

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
CONNIE MITCHELL
Involving Certain Employees of
KAUKAUNA AREA SCHOOL DISTRICT

Case 27
No. 64152
ME-4012

Decision No. 31208

Appearances:

Gregory B. Gill, Sr., Gill & Gill, S.C., Attorneys at Law, 128 North Durkee Street, Appleton, Wisconsin 54911, appearing on behalf of Kaukauna Area School District.

Connie Mitchell, W1787 Lau Road, Kaukauna, Wisconsin 54130, appearing on her own behalf.

Michael D. Phillips, Attorney, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of Kaukauna Area School District Secretarial-Clerical Association, Wisconsin Education Association Council.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On November 9, 2004, Connie Mitchell, an Accounting Assistant employed by the Kaukauna Area School District, filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether the Kaukauna Area School District Secretarial-Clerical Association, Wisconsin Education Association Council should continue to represent Mitchell and other employees of the District for the purposes of collective bargaining.

By letter dated November 16, 2004, the Commission advised the parties that the petition was accompanied by the requisite 30% showing of interest and asked the parties if they could stipulate to an election.

On December 15, 2004, the Association filed a motion to dismiss the petition as untimely.

The parties thereafter stipulated to the relevant facts and filed written argument -- the last of which was received January 6, 2005.

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

FINDINGS OF FACT

1. Connie Mitchell, herein Mitchell, is an employee of the Kaukauna Area School District who is currently included in a bargaining unit of District employees represented for the purposes of collective bargaining by the Kaukauna Area School District Secretarial-Clerical Association, Wisconsin Education Association Council.

2. The Kaukauna Area School District, herein the District, is a municipal employer.

3. The Kaukauna Area School District Secretarial-Clerical Association, Wisconsin Education Association Council, herein the Association, is a labor organization.

4. On November 9, 2004, the date Mitchell filed the petition for election, the District and the Association had reached a tentative agreement on a successor to an expired July 1, 2002-June 30, 2004 contract and the Association had ratified the tentative agreement.

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

CONCLUSIONS OF LAW

1. Because no contract was in effect when the petition for election was filed, the petition is timely.

2. A question concerning representation exists within the meaning of Sec. 111.70(4)(d)3, Stats., as to whether certain employees of the Kaukauna Area School District wish to continue to be represented by the Kaukauna Area School District Secretarial-Clerical Association, Wisconsin Education Association Council.

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

ORDER

1. The motion to dismiss the petition for election is denied.
2. 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 of this Order in the collective bargaining unit consisting of all regular full-time and regular part-time secretarial, clerical and bookkeeping employees of the Kaukauna Area School District, excluding professional, confidential, supervisory and managerial employees who were employed on January 11, 2005, for the purpose of determining whether such employees desire to be represented by the Kaukauna Area School District Secretarial-Clerical Association, Wisconsin Education Association Council for the purposes of collective bargaining with the Kaukauna Area School District or not to be so represented.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of January, 2005.

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

Kaukauna Area School District

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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 statutory 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. **During the term of an existing contract**, we have held that the interest in stability of collective bargaining relationships warrants restricting the time frame when election petitions can be timely filed to the 60 day period prior to the date specified in an existing contract when a party can ask that negotiations for a successor agreement begin. 1/ Election petitions filed before or after this 60 day period are untimely. However, we have also held that the interest in stability does not insulate the incumbent union from replacement or ouster once negotiations for a successor agreement extend beyond the expiration date of the existing contract. Thus, we have held that **once a contract expires**, the right of employees to change or eliminate an existing representative predominates over the statutory interest in stability and therefore that an election petition is timely. 2/

As reflected in the Findings of Fact, when Mitchell filed her petition, no contract was in effect but one party had ratified a tentative agreement on a new contract. In these circumstances, Mitchell argues her petition is timely while the Association contends it is not. We conclude Mitchell has the better of the argument.

The Association would have us make an exception to our existing “contract bar” precedent where a tentative agreement has been reached and ratified by one side -- in effect creating an “almost a contract bar.” We do not find this argument persuasive. We are satisfied that existing precedent provides the appropriate balance between the competing interests and has the additional benefit of creating known and predictable time frames for the filing of election petitions that minimize the need for litigation over such issues. Thus, although the Association correctly notes that finding this petition timely will disrupt the collective bargaining process at an important point, we continue to believe that such disruption after the contract has expired 3/ is not sufficient to deprive employees of the opportunity to

determine whether they wish to continue be represented by the incumbent union. 4/ Thus, we have denied the motion to dismiss and directed an election. 5/

1/ Thus, in the context of the 2002-2004 contract between the Association and the District, Mitchell could have timely filed an election petition during the 60 day period prior to the March 1, 2004, reopening date contained therein.

2/ BRISTOL SCHOOL DISTRICT, DEC. NO. 27427 (WERC, 10/92) and the cases cited therein. Though not applicable here, there is an interest arbitration exception to this general rule. MUKWONAGO SCHOOL DISTRICT, DEC. NO. 24600 (WERC, 6/81).

3/ The Association cites CITY OF APPLETON, DEC. NO. 9511 (WERC, 2/70), where the Commission concluded that an election petition was untimely when filed during the term of a contract that had no reopener date and after a tentative agreement had been reached and adopted by both the union and employer and the only remaining step was adoption of the municipal budget. Because this dispute asks us to determine the timeliness of a petition filed after the contract has expired and where only one side has ratified the tentative agreement, APPLETON is not on all fours with the instant case. CITY OF GREEN BAY, DEC. NO. 6558 (WERC, 11/63) and MILWAUKEE COUNTY, DEC. NO. 8855, WERC, 1/65) also involved disputes over the timeliness of petitions for election filed during the term of a contract and thus are also distinguishable.

To the extent the Association's position also relies on a portion of the WERC Hearing Examiner Manual, both the text of the Manual itself and Commission precedent make clear that the Manual is not binding on the Commission as to any procedural or substantive issue. STATE OF WISCONSIN, DEC. NO. 31195 (WERC, 12/04).

4/ There may be circumstances -- such as intentional employer delay in the scheduling of a ratification vote so as to allow for the filing of an election petition -- that would warrant creating an exception to this bright-line rule as to timeliness. No such circumstances are present in the record before us here.

5/ Our result is consistent with that reached by the National Labor Relations Board when interpreting comparable provisions of the National Labor Relations Act. APPALACIAN SHALE PRODUCTS, 121 NLRB 1160, 42 LRRM 1506 (1958).

Dated at Madison, Wisconsin, this 11th day of January, 2005.

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

rb
31208