

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
BRADLEY J. SUBERA and CASEY KAKUSKE
Involving Certain Employees of the
MIDDLETON FIRE PROTECTION DISTRICT

Case 4
No. 66876
ME-4125

Decision No. 31247-C

Appearances:

Bradley J. Subera, 7240 North Avenue, Middleton, Wisconsin 53562, appearing on his own behalf and Casey Kakuske.

Peter L. Albrecht, Albrecht Labor and Employment Law, S.C., 131 West Wilson Street, Suite 1202, Madison, Wisconsin 53703, appearing on behalf of the Middleton Fire Protection District.

Bruce F. Ehlke, Hawks, Quindel, Ehlke & Perry, S.C., 222 West Washington Avenue, Suite 705, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of Local 311, International Association of Firefighters, AFL-CIO.

ORDER

On April 2, 2007, Brad Subera and Casey Kakuske filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether Local 311, International Association of Firefighters, AFL-CIO, should continue to represent certain employees of the Middleton Fire Protection District for the purposes of collective bargaining.

By letter dated April 10, 2007, the Commission advised Subera, Local 311 and the District that the petition was accompanied by a sufficient showing of interest to be processed further.

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By letter dated April 30, 2007, Local 311 stated its belief that two pending prohibited complaints (Cases 2 and 3) allege illegal conduct by the District which would affect the ability of employees to cast their ballots free of coercion in the election sought by Subera and Kakuske and further that it did not waive the effect of the alleged conduct on any election results. Therefore, Local 311 asked that the election petition be dismissed or held in abeyance pending the disposition of the two complaints

By letters dated May 17 and 21, 2007, the District opposed the Local 311 request arguing that the record in the two complaint proceedings makes clear that Subera and Kakuske have not been improperly influenced by any District conduct and thus that the election should proceed.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The election petition will be held in abeyance pending final disposition of the two prohibited practice complaints (Cases 2 and 3) and sufficient compliance with any resultant remedial orders to restore the conditions necessary for employees to exercise their free choice as to whether to be represented for the purposes of collective bargaining by Local 311.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of June, 2007.

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

Middleton Fire Protection District

MEMORANDUM ACCOMPANYING ORDER

Section 111.70(2) of the Municipal Employment Relations Act gives municipal employees the right to bargain collectively through representatives of their own choosing and to “refrain” from such activity. When municipal employees exercise this right to select or end union representation through a Commission election conducted pursuant to Sec. 111.70(4)(d), Stats., they are entitled to cast their ballots in an election climate free of conduct that might improperly influence the ballot choice they make. *WERC v. CITY OF EVANSVILLE*, 69 Wis.2d 140 (1975). Thus, where conduct is alleged to have occurred which, if proven, could improperly influence how employees cast their ballots, the Commission will not process the election petition until the existence and impact of said conduct has been resolved. *SCHOOL DISTRICT OF PLATTEVILLE*, DEC. NO. 21645-A (WERC, 6/84); *MARINETTE COUNTY*, DEC. NO. 22102 (WERC, 11/84).¹

Here, Local 311 asserts that the two complaints pending before Commission examiners allege District misconduct that would improperly affect employee choice in the election sought by Subera and Kakuske.

Case 2, filed on August 12, 2005 by Local 311, alleges that the District committed prohibited practices within the meaning of Secs. 111.70(3)(a) 1 and 3, Stats., by suspending and terminating an employee (Brandl) because he supported Local 311 and by encouraging employees (Subera and Kakuske) not to vote for Local 311 in the election by which Local 311 became the collective bargaining representative of certain District employees.

Case 3, filed on May 19, 2006 by Local 311, alleges that the District committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 3, Stats., by taking or threatening to take action against employees who support Local 311.

It is apparent that if the District engaged in the conduct alleged in the Case 2 and/or 3 complaints, such conduct would have the potential to improperly influence the ballot choice employees might make in an election. Indeed, as to the allegations as to Brandl, the complaint outcome has the potential to affect the identity of the eligible voters if Brandl is reinstated as an employee as part of a remedial order.

¹ A limited exception to this general rule exists if the complaining party in the complaint proceeding is willing to waive the right to object to the election results based on the alleged illegal conduct. In such circumstances, the Commission will proceed to conduct the election. *PLATTEVILLE*, SUPRA, *MARINETTE COUNTY*, SUPRA. Here, Local 311 has not waived the right to object and thus this exception is not applicable.

The District argues not that the alleged illegal conduct lacks coercive potential but rather that the evidence in the complaint hearing establishes that the alleged illegal conduct vis-à-vis Subera and Kakuske did not occur. Thus, the District asserts we should proceed to conduct the election because they have not been coerced by any illegal District conduct. We do not find the District's position persuasive for several reasons.

First, even if the District did not engage in illegal conduct as to Subera and Kakuske, there are other allegations in the complaints (for instance the Brandl discharge) which, if found illegal, could be coercive as to Subera and Kakuske and/or to the other eligible voter(s).

Second, the Brandl discharge (and potential reinstatement) could add an additional voter in the election which, in the context of a 3 or 4 person bargaining unit, has a significant potential to affect the election outcome.

Third, a definitive determination as to the merits of the allegations that directly relate to Subera and Kakuske requires consideration of all of the evidence presented during the complaint hearings. That consideration is best done by the examiners who heard all of the testimony and who are currently writing their decisions in Cases 2 and 3.

Given all of the foregoing, we have granted the Local 311 request that the election petition be held in abeyance pending final disposition of the two prohibited practice complaints (Cases 2 and 3) and sufficient compliance with any resultant remedial orders to restore the conditions necessary for employees to exercise their free choice as to whether to be represented for the purposes of collective bargaining by Local 311.

Dated at Madison, Wisconsin, this 26th day of June, 2007.

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

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