

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION**  
Involving Certain Employees of  
**VILLAGE OF FREDERIC**

Case 1  
No. 59495  
ME-3805

**Decision No. 30035-B**

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**Appearances:**

Grindell Law Offices, S.C., by **Attorney John Grindell**, 105 West Oak Street, P.O. Box 585, Frederic, Wisconsin 54837, appearing on behalf of the Village of Frederic.

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

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION**

On February 12, 2001, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission seeking an election pursuant to Sec. 111.70(4)(d), Stats., to determine whether all regular full-time and regular part-time employees of the Village of Frederic Police Department having the power of arrest, excluding supervisory, confidential and managerial personnel wish to be represented by WPPA for the purposes of collective bargaining.

On March 5, 2001, the Village advised the Commission that it would not voluntarily agree to the conduct of an election because the Commission had held an election in the same bargaining unit on January 29, 2001.

Dec. No. 30035-B

Through correspondence, a factual record was created and the parties then filed written argument in support of and in opposition to the election petition, the last of which was received April 13, 2001.

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

### **FINDINGS OF FACT**

1. The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein WPPA, is a labor organization having its principal offices at 340 Coyier Lane, Madison, Wisconsin 53713.

2. The Village of Frederic, herein the Village, is a municipal employer having its principal offices at Frederic, Wisconsin.

3. On December 15, 2000, the WPPA filed a petition with the Wisconsin Employment Relations Commission seeking an election among all regular full-time and regular part-time employees of the Village of Frederic Police Department having the power of arrest, excluding supervisory, confidential and managerial personnel.

On January 9, 2001, the Commission received a Stipulation For Election signed by representatives of the WPPA and the Village and on January 12, 2001, the Commission issued a Direction of Election pursuant to the Stipulation which stated in pertinent part:

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Village of Frederic Police Department having the power of arrest, excluding confidential, supervisory, managerial and executive employees, who were employed on January 12, 2001, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of the voting employees vote to be represented by Wisconsin Professional Police Association/LEER Division, for the purpose of collective bargaining with the Village of Frederic, or whether such employees vote not to be so represented by said labor organization.

4. The election was held by mail ballot. Mail ballots and instructions were mailed to the two eligible voters (Shane Allen and Dale Johnson) on January 19, 2001. Among other matters, the instructions received by the voters stated:

If you desire to vote, please do so promptly. Ballots will be opened and counted in the Commission's offices in Madison, Wisconsin, on Monday, January 29, 2001, commencing at 11:00 a.m. Ballots must be received in the Commission's offices prior to the count to be valid.

5. On January 24, 2001, voter Dale Johnson mailed his ballot by leaving the stamped envelope containing the ballot for pick-up by the U.S. Postal Service letter carrier who delivered the mail to his residence on that date.

6. By 11:00 a.m. on January 29, 2001, no ballots had been received in the Commission's Madison offices and thus no ballots could be counted. A Commission staff member advised the parties of the election results that same day. Two ballots were received January 30, 2001. The envelopes containing the ballots indicate that they were postmarked January 25, 2001 (Johnson) and January 26, 2001 (Allen).

7. On February 12, 2001, the Wisconsin Employment Relations Commission issued a Certification of Results of Election which reflected that no ballots had timely been cast and thus that a majority of the employees voting had not selected WPPA as the collective bargaining representative.

8. Since the conduct of the January 29, 2001 election, employee Allen and Police Chief Wald have resigned and replacements are being hired.

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

#### **CONCLUSIONS OF LAW**

1. There is sufficient reason within the meaning of Sec. 111.70(4)(d) 5, Stats., to conduct another election within the collective bargaining unit of all regular full-time and regular part-time employees of the Village of Frederic Police Department having the power of arrest, excluding confidential, supervisory, managerial, and executive employees.

2. A question concerning representation within the meaning of Sec. 111.70(4)(d) 3, Stats., exists within the appropriate bargaining unit described in Conclusion of Law 1.

