

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MICHAEL RAPP AND SCOTT BOESE
Involving Certain Employees of
WAUKESHA COUNTY

Case 166
No. 60692
ME-3856

Decision No. 30269

In the Matter of the Petition of
MICHAEL RAPP AND SCOTT BOESE
Involving Certain Employees of
WAUKESHA COUNTY

Case 29
No. 60691
ME-3855

Decision No. 14157-D

Appearances:

Mr. Scott Boese, S103 W36915 Cty Trk 20, Eagle, Wisconsin 53119, and **Mr. Michael Rapp**, S. 72 W13701 Woods Road, Muskego, Wisconsin 53150, appearing on their own behalf.

Michael, Best & Friedrich, by **Attorney Scott C. Beighton**, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202-4108, appearing on behalf of Waukesha County.

Mr. Dave Berg, Business Representative, Teamsters “General” Local Union No. 200, 6200 West Bluemound Road, P.O. Box 2073, Milwaukee, Wisconsin 53201, appearing on behalf of Teamsters “General” Local Union No. 200.

Dec. No. 30269

ORDER DISMISSING PETITION FOR ELECTION

On December 17, 2001, Scott Boese and Michael Rapp filed a petition and showing of interest with the Wisconsin Employment Relations Commission seeking an election in a collective bargaining unit of mechanics employed by Waukesha County. The petition asserted that the mechanics are currently included in a larger collective bargaining unit represented by Teamsters Local 200.

By letter dated December 17, 2001, the Commission General Counsel asked the County to provide a list of employees so that it could be determined whether the petition was accompanied by the requisite 30% showing of interest. The letter also asked for a copy of any collective bargaining agreement covering the employees in question.

The County responded with a letter dated December 28, 2001 that included a list of employees in the existing bargaining unit and a copy of a 1999-2001 contract between the County and Teamsters Local 200 that the County asserted covered the mechanics. The County's letter further stated the County's opposition to the election petition.

By letter dated January 3, 2002, the Commission General Counsel wrote the parties the following letter:

As requested in my December 17, 2001 letter, Attorney Beightol's December 28, 2001 response (copies enclosed for Mr. Boese and Mr. Rapp) includes a copy of the 1999-2001 contract for the unit in which the DPW-Fleet Mechanics are presently included. That contract contains an August 1, 2001 date for the commencement of bargaining on a new contract and further indicates that the contract expired December 31, 2001.

As indicated in the enclosed copy of MUKWONAGO SCHOOLS, DEC. No. 24600 (WERC, 6/87), Commission law generally provides that an election petition can only be filed during the 60 days prior to the reopening date in a collective bargaining agreement or during any period when an existing contract has expired and no petition for interest arbitration has been filed.

Applying existing Commission law as expressed in MUKWONAGO, it would appear that the December 17, 2001 election petition filed by Mr. Boese and Mr. Rapp is not timely because it was not filed during the 60 days (sic) period prior to August 1, 2001 and was filed at a time when a contract was in effect.

By this letter, I ask that on or before January 18, 2002, you postmark any written argument you want the Commission to consider when it decides whether the election petition is timely or should be dismissed.

Boese and Rapp responded to the Commission's January 3, 2002 letter with written argument dated January 13, 2002 that asserted among other matters that the 1999-2001 contract expired December 31, 2001.

Waukesha County responded to the Commission's January 3, 2002 letter with written argument dated January 17, 2002 that argued among other matters that the petition should be dismissed as untimely filed.

Teamsters Local 200 responded to the Commission's January 3, 2002 letter with written argument dated January 25, 2002 urging dismissal of the petition.

We have considered the matter and conclude that the election petition should be dismissed as untimely filed under the holding in MUKWONAGO SCHOOL DISTRICT, DEC. NO. 24600 (WERC, 6/87). We reach this conclusion because: (1) the petition was not filed during the 60 day period prior to the August 1, 2001 reopening date in the 1999-2001 Teamsters 200/Waukesha County contract establishing the mechanics' wages, hours and conditions of employment and; (2) was filed at a time when that 1999-2001 contract was still in effect.

Boese and Rapp assert that the 1999-2001 contract has now expired. However, the question before us is whether the Boese/Rapp petition was timely when filed – not whether a newly filed petition would be timely because the contract has now expired. At the time the December 17, 2001 petition was filed, there was a contract in effect and the existence of that contract made this petition untimely.

NOW, THEREFORE, it is

ORDERED

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of January, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

rb

30269