

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
VILLAGE OF NECEDAH
Involving Certain Employees of
VILLAGE OF NECEDAH

Case 7
No. 53839 ME-3518
Decision No. 28700-A

Appearances:

Curran, Hollenbeck & Orton, Attorneys at Law, by Mr. Fred D. Hollenbeck, P.O. Box 140, Mauston, Wisconsin 53948-0140, for the Village.

Shneidman, Myers, Dowling & Blumenfield, Attorneys at Law, by Mr. Bruce F. Ehlke, P.O. Box 2155, Madison, Wisconsin 53701-2155, for the Union.

ORDER DISMISSING PETITION FOR ELECTION

On February 16, 1996, the Village of Necedah filed a petition with the Wisconsin Employment Relations Commission seeking an election in an existing collective bargaining unit to determine whether the employees in said unit wished to continue to be represented by District Council 40, AFSCME, AFL-CIO. By letter dated February 27, 1996, District Council 40 filed a written statement of position with the Commission asserting inter alia that the petition was untimely filed.

On April 16, 1996, the Commission issued an Order to Show Cause Why Election Petition Should Not be Dismissed. On April 25, 1996, the Village responded to the Order.

Having considered the matter, and being fully advised in the premises, the Commission makes and issues the following

ORDER 1/

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin,
this 8th day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

(footnote 1 begins on page 2)

(footnote 1 referred to on page 1 begins)

- 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.

(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.

(footnote 1 continues on page 3)

(footnote 1 continued from page 2)

(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.

VILLAGE OF NECEDAH

MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION FOR ELECTION

In our Order to Show Cause, we stated the following:

Prior to the filing of the petition for election by the Village of Necedah, District Council 40, AFSCME, AFL-CIO, had filed a petition with the Wisconsin Employment Relations Commission seeking interest arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., to establish the terms of an initial contract between District Council 40 and the Village as to the bargaining unit which is the subject of the Village's petition for election.

On March 1, 1996, Circuit Judge John W. Brady rejected the Village's claim that the Village was not subject to the binding arbitration provisions of Sec. 111.70(4)(cm)6, Stats.

The Commission has consistently held that an election petition is untimely when filed during the pendency of an interest arbitration petition so long as the term of the contract which is subject to the interest arbitration petition has not expired. New London School District, Dec. No. 27396-B (WERC, 11/93); 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).

In response to the Order, the Village asserted that because there is no contract presently in existence and the parties continue to bargain the initial contract, the Commission precedent cited in the Order has no application to the facts at hand.

In New London School District, Dec. No. 27396-B (WERC, 11/93), the Commission generally held that the presence of a petition for interest arbitration of an initial collective bargaining agreement rendered a subsequently filed petition for election untimely. Thus, contrary to the Village's argument, it is clear that the precedent cited in our Order to Show Cause is applicable herein.

Under that precedent, an election petition cannot be timely filed during the period of time which the contract being arbitrated may cover depending upon which party's offer is selected by the

arbitrator.

At the present time, the parties to this interest arbitration proceeding have not submitted final offers which have been certified to arbitration. Thus, we cannot specifically determine what the duration of the initial contract between the parties could potentially be and thus how long an election petition will remain untimely. However, we do note that an initial collective bargaining agreement can be for a term up to three years in duration. The bargaining unit in question was certified by the Commission in November of 1994. Thus, if one of the parties was to propose a three-year contract commencing with the date of certification, the term of such an agreement could extend through November of 1997. Thus, although it cannot now be precisely determined as to when an election petition can be timely filed, it is apparent that, at present, it cannot be said that the term of the contract to be arbitrated has expired.

Given the foregoing, we are persuaded that the election petition in question is untimely under the rights and interests discussed in the cases cited in our Order 1/ and we have therefore dismissed the petition.

However, we wish to make it clear that the Village is ultimately guaranteed the right to timely file an election petition. As we stated in New London:

Although we have dismissed Zuehlke's petition, it should be

1/ In New London, we cited those interests and rights as being:

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/

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.

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.

Dated at Madison, Wisconsin, this 8th day of May, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner