

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TOWN OF WATERFORD SANITARY DISTRICT NO. 1
Involving Certain Employees of
TOWN OF WATERFORD SANITARY DISTRICT NO. 1

Case 5
No. 64415
ME-4019

Decision No. 31293

Appearances:

Wesley Gable, Business Representative, Teamsters Union Local 43, 1624 Yout Street, Racine, Wisconsin 53404, appearing on behalf of Teamsters, Chauffeurs and Helpers Union, Local 43.

Robert K. Weber, Weber & Cafferty, S.C., Attorneys at Law, 704 Park Avenue, Racine, Wisconsin 53403, appearing on behalf of Town of Waterford Sanitary District No. 1.

ORDER

On January 24, 2005, the Waterford Sanitary District No. 1 filed a petition for election seeking to determine whether the one employee it employs wished to continue to be represented by Teamsters, Chauffeurs and Helpers Union, Local 43 for the purposes of collective bargaining. The petition was accompanied by a document entitled PETITION REQUEST FOR ELECTION dated January 13, 2005, and signed by Norman J. Nelson which stated:

I have been advised that the only way I can be excluded from the Teamsters, Chauffeurs and Helpers Union, Local 43, is through an election Conducted by the Wisconsin Employment Relations Commission.

I do not wish to belong to a union and am currently only a fair share member.

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Local 43 subsequently asserted that Nelson is on probation and questioned whether a communication from a probationary employee can be relied upon to establish a good faith doubt as to Local 43's continuing majority status.

The parties were given the opportunity to file written argument on the issue and the District did so on March 7, 2005 asserting that such reliance is appropriate.

Section 111.70(4)(d),5, Stats., provides as follows:

5. Questions as to representation may be raised by petition of the municipal employer or any municipal employee or any representative thereof. Where it appears by the petition that a situation exists requiring prompt action so as to prevent or terminate an emergency, the commission shall act upon the petition forthwith. The fact that an election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the commission that sufficient reason for another election exists.

Thus, Sec. 111.70(4)(d)5, Stats., expressly provides a municipal employer with the right to raise a question of representation by filing a petition for election. However, where, as here, there is an incumbent union representing the employees, the Commission will not entertain a petition for another election unless, as set forth in Sec. 111.70(4)(d)5, Stats., "it appears to the Commission that sufficient reason for another election exist."

To establish that there is "sufficient reason for another election," a petitioning municipal employer must comply with the following requirement, first enunciated in WAUWATOSA BOARD OF EDUCATION, DEC. NO. 8300-A (WERC, 2/68):

An employer petitioning for an election in an existing unit must demonstrate to this agency at the hearing, by objective considerations, that it has reasonable cause to believe that the incumbent organization has lost its majority status since its certification or the date of voluntary recognition. This objective evidence must not have been obtained by the employer through prohibited means.

The question before us now is whether the objective considerations can be established by communication from a probationary employee. We conclude that they can.

Citing its experience under the Wisconsin Employment Peace Act in ST. FRANCIS HOSPITAL, DEC. NO. 4340 (WERC, 8/56); BADGER DIE CASTING CORP., DEC. NO.

(WERC, 11/63), the Commission has consistently allowed probationary employees to vote in Municipal Employment Relations Act elections to determine whether employees wish to be represented by a union. TAYLOR COUNTY, DEC. NO. 8178 (WERC, 9/67); CITY OF MONROE, DEC. NO. 11580, (WERC, 2/73). From this precedent, it logically follows that communications from probationary employees are proper to consider when determining whether an employer has reasonable cause to believe that the incumbent union has lost its majority status. Therefore, we will continue to process the instant petition.

Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of March, 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

