

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**LOCAL 1486 AFFILIATED WITH MILWAUKEE DISTRICT
COUNCIL 48, AFSCME, AFL-CIO**

To Initiate Arbitration Between Said Petitioner and
GLENDALE – RIVER HILLS SCHOOL DISTRICT

Case 20
No. 58630
INT/ARB-8976

Decision No. 29932

Appearances:

Ms. Malou Noth, Staff Representative, Milwaukee District Council 48, AFSCME, AFL-CIO, 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208, appearing on behalf of Milwaukee District Council 48, AFSCME, AFL-CIO.

Davis & Kuelthau, S.C., by **Attorney Daniel Vliet**, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613, appearing on behalf of Maple Dale – Indian Hill School District.

ORDER GRANTING MOTION TO DISMISS

On March 6, 2000, Local 1486, Milwaukee District Council 48, AFSCME, AFL-CIO, filed a petition for arbitration with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(cm)6, Stats., relating to a bargaining unit of employees of the Glendale – River Hills School District. The petition alleged that the Local and the District had exchanged proposals on December 15, 1999 and met to bargain on three occasions thereafter.

The petition was accompanied by a preliminary final offer and a cover letter that stated in pertinent part:

The filing of this Interest Arbitration is in order to protect the rights of this bargaining unit that was newly organized as of March 15, 1999.

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It is our intent to continue negotiations on a regular basis unless an impasse is reached.

By letter dated March 10, 2000, the District asked the Commission to “decline to accept the Petition since the statutory prerequisites have not yet been met.”

The District and the Local thereafter filed written argument, the last of which was received March 24, 2000.

By letter dated April 27, 2000, the Commission advised the parties that it would presume that the matter of the petition’s dismissal should be decided based on the interest arbitration petition and the cover letter unless either party advised the Commission to the contrary by May 5, 2000. Neither party responded to this letter.

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

ORDER

The District’s motion to dismiss the petition for interest arbitration is granted.

Given under our hands and seal at the City of Madison, Wisconsin this 27th day of June, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

I dissent.

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Glendale – River Hills School District

**MEMORANDUM ACCOMPANYING
ORDER GRANTING MOTION TO DISMISS**

POSITIONS OF THE PARTIES

The District argues that the parties were not at impasse when the petition for interest arbitration was filed and thus that the petition should be dismissed. As evidence of the absence of an impasse, the District cites the Local's cover letter to the Commission that states that the Local intended to continue negotiations "unless an impasse is reached."

The Local argues that the petition for arbitration should not be dismissed. The Local contends that it is the Commission investigator who determines whether the parties are at impasse/deadlocked and asserts that continued bilateral negotiations are appropriate despite the presence of the arbitration petition.

DISCUSSION

Section 111.70(4)(cm)6, Stats., provides in pertinent part:

(a) If . . . the parties are deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement, either party . . . may petition the commission, in writing to initiate compulsory, final and binding arbitration. . . .

In MILWAUKEE SCHOOLS, DEC. NO. 23689 (WERC, 5/86), the Commission concluded that the appropriate forum for resolving disputes as to whether the parties are at deadlock/impasse is an investigation of the petition by a Commission investigator/mediator. That conclusion was based in part upon the Commission's view that the delay (and we would add the expense to the parties) produced by allowing formal litigation of such issues is contrary to the overriding statutory purpose of prompt resolution of labor disputes.

We continue to find MILWAUKEE SCHOOLS persuasive. But for the content of a portion of the cover letter which accompanied the instant petition, we would deny the motion to dismiss based on MILWAUKEE SCHOOLS and assign an investigator/mediator to determine whether the parties are deadlocked/at impasse as alleged in the interest arbitration petition. However, where, as here, we have the unique situation of the petitioning party's own cover letter indicating that the parties are not yet at impasse and thus contradicting the allegation of deadlock contained in the petition, we conclude that dismissal of the petition is appropriate.

We wish to emphasize that our holding is not based in any part on the portion of the cover letter that reflects the Local's ongoing willingness to meet bilaterally with the District despite the filing of the petition. Such meetings are consistent with the overriding statutory purpose of resolution of labor disputes.

Dated at Madison, Wisconsin this 27th day of June, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Glendale-River Hills School District

Dissent of Commissioner A. Henry Hempe

This case is the companion to Maple Dale - Indian Hill School District (DEC. No. 58617; WERC, 6/2000) also decided by the Commission today. Not surprisingly, the record of each adduces similar, material facts. 1/

1/ The two School Districts are geographically adjacent to each other, share the same business address, and use the same business manager. The same attorney represents each in these matters. The same Union represents each bargaining unit impacted by the majority's decisions, and wrote virtually identical cover letters of transmittal to the Commission for the petitions of interest arbitration the Union filed in each case. Each bargaining unit was certified in early 1999. However, I am aware of no petitions for a new representation election filed by any member of the 43-person Glendale-River Hills bargaining unit.

Based on the reasons and rationale stated in my dissent in the Maple Dale-Indian Hill matter, I also dissent herein. However well intended the new rule the majority adopts today, I believe it constitutes a flawed public policy that is contrary to existing legislative mandate. I am also dubious that the record of this case offers sufficient support for the new rule of practice and procedure the majority seems determined to create.

Dated at Madison, Wisconsin this 27th day of June, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

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