

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LISA KOEPKE, THERESA NELSEN AND ELLEN MORREY
Involving Certain Employees of
NORTH CENTRAL HEALTH CARE FACILITIES, INC.

Case 14
No. 57568
ME-3724

Decision No. 29770-C

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Marianne Goldstein Robbins**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Service Employees International Union, Local 150.

Ruder, Ware & Michler, S.C., by **Attorney Ronald J. Rutlin**, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of North Central Health Care Facilities, Inc.

Ms. Lisa Koepke, Ms. Ellen Morrey and Ms. Theresa Nelsen, appearing on their own behalf.

ORDER GRANTING MOTION TO DISMISS

On September 6, 2001, Lisa Koepke, Theresa Nelsen, and Ellen Morrey filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether the employees in an existing bargaining unit of licensed practical nurses employed by North Central Health Care Facilities, Inc., wish to continue to be represented by Service Employees International Union, Local 150.

By letter dated September 14, 2001, Local 150 moved that the election petition be dismissed due to the pendency of an interest arbitration petition covering the bargaining unit in question.

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Local 150 and North Central Health Care filed written argument in support of and in opposition to the motion, the last of which was received October 15, 2001.

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

ORDER

The motion to dismiss is granted.

Given under our hands and seal at the City of Madison, Wisconsin this 4th day of December, 2001.

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

North Central Health Care Facilities, Inc.

**MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO DISMISS**

BACKGROUND

On June 15, 2000, Local 150 was certified by the Commission as the collective bargaining representative of a bargaining unit consisting of:

All regular full-time and regular part-time licensed practical nurses employed by the North Central Health Care Facilities, Inc. at Mount View Care Center, excluding supervisory, managerial, confidential and executive employees.

On December 22, 2000, North Central Health Care filed a petition for arbitration pursuant to Sec. 111.70(4)(cm)6, Stats., as to this bargaining unit. This petition was and continues to be pending before Commission staff investigator Steve Morrison who is providing mediation services to the parties.

POSITIONS OF THE PARTIES

Local 150

Citing MUKWONAGO SCHOOLS, DEC. No. 24600 (WERC, 6/87), Local 150 asserts that because the interest arbitration petition was pending at the time the election petition was filed, the election petition should be dismissed. Contrary to the argument of North Central Health Care, Local 150 contends that the facts of this case demonstrate why any departure from the MUKWONAGO holding is not warranted.

North Central Health Care

North Central Health Care acknowledges the holding of MUKWONAGO but argues that under the facts of this case, the Commission should create an exception to the general MUKWONAGO rule. Citing the lengthy and ongoing negotiations over the parties' initial

contract, North Central asserts that where, as here, the election petition seeks to decertify the union (as opposed to seeking to replace the incumbent with a different union), the petition should be found timely if filed more than one year after the election was conducted but prior to any Commission order to arbitrate the dispute. North Central contends that such an exception would better balance the competing interests of employee choice and stability.

DISCUSSION

As the Commission stated in MUKWONAGO:

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.

Where no election petition has been timely filed during the 60-day period prior to the reopener date, and the union and/or employer have invoked the statutory interest arbitration procedures in an effort to reach a successor agreement, we have held that the interests of stability warrant finding an election petition filed during the pendency of an interest arbitration petition to be untimely. 10/ However, mindful of the statutory rights of municipal employees and municipal employers to raise questions as to representation, we have also concluded that this interest arbitration bar is extinguished once the term of the contract being arbitrated (under either party's offer) has expired. 11/ Our holdings provided municipal employees and employers with the guaranteed time prior to the commencement of bargaining on a successor (to the contract being arbitrated) agreement when questions concerning representation could be timely raised.

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).*

10/ *DUNN COUNTY, DEC. NO. 17861, (WERC, 6/80); CITY OF PRESCOTT, SUPRA.*

11/ *OCONTO, SUPRA; MARINETTE, SUPRA.*

The instant case requires that we decide when the guaranteed but limited time for timely filing an election petition should be when an interest arbitration award is issued prior to the expiration of the contract which was arbitrated but after the commencement of the 60-day window period.

The answer posited by WEAC in this case would conclude that if the contract issues being arbitrated do not include the reopener date or contract duration, a petition would be timely even if filed during the pendency of interest arbitration petition so long as it was filed during the 60 day period prior to the undisputed reopener date. We find such a rule troublesome because it would have no applicability in situations where the reopener date or the duration of the agreement are in dispute in the arbitration proceeding, it presumes that agreed-upon reopener dates are common knowledge during the pendency of interest arbitration, and it could create situations in which we would be faced with the equally undesirable choices of either conducting an election before the arbitration award was issued or delaying the election until the award was issued.

We conclude that the best balance of competing interests and rights in situations such as that before us herein is to conclude that election petitions cannot be timely filed during the pendency of an interest arbitration petition, but that a petition can be timely filed during the 60-day period following the date the award is issued. Such a holding will be generally and understandably applicable by all parties in varying fact situations and will allow the employees to receive a timely election while being fully informed as to the result which the interest arbitration proceeding produced.

Thus, the Commission's rule with respect to timeliness of election petitions during the pendency of an interest arbitration proceeding is as follows: In those cases where an arbitration proceeding is pending, an election petition filed will be deemed untimely in all cases except where the pending arbitration proceeding involves an agreement which has already expired by its own term. In such cases an election petition can timely be filed any time after expiration of the agreement and up to 60 days following issuance of the arbitration award. 12/ In all other cases a petition is timely only if filed after issuance of award, and if filed: (1) during the 60-day period before the reopener date in the agreement if the issuance of the award is prior to such 60-day period, or (2) during the 60 days after the issuance of the award if the award is issued during or after the 60-day period prior to the reopener date in the agreement.

As evidenced by the first sentence of the above quoted text, our consideration of the competing interests of choice and stability includes situations where, as here, the employees wish to decertify the existing union. Thus, the facts presented here have previously been considered by the Commission when determining the appropriate balance between stability and choice. Further, as also noted in the above quoted text, the existing precedent has the value of being "... generally and understandably applicable to all parties in varying fact situations ...". Having again considered the matter, we remain persuaded that existing precedent summarized in MUKWONAGO continues to be the best balance of the interests of stability and choice. Thus, because the interest arbitration petition was pending when the instant election petition was filed, we have granted the motion to dismiss.

Dated at Madison, Wisconsin this 4th day of December, 2001.

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

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