

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION**

Involving Certain Employes of
TOWN OF NASHVILLE

Case 1
No. 56951
ME-3687

Decision No. 29499-B

Appearances:

Attorney Richard Thal, General Counsel, Wisconsin Professional Police Association/LEER Division, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of the Wisconsin Professional Police Association/LEER Division.

Garvey & Stoddard, S.C., by **Attorney Glenn M. Stoddard**, 634 West Main Street, Suite 201, Madison, Wisconsin 53703, appearing on behalf of the Town of Nashville.

ORDER DISMISSING PETITION FOR ELECTION

On November 6, 1998, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employes of the Town of Nashville wished to be represented by the Association for the purposes of collective bargaining.

On December 1, 1998, prior to any hearing on the petition, the Commission received a Stipulation For Election executed by the Town and the Association.

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On December 3, 1998, based on the parties' Stipulation, the Commission issued a Direction of Election pursuant to which the Commission conducted a mail ballot election among the two eligible voters/employees. The two employees received ballots and written instructions which reflected that the ballots would be opened and counted in the Commission's Madison offices on December 21, 1998 at 11:30 a.m. and that "Ballots must be received in the Commission's offices prior to the count to be valid."

On December 21, 1998, at 11:30 a.m., the Commission opened the one ballot which had been received. That ballot reflected a vote for the Association as the collective bargaining representative for the two Town employees. That same day, the Commission mailed the Association and the Town a Tally Sheet which reflected that only one ballot had been cast and that said ballot had been cast for the Association. Later that same day, a second ballot arrived.

The Town received the Tally Sheet on December 22, 1998.

No objections to the conduct of the election were received.

On January 8, 1999, the Commission issued a Certification of Representative which certified that: (1) a majority of the eligible employees/voters who voted had selected the Association as the collective bargaining representative; and (2) the Association was the exclusive collective bargaining representative of a bargaining unit consisting of ". . . all regular full-time employees of the Town of Nashville, excluding supervisory, confidential and managerial employees . . ."

On January 13, 1999, the Town filed an "Emergency Petition For New Election." In the Petition, the Town asserts that the employee who voted in the election had harassed the non-voting employee and that said harassment was creating an emergency which a new election would terminate.

By letter dated January 21, 1999, the Association opposed the Emergency Petition.

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.

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

ORDER

The Town of Nashville's Emergency Petition for New Election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 10th day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Town of Nashville

MEMORANDUM ACCOMPANYING ORDER
DISMISSING PETITION FOR ELECTION

The Town cites Sec. 111.70(4)(d)5, Stats., as providing the statutory authority for conducting a new election under the alleged circumstances. Section 111.70(4)(d)5, Stats., provides:

5. Questions as to representation may be raised by petition of the municipal employer or any municipal employe or any representative thereof. Where it appears by the petition that a situation exists requiring prompt action so as to prevent or terminate an emergency, the commission shall act upon the petition forthwith. The fact that an election has been held shall not prevent the holding of another election among the same group of employes, if it appears that sufficient reason for another election exists.

The statute: (1) identifies who can file an election petition; (2) directs the Commission to act on a petition “forthwith” (by either conducting an election or dismissing the petition) if such action is required “to prevent or terminate an emergency”; and (3) gives the Commission authority to conduct “another election” if “sufficient reason” exists.

We are satisfied that even assuming all of the facts alleged by the Town are true, “sufficient reason” does not presently exist for us to conduct a new election. Therefore, we have dismissed the Town’s petition.

In VILLAGE OF DEERFIELD, DEC. NO. 26168 (WERC, 8/89), we held that as a general matter, an election petition filed less than one year after the date a bargaining representative is certified will be dismissed as untimely under Sec. 111.70(4)(d)5, Stats. As reflected in that decision, this one-year policy reflects a balancing of competing rights and interests. We therein stated:

On the one hand, the Commission has an interest in encouraging stability in collective bargaining relationships which enhances the potential for labor peace. 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. As the Union argues, a bargaining representative selected in a valid representation election should be given a reasonable period of time in which to negotiate a collective bargaining agreement without threat of challenge to its majority status. Not only does the existence of such a time period encourage labor relations stability, but it also serves the interests of employe free choice by providing the employes’ chosen representative with a reasonable opportunity to fulfill the purpose for which it was chosen, *i.e.*, to bargain with the employer on matters affecting the employes’ wages, hours and working conditions. (footnotes omitted)

The facts alleged here do not establish a persuasive basis for departing from the general one-year policy discussed above.

