

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**AMERICAN FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 48, AFL-CIO**

Involving Certain Employees of

VILLAGE OF HALES CORNERS (DEPARTMENT OF PUBLIC WORKS)

Case 44
No. 64017
ME-4001

Decision No. 31137

Appearances:

Patrick J. Coraggio, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, appearing on behalf of Labor Association of Wisconsin.

Mark Sweet, Law Offices of Mark A. Sweet, 705 East Silver Spring Drive, Milwaukee, Wisconsin 53217, appearing on behalf of American Federation of State, County and Municipal Employees, District Council 48, AFL-CIO.

Mary L. Hubacher, Davis & Kuelthau, S.C., Attorneys at Law, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the Village of Hales Corners.

ORDER DISMISSING PETITION FOR ELECTION

On September 21, 2004, AFSCME District Council 48 (AFSCME) filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain Department of Public Works (DPW) employees of the Village of Hales Corners (Village) who are currently represented by the Labor Association of Wisconsin (LAW) for the purposes of collective bargaining wish to be so represented by AFSCME.

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On September 27, 2004, LAW filed a motion to dismiss the petition as untimely because the petition was not filed during the 60 day window period prior to the September 1, 2004, reopening date established by Article 3.02 of the existing 2003-2004 contract between LAW and the Village. Article 3.02 was attached to the motion and by letter dated September 29, 2004, the Commission advised the parties that it proposed to take administrative notice of this contract provision. We hereby do so. In its motion, LAW further argued that the DPW employees in question are currently included in a larger unit and that a separate DPW unit would therefore be inappropriate.

On October 8, 2004, AFSCME filed a statement in opposition to the motion arguing that the petition is timely because it was filed before LAW and the Village actually commenced bargaining over a successor agreement.

On October 12 and 19, 2004, the Village filed statements in support of the LAW motion to dismiss.

On October 21, 2004, LAW filed a response to AFSCME's position statement.

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

ORDER

The petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of November, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION FOR ELECTION

Sections 111.70(2), (4)(d) and (6), Stats., give employees the right to decide whether they wish to bargain collectively through representatives of their own choosing. This statutory right includes the opportunity for employees to decide whether a previously selected representative should continue to so serve or whether the employees wish to select a different representative or return to unrepresented status.

Sections 111.70(4)(d) and (6), Stats., also reflect a statutory interest in the stability of existing collective relationships.

Where, as here, the election petition filed seeks to determine whether an existing representative should be replaced, the Commission balances the interest in stability of collective bargaining relationships and the statutory right to petition for an election by limiting the time frames within which an election petition can be timely filed. When striking that balance, the Commission has traditionally held that where the collective bargaining agreement specifies a deadline by which a party to an existing collective bargaining relationship must notify the other that it wishes to bargain a successor agreement, an election petition must be filed during the 60 day period prior to that contractually established deadline. WAUWATOSA BOARD OF EDUCATION, DEC. NO. 8300-A (WERC, 2/68); MUKWONAGO SCHOOLS, DEC. NO. 24600 (WERC, 6/87); WAUKESHA COUNTY, DEC. NO. 31115 (WERC, 10/04). This timeliness rule has been applied where, as here, the petition seeks an election in only a portion of the existing unit. WAUKESHA COUNTY, SUPRA.

The Commission has also noted the value in having predictable Commission precedent as to when an election petition can timely be filed. VILLAGE OF REEDSVILLE, DEC. NO. 30313-B (WERC, 7/03); PORTAGE SCHOOLS, DEC. NO. 20470-A (WERC, 7/97). Here, as argued by LAW and the Village, application of that predictable precedent would find this petition untimely because the contractually established reopening date is September 1, 2004, and the petition was not filed until September 21, 2004. However, AFSCME responds by arguing that the petition should nonetheless be found timely because bargaining had not in fact commenced when the petition was filed. AFSCME asserts that the policy behind the 60 day rule is to avoid interruption of the bargaining process and that said policy is not violated by finding the instant petition timely.

The Commission could have structured the 60 day rule by reference to the actual commencement of bargaining but did not do so. Had the Commission done so, it would have sacrificed the predictability of the existing 60 day rule (i.e., the parameters of the 60 day period are known in advance) and would also have created scenarios in which the parties would have expended considerable time and resources preparing for their initial bargaining

session only to have the process interrupted by an election petition. Given these considerations, we conclude that AFSCME has not presented a persuasive basis for establishing a new timeliness rule and we remain satisfied that the existing 60 day rule well serves the statutory policies in question. It is also apparent that creation of a new timeliness rule would not serve the interests of predictable application of Commission precedent. Therefore, we have applied existing Commission precedent and dismissed the petition.

Dated at Madison, Wisconsin, this 8th day of November, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner