

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

JO ANN LEASURE and ARLENE BRADEN

Involving Certain Employees of

EAST TROY COMMUNITY SCHOOL DISTRICT

Case 40
No. 54863
ME-3575

Decision No. 29166-B

Appearances:

Mr. Robert Spence, District Administrator, East Troy Community School District, 2043 Division Street, P.O. Box 915, East Troy, Wisconsin 53120, appearing on behalf of East Troy Community School District.

Mr. Gregory N. Spring, Negotiations Specialist, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Wisconsin Education Association Council.

Ms. JoAnn Leasure, N7790 Townline Road, East Troy, Wisconsin, 53120, appearing on behalf of JoAnn Leasure and Arlene Braden.

ORDER DISMISSING PETITION FOR ELECTION

On November 13, 2002, JoAnn Leasure and Arlene Braden filed a petition and showing of interest with the Wisconsin Employment Relations Commission seeking an election in a collective bargaining unit of non-professional employees of the East Troy Community School District to determine whether the employees wished to continue to be represented for the purposes of collective bargaining by the East Troy Educational Support Personnel Association, Southern Lakes United Educators (Council 26), Wisconsin Education Association Council (herein the Association).

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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On November 8, 2002, prior to the Commission's receipt of the petition for election, the Association had filed a Sec. 111.70(4)(cm)6, Stats. interest arbitration petition with the Commission covering the same bargaining unit.

The parties thereafter had the opportunity to file written argument with the Commission as to whether the election petition should be dismissed as untimely because an interest arbitration petition covering the same employees had already been filed.

The District filed written argument on December 4, 2002 arguing that because the interest arbitration petition was filed "prior to reaching an impasse purely to block the . . . election petition. . . .", the election petition should not be dismissed.

The Association filed written argument on December 18, 2002 asserting that the election petition should be dismissed.

The opportunity to file written argument expired December 26, 2002.

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

ORDER

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

East Troy Community School District

**MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION FOR ELECTION**

It is undisputed that when the election petition was filed, the District and the Association were in the process of bargaining a contract and an interest arbitration petition covering the same employees had already been filed. The District acknowledges that existing Commission precedent, most recently reaffirmed in WAUKESHA COUNTY, DEC. NO. 30269-A (WERC, 4/02), generally holds that an election petition is untimely in such circumstances. 1/ However, the District argues that if (as the District asserts is true here) an interest arbitration petition is filed prematurely solely to block the election petition, then the Commission ought to make an exception to the general rule.

1/ Existing Commission precedent is based on the judgment that the interest of enhancing labor peace through stability in the collective bargaining relationship is stronger than the interest in potentially disrupting that stability by giving employees a present opportunity to determine whether they wish to continue to be represented by the incumbent labor organization. Existing Commission precedent guarantees employees the opportunity to timely file an election petition once during the term of a collective bargaining agreement – generally during the 60 day period prior to the contractually established date on which the labor organization and employer notify each other that they wish to bargain a successor agreement.

The issue before us is whether the facts surrounding the filing of the interest arbitration petition are relevant to the question of whether the election petition is untimely. If those facts are relevant, then an evidentiary hearing should be held to establish what those facts are. If those facts are not relevant, then the election petition should be dismissed.

In PORTAGE SCHOOLS, DEC. NO. 20470-A (WERC, 7/97), the Commission held that the motivation for filing an interest arbitration petition is irrelevant to the question of whether an election petition is timely. The Commission therein stated:

Allowing litigation over the decisionmaking process which prompted the filing of the interest arbitration petition has negative consequences for all parties to a proceeding. The delay, uncertainty of result, and expense caused by litigation of such issues (particularly in the context of parties' efforts to reach

agreement on a contract) strongly suggest that such issues should be found to be irrelevant to the timeliness issue. Indeed, we herein hold that in all future such proceedings, this issue is irrelevant and should not be litigated.

Applying PORTAGE, we conclude that the Association's motivation for filing the interest arbitration petition is irrelevant.

The District also argues that the interest arbitration petition was prematurely filed because the parties had not reached impasse. As reflected in MILWAUKEE SCHOOLS, DEC. NO. 23689 (WERC, 5/86), we have consistently held that the question of whether an impasse exists is for the Commission's investigator to determine during his or her investigation of the interest arbitration petition and thus does not affect the validity of the interest arbitration petition. Therefore, the facts as to whether the District and the Association were at impasse when the interest arbitration petition was filed are also irrelevant.

Given all of the foregoing, we conclude that there is no need for an evidentiary hearing and that the election petition is untimely. Therefore, we have dismissed the election petition.

Dated at Madison, Wisconsin, this 21st day of January, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner