

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/  
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

Involving Certain Employees of

**MENOMINEE COUNTY**

Case 64  
No. 64138  
ME-4010

**Decision No. 31421**

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**Appearances:**

**John Drana**, Attorney at Law, 789 North Water Street, Suite 480, Milwaukee, Wisconsin 53202, appearing on behalf of Menominee County.

**Sam Gieryn**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

**Gordon E. McQuillen**, Director of Legal Services, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 340 Coyier Lane, Madison, Wisconsin 53713, appearing on behalf of Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION**

On November 2, 2004, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Menominee County Sheriff's Department wished to be represented for the purposes of collective bargaining by the Association or to continue to be so represented by Wisconsin Council 40, AFSCME, AFL-CIO.

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On November 17, 2004, AFSCME filed a motion to dismiss the petition as untimely filed.

The County took no position on the motion.

Hearing was held in Keshena, Wisconsin on February 18, 2005 by Commission examiner Peter G. Davis. The parties filed post-hearing briefs and the record was closed July 21, 2005.

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

### **FINDINGS OF FACT**

1. Menominee County, herein the County, is a municipal employer that provides law enforcement services to its citizens through a sheriff's department.

2. Wisconsin Council 40, AFSCME, AFL-CIO, herein AFSCME, is a labor organization that serves as the collective bargaining representative of certain law enforcement employees of the County.

3. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, herein WPPA, is a labor organization.

4. On November 2, 2004, the 2002-2003 bargaining agreement between the County and AFSCME had expired and a successor agreement had not been ratified by both the County and AFSCME.

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

### **CONCLUSIONS OF LAW**

1. The petition for election is timely and the motion to dismiss is denied.

2. A question concerning representation exists within the meaning of Secc. 111.70(4)(d) 2.a., Stats. in the following appropriate bargaining unit:

All regular full-time and regular part-time employees of the Menominee County Sheriff's Department who have the power of arrest, including all deputies and sergeants, and excluding the Sheriff, Chief Deputy, Administrative Assistant and all supervisory, managerial, confidential and executive employees.

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

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Direction among all regular full-time and regular part-time employees of the Menominee County Sheriff's Department who have the power of arrest, including all deputies and sergeants, and excluding the Sheriff, Chief Deputy, Administrative Assistant and all supervisory, managerial, confidential and executive employees who were employed on August 9, 2005 except such employees who quit their employment or are discharged for cause prior to the election, for the purpose of determining whether a majority of the voting employees wish to be represented for the purposes of collective bargaining by Wisconsin Professional Police Association/Law Enforcement Employee Relations Division or by Wisconsin Council 40, AFSCME, AFL-CIO or wish not to be so represented.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of August, 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

**MENOMINEE COUNTY (SHERIFF'S DEPARTMENT)**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION**

In KAUKAUNA AREA SCHOOL DISTRICT, DEC. NO. 31208 (WERC, 1/05) we recently concluded that when an election petition was filed after the most recent contract between the incumbent union and the employer had expired by its terms and at a time when only one party had ratified a successor agreement, a contract bar does not exist and the election petition was timely. Our result in KAUKAUNA reflected our view that when balancing the statutory right of employees to determine whether and by whom they wish to be represented for the purposes of collective bargaining against the instability and disruption caused by a potential change in the identity of the bargaining representative, the statutory right prevails unless a contract exists through ratification of a tentative agreement by both parties. We also noted in KAUKAUNA that a bright-line ratification requirement has the additional benefit of limiting litigation over timeliness issues. AFSCME has not presented us with a persuasive basis for reaching a different result here.

It is undisputed that the tentative agreement reached by AFSCME and the County had not been ratified by the County <sup>1</sup> at the time the WPPA petition was filed and that contract ratification by the County was needed before a contract would exist. AFSCME urges us to discount this undisputed reality because: (1) the County Board had always ratified tentative agreements in the past; (2) the County had already implemented the tentative agreement when calculating the back pay owed to a departing employee; and (3) adoption of private sector precedent under the National Labor Relations Act should persuade us to reach a different result. None of these arguments is persuasive.

As to the "they've always ratified" argument, it is generally the case in all collective bargaining relationships that tentative agreements are ratified. Nonetheless, there is no binding contract until ratification occurs and we have concluded in such circumstances that the employees' statutory right to determine the identity, if any, of their bargaining representative triumphs over the admitted instability and disruption at least temporarily caused by the conduct of an election.

As to the partial implementation argument, the record establishes that implementation was limited to the County unilaterally determining that the back pay received by a departing employee should reflect the tentatively agreed upon wage increase. The wage increases for current bargaining unit employees were not implemented. Thus, assuming for the sake of argument that there might be some level of implementation that is sufficient to tip the balance of interests away from the right to an election, the limited implementation present here falls far

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<sup>1</sup> There is some dispute as to whether AFSCME had properly ratified the tentative agreement. In light of our holding, we need not and do not resolve this dispute.

short.

Lastly, we note that the private sector precedent cited by AFSCME affirms the need for certainty as to both side's acceptance of the terms of the new contract. Given the need for ratification by the County, that certainty was not present at the time WPPA filed its petition.

Given all of the foregoing, we find the WPPA election petition to be timely and therefore have denied the AFSCME motion to dismiss and directed an election.<sup>2</sup>

Dated at Madison, Wisconsin, this 9th day of August, 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>2</sup> As we noted in KAUKAUNA, 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.

