

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**THREE RIVERS UNITED EDUCATORS/  
WISCONSIN EDUCATION ASSOCIATION COUNCIL**  
Involving Certain Employees of  
**PORTAGE COMMUNITY SCHOOL DISTRICT**

Case 49  
No. 64632  
ME-4027

**Decision No. 31391**

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**Appearances:**

**Gene Gowey**, Business Representative, Teamsters Union Local No. 695, 1314 North Stoughton Road, Madison, Wisconsin 53714-1293, appearing on behalf of Teamsters Union Local No. 695.

**Nancy J. Kaczmarek**, Legal Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of Three Rivers United Educators/Wisconsin Education Association Council.

**Joanne Harmon Curry**, Lathrop & Clark, Attorneys at Law, 740 Regent Street, Suite 400, Madison, Wisconsin 53715, appearing on behalf of Portage Community School District.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On March 21, 2005, Three Rivers United Educators/Wisconsin Education Association Council (WEAC) filed a petition and supporting showing of interest with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Portage Community School District (District) wish to be represented by WEAC for the purposes of collective bargaining or wish to continue to be so represented by Teamsters Union Local No. 695 (Teamsters).

On April 15, 2005, the Commission advised the parties that the petition was supported by at least the requisite minimum 30% showing of interest and asked whether there were issues that needed to be resolved before an election was conducted.

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On April 21, 2005, Teamsters filed a motion to dismiss the petition as being untimely and unsupported by a sufficient showing of interest.

WEAC and Teamsters thereafter filed written argument and the District filed a position statement remaining neutral in the matter.

On June 1, 2005, WEAC requested a hearing. That request was denied by the Commission on June 13, 2005.

The record was closed on June 21, 2005, with receipt of additional written argument from WEAC.

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

#### **FINDINGS OF FACT**

1. The Portage Community School District, herein the District, is a municipal employer.
2. Teamsters Union Local No. 695, herein Teamsters, is a labor organization functioning as the collective bargaining representative of certain employees of the District.
3. Teamsters and the District are parties to a July 1, 2002-June 30, 2005, collective bargaining agreement that requires a party desiring to open negotiations for a successor agreement to give notice 180 days prior to June 30, 2005.
4. Pursuant to Sec. 120.08(1)(a), Stats., the District's annual meeting will be held September 19, 2005.

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

#### **CONCLUSIONS OF LAW**

1. Section 120.08(1)(a), Stats., provides that the District's annual meeting will be July 25, 2005 (the fourth Monday in July) unless the District establishes an alternative date.
2. The date of the District's annual meeting (actual or statutorily specified) is the District's "budgetary deadline date" as that term is used in ADAMS FRIENDSHIP SCHOOLS, DEC. NO. 14525 (WERC, 4/76).

3. The WEAC petition was not filed within the 60-day period prior to the six-month period that precedes the District's budgetary deadline date and thus is untimely.

Based on the above and foregoing Findings of Fact and Conclusions of Law, 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 8<sup>th</sup> day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**Portage Community School District**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

**Was the Petition Timely Filed?**

Teamsters argue that the March 21, 2005 WEAC election petition is untimely because it was not filed during the 60 days prior to the January 1, 2005 contractual reopening date. Teamsters contend in the alternative that if the so called “modified Wauwatosa policy” remains viable, the petition is still untimely because it was not filed within the 60-day period prior to the six months before the District’s “budgetary deadline date” which is either September 19, 2005 or July 25, 2005.

WEAC asserts that under the “modified Wauwatosa policy” the “budgetary deadline date” is November 1, 2005 and therefore that the March 21, 2005 petition is timely.

The District takes no position.

We conclude the petition is untimely under the “modified Wauwatosa policy” and therefore grant Teamsters’ motion to dismiss the petition. We further conclude that statutory changes have undermined the viability of the “modified Wauwatosa policy” to the extent that it should be abandoned.

