

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**ELLEN MORREY**

Involving Certain Employees of

**NORTH CENTRAL COMMUNITY SERVICE PROGRAM BOARD OF  
LINCOLN, LANGLADE AND MARATHON COUNTIES**

Case 14  
No. 57568  
ME-3724

**Decision No. 29770-D**

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**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 Local 150, Service Employees International Union.

Ruder Ware, by **Attorney Ronald J. Rutlin**, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of North Central Community Service Program Board of Lincoln, Langlade and Marathon Counties.

**Ms. Ellen Morrey**, 2086 DuBay Drive, Mosinee, Wisconsin 54455, appearing on her own behalf.

**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

On November 29, 2002, Ellen Morrey, a licensed practical nurse employed by the North Central Community Service Program Board of Lincoln, Langlade, and Marathon Counties, filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain licensed practical nurses employed by the Board wish to continue to be represented for the purposes of collective bargaining by Local 150, Service Employees International Union.

Dec. No. 29770-D

By letter dated December 5, 2002, Local 150 asserted that the election petition should be dismissed because of a pending prohibited practice complaint. By letter dated December 9, 2002, the Board responded by indicating its view that the complaint did not block the conduct of the election but that the Board was willing to attempt to settle the complaint so as to remove any issue in that regard.

On December 13, 2002, Morrey filed a second election petition accompanied by the requisite minimum 30% showing of interest.

Local 150 and the Board thereafter unsuccessfully attempted to settle the complaint and by February 25, 2003 filed written argument on the question of whether the pending complaint should block further processing of the election 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 reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. The North Central Community Service Program Board of Lincoln, Langlade, and Marathon Counties, herein the Board, is a municipal employer having its principal offices in Wausau, Wisconsin.

2. Local 150, Service Employees International Union, herein Local 150, is a labor organization that serves as the collective bargaining representative for certain regular full-time and regular part-time licensed practical nurses employed by the Board.

3. On May 7, 2001, Local 150 filed a prohibited practice complaint that alleged in pertinent part as follows:

4. Respondent has committed prohibited practices by unilaterally implementing direct deposit of employee paychecks on April 6, 2000.

5. Respondent committed a prohibited practice by unilaterally implementing its 2001 wage proposals for both the Service and Maintenance and Licensed Practical Nurse bargaining units represented by Local 150 on or about April 26, 2001.

6. The unilateral implementation described above occurred while a petition for interest arbitration was pending.

7. By the above and other acts, respondent has violated Sec. 111.70(3)(a)1. and 111.70(3)(a)4., Wis. States. (sic)

4. In the interest arbitration award that completed the interest arbitration proceeding referenced in paragraph 6 of the complaint, the arbitrator selected the final offer of Local 150.

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

#### **CONCLUSION OF LAW**

The Board conduct alleged in the complaint affects the employees' Sec. 111.70(2), Stats. right to vote in an election atmosphere free of coercion.

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

#### **ORDER**

The election petition will not be processed further until there is either a final disposition of the complaint through a Commission decision or a posted Board admission that it engaged in illegal unilateral conduct and will in the future honor its obligation to bargain with Local 150.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**North Central Community Service Program Board**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER**

The parties agree that absent waiver by the complaining party, the Commission will not process an election petition during the pendency of a complaint that contains allegations which, if proven, would affect the employees' right to vote in an atmosphere free of coercion. MAPLE-DALE INDIAN HILLS SCHOOLS, DEC. NO. 29961 (WERC, 8/00); CITY OF BELOIT, DEC. NO. 27799 (WERC, 9/93); MENOMONEE COUNTY, DEC. NO. 26236 (WERC, 11/89); SCHOOL DISTRICT OF PLATTEVILLE, DEC. NO. 21645-A (WERC, 6/84). The parties disagree as to whether the complaint allegations in question, if proven, create a coercive election atmosphere.

As recited in our Findings, the complaint alleges unilateral implementation of wage increases and a direct deposit requirement.

Local 150 argues that such conduct demonstrated to employees that the employer did not feel obligated to honor its duty to bargain with Local 150 but instead would and could act unilaterally. Until such unlawful conduct is acknowledged and remedied, Local 150 argues that the election should not be conducted.

The Board argues that the almost two year old conduct alleged in the complaint is not coercive of employees' freedom of choice in an election. The Board asserts that alleged unilateral implementation of a wage increase occurred in the context of an interest arbitration proceeding in which the wage offers of each side for the implemented period in question were identical. As to the alleged unilateral implementation of direct deposit, the Board notes that Local 150 prevailed on this issue in interest arbitration and thus employees currently have retained the right to receive their paychecks directly. In this context, the Board contends that the Local 150 complaint, which has been held in abeyance at Local 150's request while the interest arbitration proceeding was pending, does not provide a persuasive basis for delaying further processing of the election petition.

We find Local 150's position to be the more persuasive. While it is true that the outcome of the interest arbitration proceeding returned the employees to the position they were in prior to the alleged unilateral implementation, the outcome of the interest arbitration proceeding does not address Local 150's primary objection to proceeding to an election -- the Board's unilateral conduct demeaned the status of Local 150 as the collective bargaining representative. Absent resolution of that concern (either through final disposition of the

complaint by a Commission decision or a posted Board admission that it engaged in illegal unilateral conduct and will in the future honor its obligation to bargain with Local 150), we conclude that the complaint allegations affect the employees' right to vote in an atmosphere free of coercion. Thus, we will not further process the election petition at this time. 1/

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*1/ The Board has also argued that we should consider the fact that due to the pendency of the interest arbitration petition, we previously dismissed an election petition filed by the same employee. The Board asserts that if we now fail to allow this petition to proceed, we will not be properly honoring the appropriate balance between stability in collective bargaining relationships and the right of employees to decide whether they wish to change or eliminate their existing bargaining representative. We disagree. The "balance" to which the Board refers is relevant to the question of when an election petition is timely. This petition is timely now that the interest arbitration proceeding has concluded. However, the filing and dismissal of an earlier petition is irrelevant to the question of whether this timely petition should proceed in light of allegedly illegal Board conduct.*

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Dated at Madison, Wisconsin, this 26th day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner