to reopen and negotiate is timely provided. The balance of the contract shall be effective upon Union ratification and subsequent Town Board approval.

In the event a new Agreement is desired to take effect after the termination of this Agreement, the parties shall follow the following procedure:

- Step 1: On or before August 1, 2012 or any subsequent year, the Union shall present a written notice of its desire for a new Agreement to the Administrator together with written proposals for a new Agreement.
- Step 2: The Employer shall present its proposals to the Union by September 1 of that year.
- Step 3: Negotiations will then commence not later than October 1 of that year.

5. On July 24, 2009, the Fire Fighters filed the petition for election.

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

#### **CONCLUSIONS OF LAW**

1. An election petition in the instant circumstances is timely if filed during the 60 day period prior to December 1, 2009.
2. Because the Fire Fighters' election petition was filed before the period referenced in Conclusion of Law 1, it is not timely filed.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER**

The motion to dismiss the petition for election is granted.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of November, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**TOWN OF BROOKFIELD**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER GRANTING MOTION TO DISMISS**

Both Teamsters and Fire Fighters correctly cite the Commission's decision in MUKWONAGO SCHOOL DISTRICT, DEC. NO. 24600 (WERC, 6/87) as a good summary of the law we will apply to this dispute. In pertinent part, MUKWONAGO holds:

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. 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 employees to bargain collectively through representatives of their own choosing, which right necessarily includes the right to change or eliminate a chosen 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. (emphasis added).

- 6/ Durand Unified Schools, Dec. No. 13552 (WERC, 4/75).
- 7/ Secs. 111.70(4)(c) and 111.70(1)(a), Stats.
- 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).

As the emphasized above-quoted portions of MUKWONAGO indicate, the balance between the competing interests of stability and the right to choose has been struck by guaranteeing that once during the term of each contract there is an opportunity for an election petition to be timely filed.

The Town and the Teamsters argue that in the unique circumstances presented here, the interest of stability warrants a conclusion that there is no guaranteed time period during the

2007-2009 contract when an election petition can be filed and that a timely petition must wait until June and July of 2012. When advancing this stability argument, the Town and Teamsters point to the provisions of the 2010-2012 contract which they assert would no longer be binding (and thus subject to renewed bargaining) if the Fire Fighters were selected as the collective bargaining representative. The concern of the Town and Teamsters is grossly overstated. All provisions of the 2010-2012 agreement would be binding on the Fire Fighters (and the Town) with the sole exception of the contractual union security provisions which inure to the exclusive benefit of Teamsters and thus would be extinguished should the Fire Fighters win the election. GATEWAY TECHNICAL COLLEGE, DEC. NO. 20209-B (WERC, 8/84). In the face of such a minimal “instability” impact and the statutory interest in the right to choose, we remain persuaded that there must be a guaranteed period during the term of the 2007-2009 contract when an election petition can be timely filed. We proceed to identify that time period in the context of this case.<sup>1</sup>

When making determinations as to the guaranteed time period when an election petition can be filed, we have sought to minimize the disruption of both the existing collective bargaining relationship and of the collective bargaining process as to a successor agreement. Thus, as indicated in MUKWONAGO, where a contract contains a date for giving notice of intent to start bargaining a successor agreement (which date is typically close to the end of a contract’s term) we have linked the guaranteed period when an election petition can be timely filed to that “reopening date” because the majority of the contract’s term has run its course and bargaining a new contract has not yet begun. Where, as here, there is no reopening date specified in the contract, we apply a case by case test to determining timeliness which also seeks to avoid disruption of both the existing collective bargaining relationship and the bargaining of a successor agreement. VILLAGE OF MOUNT PLEASANT, DEC. NO. 32562 (WERC, 9/08); WILMOT GRADE SCHOOL DISTRICT, DEC. NO. 27433;(WERC, 10/92); VILLAGE OF SHOREWOOD, DEC. NO. 14262 (WERC, 1/76); VILLAGE OF GRAFTON, DEC. NO. 12718 (WERC, 5/74); CITY OF GREEN BAY, DEC. NO. 6558 (WERC, 11/63). Here, because a successor agreement has already been bargained, that element of disruption does not enter into our analysis. Thus, we are left with resolving the timeliness issue after giving appropriate consideration to minimizing disruption of the existing collective bargaining relationship between the Teamsters and the Town.

In this very unusual circumstance where there is no specified reopening date (presumably because there was no need for one given that a successor agreement had already

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<sup>1</sup> Teamsters argue in the alternative that where, as here, there is no specified date for the notice of intent to reopen bargaining, the reopening date should be presumed to be 180 days prior to the expiration date (in this instance July 5, 2009) and that any timely election petition must be filed during the 60 day period prior thereto. Teamsters cite no authority for this proposition. Section 111.77 (1), Stats. does provide that a party to a contract covering firefighting employees cannot terminate or modify that contract unless notice is served 180 days prior to the expiration thereof. However, we conclude that this provision has no applicability here because the successor contract has already been bargained.

bargaining relationship, it is apparent that a timely filing should only be made late in the term of the existing agreement-later than would be the case if minimizing disruption to the bargaining of a successor agreement were also a factor to be considered. In this context, Teamsters' assertion that May and June 2009 was the guaranteed timely filing period is rejected as not late enough in the bargaining relationship to appropriately minimize disruption. Indeed, we reach the same conclusion as to the instant July 24, 2009 filing. As of that date, the disruption to the existing relationship was too great in the context of the remaining term of the 2007-2009 agreement. Instead we conclude that the appropriate balance between avoidance of disruption and the right to choose warrants a determination that an election petition is timely if filed during the 60 days prior to December 1, 2009. Depending on when during that 60 day period a petition is filed, such a time frame minimizes or potentially even eliminates the disruption to the existing relationship if the election result produces a change in representative or the end of union representation. If we receive such a petition during that time frame, we will direct the election forthwith.

Dated at Madison, Wisconsin, this 3rd day of November, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner