

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**EDWARD M. CURRAN II**

Involving Certain Employees of

**ELMBROOK SCHOOL DISTRICT**

Case 45  
No. 67208  
ME-4137

**Decision No. 32230-A**

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**Appearances:**

**Edward M. Curran II**, 407 Downing Drive, Waukesha, Wisconsin 53186, appearing on his own behalf.

**John Maglio**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of AFSCME Local Union 1163U.

**Mark S. Kapocius**, Human Resources Manager, P.O. Box 1830, Brookfield, Wisconsin 53008-1830, appearing on behalf of the Elmbrook School District.

**ORDER SETTING ASIDE DIRECTION OF ELECTION  
AND DISMISSING PETITION FOR ELECTION**

On August 7, 2007, Edward M. Curran II filed a petition for election with the Wisconsin Employment Relations Commission seeking an election among certain craft employees of the Elmbrook School District to determine whether said employees wish to continue to be represented by AFSCME Local Union 1163U for the purposes of collective bargaining.

On October 1, 2007, the Commission received a Stipulation for Election signed by Curran, the District and AFSCME. Pursuant to that Stipulation, on October 2, 2007, the Commission issued a Direction of Election stating that an election would be held within 45 days to determine where the craft employees in question wished to continue to be represented

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by AFSCME for the purposes of collective bargaining. By letter dated October 2, 2007, the Commission advised the parties that the election would be conducted by mail ballot and that ballots would be placed in the mail October 11, 2007 and counted October 31, 2007.

On October 8, 2007, AFSCME advised the Commission and the other parties that it no longer wished to represent the craft employees in question and that it would cease to represent said employees for all purposes effective October 31, 2007. AFSCME further stated its position that in light of its action, no election need be conducted.

On October 9, 2007, Curran asked that the election proceed.

AFSCME and Curran thereafter filed argument in support of their positions.

On October 31, 2007, the District advised the Commission that it takes no position on the dispute.

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

**ORDER**

The Direction of Election is set aside and the petition for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of November, 2007.

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

**ELMBROOK SCHOOL DISTRICT**

**MEMORANDUM ACCOMPANYING ORDER SETTING ASIDE  
DIRECTION OF ELECTION AND DISMISSING PETITION FOR ELECTION**

Curran contends that the election should proceed “so the results will be recorded that we left the union, not that we were asked to leave.” Curran argues that this distinction is important as to how a trade union may view the matter if the craft employees seek such union representation in the future. AFSCME responds by asserting that it has no intent to advise other unions that the craft employees were “kicked out” and does not understand why decertifying AFSCME through an election places the employees in a better future position that does AFSCME’s release of said employees.

Whatever the merits of the arguments summarize above, our authority to conduct an election is based on the existence of a “question . . . concerning representation” within the meaning of Sec. 111.70 (4)(d) 3, Stats.<sup>1</sup> Where, as here, the incumbent union advises the Commission prior to the commencement of balloting that it does not wish to continue to represent the employees effective on a date prior to the earliest date on which the Commission could certify the election results<sup>2</sup>, the “question . . . concerning representation” has been eliminated. The “question” of whether the employees should continue to be “represented” by

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<sup>1</sup> Section 111.70 (4) (d) 3. provides in pertinent part:

3. Whenever, in a particular case, a question arises concerning representation or appropriate unit, calling for a vote, the commission shall certify the results in writing to the municipal employer and the labor organization involved and to any other interested parties.

<sup>2</sup> If we had mailed the ballots on October 11 and counted them on October 31, 2007, the election results could not have been certified (and thus become legally effective) no earlier than November 9, 2007. SEE ERC 11.11. AFSCME ended its representation of the employees on October 31, 2007.

the incumbent union has been answered. <sup>3</sup> Given the absence of a current “question . . . concerning representation”, we have set aside our prior Direction of Election and dismissed the petition for election filed by Curran.

Dated at Madison, Wisconsin, this 6th day of November, 2007.

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> If the election petition sought to change the identity of the collective bargaining representative from AFSCME to another labor organization, a question concerning representation would have continued despite AFSCME’s disclaimer because the employees would still have to vote on whether they wished to be represented by the new union.