In WAUWATOSA BOARD OF EDUCATION, DEC. NO. 8300-A (WERC, 2/68), the Commission held that petitions for election seeking to remove or replace an existing collective bargaining representative must be filed during the 60-day period prior to the contractually established reopening date. In CITY OF MILWAUKEE, DEC. NO. 8622 (WERC, 7/68), a Commission majority (Rice dissenting) held that the rule established in WAUWATOSA should be modified where the contractually established reopening date is more than six months prior to the “budgetary deadline date” for the municipal employer. In such circumstances, the Commission concluded that petitions for election seeking to remove or replace an existing representative should be filed during the 60-day period prior to the six-month period that precedes the “budgetary deadline date.” The Commission reasoned that without such a modification of the WAUWATOSA policy, there was a risk that undesirable instability in a collective bargaining relationship could occur because a new union selected by employees in the election would be administering the existing contract bargained by the ousted union for an extended period of time.

Although not often referenced in subsequent Commission decisions, the Commission had not abandoned the “modified Wauwatosa policy” prior to the filing of the instant petition and thus it remained in effect at that time. Thus, we reject Teamsters’ argument to the contrary and deny Teamsters’ request that the petition be dismissed as untimely under the general “Wauwatosa policy.”

Having concluded that the “modified Wauwatosa policy” was a viable precedent when the instant petition was filed, we note that there is no disagreement that the timeliness rule established therein is generally applicable here because the contractually established reopener date (January 1, 2005) is more than six months prior to any of the potentially applicable “budgetary deadline dates” identified by the parties. We turn to resolution of the parties’ disagreement as to the applicable “budgetary deadline date.”

In ADAMS FRIENDSHIP SCHOOLS, DEC. NO. 14525, (WERC, 4/76), the Commission identified the “budgetary deadline date” for that school district as being statutorily established as “July 26, 1976, Secs. 65.90(4), 120.08(1)(a) and 120.10, Wisconsin Statutes.” Review of

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<sup>1</sup> **65.90 Municipal budgets.**

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(4) Not less than 15 days after the publication of the proposed budget and the notice of hearing hereon a public hearing shall be held at the time and place stipulated at which time any resident or taxpayer of the governmental unit shall have an opportunity to be heard on the proposed budget. The budget hearing may be adjourned from time to time. In towns and school districts holding an annual meeting the time and place of the budget hearing shall be the time and place of the annual meeting thereof.

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**120.08 School district meetings.** Every elector of a common or union high school district is eligible to vote at an annual or special meeting of the school district.

(1) ANNUAL MEETING. (a) Common school districts shall hold an annual meeting on the 4<sup>th</sup> Monday in July at 8 p.m. and union high school districts shall hold an annual meeting on the 3<sup>rd</sup> Monday in July at 8 p.m. One annual meeting may fix a different hour for the next annual meeting. The first school district meeting in a reorganized school district shall be considered an annual meeting.

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**120.10 Powers of annual meeting.** The annual meeting of a common or union high school district may:

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(6) TAX FOR SITES, BUILDINGS AND MAINTENANCE. Vote a tax to purchase or lease suitable sites for school buildings, to build, rent, lease or purchase and furnish, equip and maintain schoolhouses, teacherages or outbuildings. Such tax may be spread over as many years as are required to pay any obligations approved or authorized at the annual meeting including rental payments due in future years under an authorized lease.

(7) TAX FOR TRANSPORTATION VEHICLES. Vote a tax to purchase, operate and maintain transportation vehicles and to purchase liability insurance for such vehicles, and to finance contracts for the use and services of such vehicles.

(8) TAX FOR OPERATION. Vote a tax for the operation of the schools of the school district.

(Footnote continued on next page)

(Footnote 1 continued)

(9) TAX FOR DEBTS. Vote a tax necessary to discharge any debts or liabilities of the school district.

(10) SCHOOL SINKING FUND. Vote a tax to create a sinking fund under s. 67.11 for the purpose of financing all current and future capital expenditures and for paying all current bonded indebtedness for capital expenditures. All money raised through taxation or otherwise collected pursuant to this subsection shall be deposited by the school district treasurer in a separate sinking fund. Such money shall not be used for any other purpose, except as provided by s. 67.11(1), or be transferred to any other fund except by authorization by a two-thirds majority vote of the total number of electors of the school district.

(11) TAX FOR RECREATION AUTHORITY. Vote a tax for the purposes specified in s. 66.527.

meeting was the “budgetary deadline date” as defined by the Commission; and (2) the date of a district’s annual meeting was specified in Sec. 120.08(1)(a), Stats., as either the third (for union high school districts) or fourth (for common school districts) Monday in July.