Close election results may well cause hostility between employees with different balloting preferences. To the extent that hostility intrudes into a work place, an employer is free to take appropriate action to ensure that employees meet their job responsibilities. Such hostility does not warrant creation of an exception to the one-year policy.

To the extent the Town's allegations raise issues as to conduct affecting the results of the election itself, ERC 21.10 1/ gave the Town the right to raise said issues and have them resolved on the merits by filing objections within five working days of the receipt of the Tally Sheet. No such objections were filed. Under such circumstances, the interest of finality of election results makes it inappropriate for us to allow the Town to now litigate issues which it previously failed to raise in a timely fashion.

1/ ERC 21.10 states in pertinent part:

. . . Within 5 days after the tally of ballots has been furnished, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and 5 copies of such objections shall be signed and filed with the commission, the original being sworn to.

Given all of the foregoing, we have concluded that there is not "sufficient reason" within the meaning of Sec. 111.70(4)(d)5, Stats., to conduct a second election at this time. Therefore, we have dismissed the Town's petition.

Dated at Madison, Wisconsin this 10th day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Town of Nashville

CONCURRENCE OF COMMISSIONER A. HENRY HEMPE

There are few rights more precious than that of employes to bargain collectively through representatives of their own choosing. Indeed, in Wisconsin it is a right statutorily guaranteed to employes in both the public and private sectors. 2/

2/ *Section 111.04, Stats., (private sector employes); Sec. 111.70(2), Stats., (municipal employes); Sec. 111.82, Stats., (state employes).*

For these reasons, as I have indicated on at least one other occasion, [FLAMBEAU SCHOOL DISTRICT (CONCURRENCE), DEC. NO. 26238-A (WERC, 5/90)] I am uncomfortable about disenfranchising any bargaining unit voter merely on a technicality. In my opinion, the disallowance of a voter's ballot is not a casual remedy, nor should it be.

As a practical matter, this kind of ballot protection requires mutuality. Bargaining unit voters must take seriously their voting responsibilities if their respective votes are to be counted and the election conducted in an orderly fashion. These responsibilities include compliance with reasonable election directives – including those concerning ballot deadlines. Mere inconvenience or neglect does not excuse the voter from a failure to do so.

In the instant matter, one voter failed to submit his ballot to the Wisconsin Employment Relations Commission by the indicated deadline. Indeed, the postmark on the envelope containing the ballot indicates the ballot was not even mailed until after the deadline for its receipt was already past.

The petition for a new election attributes harassment by a fellow-employee as the cause of the untimely ballot submission. Nothing more. Just harassment. The connection between the alleged harassment and tardy mailing is not only unclear, it is simply not drawn.

Thus, even if the tardy voter had been subjected to some sort of harassment by his fellow employee, it is by no means apparent that the alleged harassment delayed the voter in mailing his ballot. Frankly, it is difficult to envision how harassment that does not rise to the level of deception or intimidation could prevent a voter from dropping his or her ballot in a public mailbox by a date reasonably assuring timely delivery. To attribute that delay to the "harassment" alleged herein is simply a *non sequitur* of logic that cannot be given credence. Far more plausible is the inference that neglect, inconvenience or other reason unrelated to the alleged "harassment" delayed the voter in mailing his ballot. Under this circumstance, in my opinion no claim has been stated for which relief can be granted.

It is, of course, a serious matter if an employe has been misled or intimidated from exercising his or her right to vote in a representation election. Under some circumstances it may constitute sufficient cause for a new election.

In the instant matter, however, neither deception nor intimidation is alleged. The petition merely recites that the employe submitting the untimely ballot had been harassed by a fellow employe. While pleadings need normally recite only ultimate facts, surely some nexus must be shown between the conduct alleged and the event from which relief is sought.

This is not to say the reasons for dismissal of the town's petition indicated by the majority are insignificant. Certainly, (an) objection(s) to the conduct of an election should be filed in a timely manner, as indicated by the majority. Stability of the bargaining unit is also an essential goal. Yet even if these threshold qualifications had been met in the instant matter, I do not believe the allegations of the petition are sufficient to raise a justiciable issue.

Dated at Madison, Wisconsin this 10th day of February, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

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