

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**  
Involving Certain Employees of  
**VILLAGE OF REEDSVILLE**

Case 1  
No. 60919  
ME-3862

**Decision No. 30313-B**

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**Appearances:**

Michael, Best & Friedrich, by **Attorney Robert Mulcahy**, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202-4108, appearing on behalf of the Village of Reedsville.

**Mr. Neil Rainford**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 14002 County Road C, Valders, Wisconsin 54245, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

**ORDER DISMISSING PETITION FOR ELECTION**

On May 9, 2003, the Village of Reedsville filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain Village employees wished to continue to be represented for the purposes of collective bargaining by Wisconsin Council 40, AFSCME, AFL-CIO. In its petition, the Village asserts that:

The election conducted on May 8, 2002 was not conducted using an appropriate list of eligible voters.

On May 20, 2003, AFSCME filed a motion to dismiss the petition as untimely filed because: (1) less than one year has passed since AFSCME was certified as the collective bargaining representative on May 23, 2002; and (2) at the time the petition was filed, there was a pending petition for interest arbitration covering this bargaining unit.

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On June 17, 2003, the Village filed a statement in opposition to the AFSCME motion.

**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

**ORDER**

The motion to dismiss is granted.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of July, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Commissioner Susan J. M. Bauman did not participate.

Village of Reedsville

**MEMORANDUM ACCOMPANYING  
ORDER GRANTING MOTION TO DISMISS**

The Commission has consistently held that where, as here, a petition for interest arbitration has been filed before an election petition is filed, the pendency of the interest arbitration petition renders the election petition untimely. EAST TROY COMMUNITY SCHOOL DISTRICT, DEC. NO. 29166-B (WERC, 1/03); WAUKESHA COUNTY, DEC. NO. 14157-E (WERC, 4/02); PORTAGE SCHOOLS, DEC. NO. 20470-A (WERC, 7/97); NEW LONDON SCHOOL DISTRICT, DEC. NO. 27396-B (WERC, 11/93); MUKWONAGO SCHOOLS, DEC. NO. 24600 (WERC, 6/87); DUNN COUNTY, DEC. NO. 17861 (WERC, 6/80).

Although recognizing that this policy is susceptible to manipulation and may have other flaws, the Commission has explained that such drawbacks are outweighed by the policies favoring bargaining unit stability and predictability of Commission processes. PORTAGE SCHOOLS, SUPRA.

Based on this precedent, we grant AFSCME's motion to dismiss.

Although we are dismissing the Village's petition, the Village's claim that certain regular part-time employees should have been eligible to vote in the election which created this bargaining unit presents certain practical concerns that we believe require fashioning an equitable modification of our usual election rules.

When processing petitions for election, the Commission generally allows the parties to reach agreements as to (1) how to describe the bargaining unit, and (2) which employees are eligible to vote and therefore be included in the unit if the union wins the election. Such agreements generally will be honored by the Commission subject, of course, to the Commission's statutory duty to ensure that elections take place in "appropriate" bargaining units. Section 111.70(4)(d)2.a., Stats. MANITOWOC SCHOOLS, SUPRA.

The Commission's overriding unit responsibility is underscored by the principle that, should the union win the election, neither party has a duty to bargain with the other over modifications to the unit descriptions or over the specific inclusion or exclusion of specific employees or positions. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 20398-A (WERC, 12/83).

Here, the parties agreed to describe the bargaining unit as:

All regular full-time and regular part-time employees of the Village of Reedsville excluding supervisors, confidential, managerial and executive employees. . . .

and agreed that four employees were eligible to vote in the election. AFSCME won the election 4-0 and became the collective bargaining representative of these four employees.

As noted earlier, the Village asserts that the election which created this unit was flawed because there are regular part-time employees who should have been eligible to vote in the initial election. However, as also noted earlier, although the unit description includes regular part-time employees, the Village and AFSCME entered into a voter eligibility agreement that included only full time employees. It is possible that this occurred because both parties viewed the part-timers as not being “regular” and/or that the parties misunderstood communications with the Commission’s agents during the processing of the petition. Whatever the cause, it appears that there may be several employees who would meet the definition of “regular part-time” but who were not eligible to vote in the election and are not presently included in the bargaining unit.

Balancing the equities and the interests of the parties and the employees in these particular circumstances, we conclude that after the parties reach an agreement on an initial contract and if that contract does not resolve to the parties’ mutual satisfaction the need for further election proceedings, we will process a timely 1/ filed Village or AFSCME election petition and will, if warranted by the facts, conduct another election in which all “regular part-time employees” are eligible to vote.

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1/ *SEE MUKWONAGO SCHOOLS, SUPRA.*

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Dated at Madison, Wisconsin, this 9th day of July, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/  
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Judith Neumann, Chair

Paul Gordon /s/  
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Paul Gordon, Commissioner

Commissioner Susan J. M. Bauman did not participate.