As the parties have noted, Sec. 120.08(1)(a), Stats., has since been amended<sup>2</sup> to add the option of a district establishing a date other than the specified Mondays in July as its annual meeting and creating an October 31 deadline for any such alternative meeting. The District exercised that option here and established the third Monday in September (September 19) as the date of its annual meeting. Absent the exercise of that option, the District’s annual meeting would have been the fourth Monday in July (July 25).

Teamsters assert that either the July 25 or September 19 dates are appropriate for use as the “budgetary deadline date” within the meaning of the “modified Wauwatosa policy.” WEAC counters by pointing to the October 31 statutory deadline for holding the alternative annual meeting and the November 1 tax levy date established by Sec. 120.12(3)(a), Stats., and argues that November 1 should be the operative date. WEAC’s view is not inconsistent with the “budgetary deadline date” phrase used by the Commission and would provide a consistent benchmark that could be relied on without regard to any individual district’s actual practice. However, since we are abandoning the “budgetary deadline” modification to the WAUWATOSA policy for future cases, this case has no prospective effect and we need not concern ourselves with refining the term “budgetary deadline date” so as to ensure predictability and consistency for the future. Rather, the appropriate focus is the most reasonable interpretation of the term “budgetary deadline date” as the Commission used it in ADAMS-FRIENDSHIP, as that presumably is what heretofore would have guided a person attempting to file a timely petition. It is clear that the Commission in ADAMS-FRIENDSHIP used

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<sup>2</sup> **120.08 School district meetings.** Every elector of a common or union high school district is eligible to vote at an annual or special meeting of the school district.

(1) ANNUAL MEETING. (a) Common school districts shall hold an annual meeting on the 4<sup>th</sup> Monday in July at 8 p.m. and union high school districts shall hold an annual meeting on the 3<sup>rd</sup> Monday in July at 8 p.m. unless the electors at one annual meeting determine to thereafter hold the annual meeting on a different date or hour, or authorize the school board to establish a different date or hour. No annual meeting may be held before May 15 or after October 31. The first school district meeting in a common or union high school district created under s. 117.08, 117.09, or 117.27 shall be considered an annual meeting.

the term “budgetary deadline date” to mean the actual date of the annual meeting itself. Accordingly, we are persuaded that it is the date of the annual meeting that should prevail as being the appropriate “budgetary deadline date” to be used when applying the “modified Wauwatosa policy” in this case.<sup>3</sup>

As Teamsters argue, the March 21, 2005 WEAC petition is untimely whether the statutory July 25 or actual September 19 annual meeting date is used. Six months<sup>4</sup> prior to July 25 is January 25 (petition would have been timely during 60 days prior to January 25) and six months prior to September 19 is March 19 (petition would be timely during the 60 days prior to March 19). Given this untimeliness reality and our renouncement of future use of the “modified Wauwatosa policy,”<sup>5</sup> we need not parse the matter further by determining whether July 25 or September 19 is the applicable date and we grant the Teamsters’ motion to dismiss.

Dated at Madison, Wisconsin, this 8<sup>th</sup> day of July, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>3</sup> As WEAC points out, use of November 1 would mean that all common or unified school district contract reopeners falling before May 1 would become subject to the “modified Wauwatosa policy” and election petitions for June 30 expiration contracts could be timely filed in March or April. In our experience, this would be an undesirable result in terms of disruption of the ongoing bargaining which would likely be well underway.

<sup>4</sup> The text of ADAMS-FRIENDSHIP makes clear that a “month” is a calendar month as opposed to a specified number of days. This meaning is consistent with the statutory definition of a month found in Sec. 990.01(21), Stats.

<sup>5</sup> Having two potential rules for the timeliness of election petitions (one of which this case demonstrates to be potentially complex due to changes in applicable statutory provisions) does not enhance the exercise of the statutory employee right to change or end union representation. Thus, we are persuaded that the “modified Wauwatosa policy” should be abandoned in favor of universal application of the “file during the 60 day period prior to the contractually established reopener date” policy originally created in the WAUWATOSA SCHOOLS.