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

**DIRECTION OF ELECTION**

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date all positions in the collective bargaining unit set forth in Conclusion of Law 1 are filled for the purpose of determining whether a majority of the voting employees vote to be represented by Wisconsin Professional Police Association/LEER Division for the purposes of collective bargaining with the Village of Frederic.

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of June, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION**

**POSITIONS OF THE PARTIES**

**The Village**

The Village argues the petition for election should be dismissed as untimely filed. Because it is the responsibility of the voter to make sure the ballot is timely received, the Village asserts that a valid election was held on January 29, 2001. Citing the Commission's interpretation of Sec. 111.70(4)(d) 5, Stats., in VILLAGE OF DEERFIELD, DEC. NO. 26168 (WERC, 9/89), the Village contends that the election petition should be dismissed because an election has been conducted within the one year period preceding the date the instant petition was filed. The Village also points to an existing employee vacancy as an additional basis for concluding that an election cannot be conducted at this time.

**WPPA**

WPPA asserts that under the facts of this case, no valid election was held on January 29, 2001 because no ballots were counted. Thus, WPPA argues that because no valid election was held, the Commission should conclude that there is no reason not to conduct an election based on the WPPA's February 12, 2001 petition.

Even if the Commission concludes that a valid election was held on January 29, 2001, WPPA contends that the Commission's DEERFIELD precedent does not preclude the conduct of another election. WPPA notes that DEERFIELD holds that "normally" the Commission will not conduct another election within one year of a prior election. WPPA argues that the slow mail delivery present here provides a persuasive basis for a Commission conclusion that the "normal" rule does not apply. Further, WPPA asserts that application of the policy rationale behind the "one year rule" -- stability in labor relations and the right to change or eliminate a chosen representative -- do not suggest that conduct of an election is inappropriate. There should be no stability concerns because there presently is no union representing the employees and failure to conduct an election will delay the exercise of the right to determine whether they wish to be so represented.

**DISCUSSION**

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 employee or any representative

thereof. . . . The fact that an election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the commission that sufficient reason for another election exists.

As both parties note, the Commission has generally concluded that where an election has been conducted within the one year period prior to the filing of an election petition, such a petition is untimely and does not establish “sufficient reason for another election . . .” DEERFIELD, SUPRA.

WPPA raises the threshold question of whether an election “has been held” within the meaning of Sec. 111.70(4)(d)5, Stats., where, as here, no one voted. We conclude that an election was “held” within the meaning of Sec. 111.70(4)(d)5, Stats. It is the opportunity to vote that establishes that an election has been “held” -- not whether or how many voters took advantage of the opportunity.

Having concluded that an election has been “held,” we turn to the question of whether there is “sufficient reason” to hold another election in response to the WPPA petition.

We conclude that the combination of turnover in the identity of eligible voters and the circumstances surrounding the return of the ballots creates a “sufficient reason” for another election to be conducted.

Turnover (in this case one of the two eligible voters has left the Village’s employ) has historically been a relevant factor when applying the identical statutory language under the Sec. 111.05(4), Stats., of the Wisconsin Employment Peace Act. BELLVIEW, INC., DEC. NO. 5793, (WERC, 7/61); LAKESIDE INDUSTRIES, DEC. NO. 4610 (WERC, 9/57). Given the identical nature of the statutory language and the parallel right of employees under each statute to decide whether they wish to be represented for the purposes of collective bargaining, we conclude that consideration of turnover is appropriate under Sec. 111.70(4)(d)5, Stats. Because the turnover has been significant (50%), it supports the conduct of another election.

In addition, the facts surrounding the voters’ efforts to return their mail ballots in a timely manner support the conduct of another election. The voters acted promptly and placed their ballots in the return mail within a time frame that could reasonably have been expected to meet the deadline for timely receipt by the Commission.

Given all of the foregoing, we have directed an election. However, as the Village persuasively argues, the existence of a vacancy in the context of a two person bargaining unit

warrants delay in the conduct of the election until both employee positions are filled. The Village shall immediately advise the Commission and WPPA of the date both positions are filled and the election will be conducted within 45 days thereafter.

Dated at Madison, Wisconsin this 8th day of June, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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