

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 1486, MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO

Involving Certain Employees of

MAPLE DALE-INDIAN HILL SCHOOL DISTRICT

Case 23
No. 57017
ME-2692

Decision No. 29961

Appearances:

Ms. Nancy Behrens, 3000 West Highland Road, Mequon, Wisconsin 53092, **Ms. Nancie Daley**, 985 North Fairfield Lane, West Bend, Wisconsin 53090, **Ms. Barbara F. Harris**, 8945 North Navajo Road, Bayside, Wisconsin 53217, and **Ms. Ellen Krikelas**, 8600 North Point Drive, Fox Point, Wisconsin 53217, appearing on their own behalf.

Podell, Ugent, Haney & Miszewski, S.C., by **Attorney Matthew J. Miszewski**, 611 North Broadway, Suite 200, Milwaukee, Wisconsin 53202-5004, appearing on behalf of Local 1486, Milwaukee District Council 48, AFSCME, AFL-CIO.

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

ORDER

On March 3, 2000, Local 1486, Milwaukee District Council 48, AFSCME, AFL-CIO, filed a petition for interest arbitration with the Wisconsin Employment Relations Commission relating to a bargaining unit of clerical employees of the Maple Dale-Indian Hill School District.

On March 7, 2000, the District asked the Commission to dismiss the petition.

On March 23, 2000, Nancy Behrens, Nancie Daley, Barbara Harris, and Ellen Krikelas filed petitions with the Commission asking that the Commission conduct an election to determine whether the clerical employe bargaining unit wished to continue to be represented by Local 1486, Milwaukee District Council 48.

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On March 24, 2000, the Commission advised all parties that because there was a pending petition for interest arbitration covering the clerical employee bargaining unit, there was an issue as to whether the election petitions were timely.

On June 7, 2000, Local 1486 filed a prohibited practice complaint with the Commission alleging that the District had:

. . . provided aid and support for employees in seeking a decertification of the labor organization. Specifically, they aided in the filing of the complaint. After the filing of the decertification petition, they gave rewards to employees who were instrumental in the filing and to entice “no” votes.

On June 27, 2000, the Commission (Commissioner Hempe dissenting) dismissed the March 3, 2000 interest arbitration petition and asked the parties to file written argument regarding the impact of the dismissal on the processing of the March 23, 2000 election petitions. On July 18, 2000, Local 1486 filed a petition for rehearing. On August 21, 2000 we issued an order denying the petition for rehearing as untimely filed.

On July 19, 2000, Local 1486 filed another petition for interest arbitration as to the clerical unit.

The filing of argument regarding the processing of the election petitions was completed July 31, 2000. In its July 14, 2000 written argument, Local 1486 argued that the election petitions should not be processed and asserted among other matters that the allegations in the June 7, 2000 complaint blocked further processing of the election petitions. In its July 31, 2000 submission, the District asks that we proceed to process the election petitions so that the District could determine whether it is obligated to return to the bargaining table or whether Local 1486 no longer represents a majority of the employees.

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, we make and issue the following

ORDER

1. Upon our June 27, 2000 dismissal of the March 3, 2000 interest arbitration petitions, the March 23, 2000 election petitions became timely filed. The subsequent filing of another interest arbitration petition on July 19, 2000 has no effect on the timeliness of the March 23, 2000 election petitions.

2. The complaint filed June 7, 2000 contains allegations that, if proven, would affect the employees' right to have an election conducted in an atmosphere free of coercion. Therefore, absent a waiver by Local 1486 of the right to file objections to the election results based on the conduct alleged in the complaint, further processing of the election petitions is held in abeyance pending final disposition of the complaint.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

I concur.

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Maple Dale-Indian Hill School District

MEMORANDUM ACCOMPANYING ORDER

As reflected in the preface to our Order, the District asks that we proceed to process the election petitions filed by certain clerical employes on March 23, 2000.

We have generally held that when an election petition is filed **after** an interest arbitration petition has been filed for the same bargaining unit, the interest arbitration petition bars the processing of the election petition. See MUKWONAGO SCHOOLS, DEC. NO. 24600 (WERC, 6/87). Here, the March 23, 2000 election petitions were filed after the March 3, 2000 interest arbitration petition. However, given our June 27, 2000 dismissal of the March 3, 2000 interest arbitration petition, the interest arbitration bar to proceeding was removed and the election petitions became timely filed. The July 19, 2000 filing of another interest arbitration petition has no impact on the timeliness of the election petitions because the election petitions were filed **before** the most recent interest arbitration petition.

However, we must reject the District's request that we proceed to process the election petitions. The complaint filed by Local 1486 on June 7, 2000 contains allegations that, if proven, would affect the employes' right to have an election conducted in an atmosphere free of coercion. Under such circumstances, we will not process an election petition until there has been a final agency decision on the complaint allegations unless the complaining party is willing to waive the right to object that the election results were affected by the alleged conduct. See MENOMINEE COUNTY, DEC. NO. 26236 (WERC, 11/89). Local 1486 has not filed such a waiver and thus we await the disposition of the complaint allegations before we can proceed to process the petitions for election.

Dated at Madison, Wisconsin this 22nd day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Maple Dale-Indian Hill School District

CONCURRING OPINION OF COMMISSIONER A. HENRY HEMPE

I concur with the decision of the majority to hold in abeyance the processing of the petitions for an election of the four District employes.

However, in fairness to the parties, we should advise them that subsequent removal of the impediments to the processing of the election petitions does not necessarily mean the petitions for election would be granted. Where a representation election has already been held, no provision of the Wisconsin Statutes or the Wisconsin Administrative Code requires the Commission to grant a petition for election simply because a year has elapsed without a collective bargaining agreement in place.

The majority has already determined that the interest arbitration bar rule is not applicable herein. What has yet to be determined by the Commission is whether sufficient reason for another election exists. Sec. 111.70(4)(cm)5. This determination is a part of the Commission's responsibility to process election petitions.

Historically, this Commission has decided this kind of question by balancing the right of employes ". . . to bargain collectively through representatives of their own choosing . . ." 1/ against "the interests of stability/labor peace." PORTAGE SCHOOL DISTRICT, DEC. NO. 20470 (WERC, 7/97). When applying this standard the Commission examines the ". . . factors which affect the stability of the relationship between the employes, their bargaining agent and the employer." CITY OF MADISON, DEC. NO. 9172 (WERC, 7/69), citing CITY OF GREEN BAY, DEC. NO. 6558 (WERC, 11/63).

1/ Sec. 111.70(2), Stats.

That analysis has yet to be made in the instant matter, nor will it be made until the election petitions we currently hold in abeyance are able to be processed.

Dated at Madison, Wisconsin this 22nd day of August, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner