

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
DEBORAH GALLAGHER
Involving Certain Employees of
VILLAGE OF MOUNT PLEASANT

Case 4
No. 68183
ME-4180

Decision No. 32562

Appearances:

Deborah Gallagher, 1329 Russet, Racine, Wisconsin 53405, appearing on her own behalf.

Michael H. Andreasen, Village Administrator, 6126 Durand Avenue, Racine, Wisconsin 53406, appearing on behalf of the Village of Mount Pleasant.

Nick Kasmer, Staff Representative, AFSCME Council 40, 8450 82nd Street, #308, Pleasant Prairie, Wisconsin, 53158, appearing on behalf of Mount Pleasant Village Hall Employees, Local 864, AFSCME, AFL-CIO.

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

On July 28, 2008, Deborah Gallagher filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Village of Mount Pleasant wish to continue to be represented by Mount Pleasant Village Hall Employees, Local 864, AFSCME, AFL-CIO.

On August 21, 2008, AFSCME filed a motion to dismiss the petition as untimely filed. For the purposes of ruling on the motion, the parties waived hearing but agreed to the facts set forth below.

The Village takes no position on the motion. AFSCME filed written argument in support of the motion on September 5, 2008.

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

FINDINGS OF FACT

1. The Village of Mount Pleasant, herein the Village, is a municipal employer.
2. Mount Pleasant Village Hall Employees, Local 864, AFSCME, AFL-CIO, herein the Union, is a labor organization that serves as the exclusive collective bargaining representative for certain Village employees described in the January 1, 2007-December 31, 2008 contract between the Village and the Union as:

 . . the Village Hall employees, such employees being regular full time or regular part time employees, and excluding any Village Hall employee in a supervisory, managerial, confidential, temporary or seasonal position.
3. Deborah Gallagher, herein Gallagher, is a Village employee in the collective bargaining unit described in Finding of Fact 2.
4. The January 1, 2007-December 31, 2008 contract between the Village and the Union does not include any schedule for giving notice that a party to said contract wishes to bargain a successor collective bargaining agreement.

5. By letter dated May 23, 2008, the Union advised the Village as follows:

Be advised the local union identified above has a collective bargaining agreement which expires December 31, 2008. Be further advised of the union's intent to negotiate changes in the agreement – such to become effective January 1, 2009.

Because of internal restructuring, I will no longer be assigned as the Staff Representative for the Village of Mt. Pleasant. Nick Kasmer will assume the role. His contact info follows:

**Nick Kasmer
8450 82nd Street - #308
Pleasant Prairie 53158
262.764.5775
nkasmer40@yahoo.com**

Please contact Mr. Kasmer when the Village is prepared to exchange proposals. It has been a pleasure working with you and I'm certain you and Mr. Kasmer will enjoy the same professional relationship.

6. The Village and the Union have not met nor exchanged proposals for the purpose of bargaining a successor to the 2007-2008 bargaining agreement.

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

CONCLUSIONS OF LAW

1. The election petition is timely filed.

2. A question concerned representation exists within the meaning of Sec. 111.70(4)(d) 2. a. Stats. as to whether employees in the bargaining unit described in Finding of Fact 2 wish to continue to be represented by Mount Pleasant Village Hall Employees, Local 864, AFSCME, AFL-CIO.

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

ORDER

1. The motion to dismiss is denied.

2. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Order in the collective bargaining unit consisting of the Village Hall employees, such employees being regular full time or regular part time employees, and excluding any Village Hall employee in a supervisory, managerial, confidential, temporary or seasonal position who were employed on September 16, 2008, except such employees as may prior to the election quit their employment

or be discharged for cause, for the purpose of determining whether such employees desire to be represented by Mount Pleasant Village Hall Employees, Local 864, AFSCME, AFL-CIO for the purpose of collective bargaining with the Village of Mount Pleasant.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of September, 2008.

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

VILLAGE OF MOUNT PLEASANT

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

As reflected in the Findings of Fact, the current January 1, 2007-December 31, 2008 contract does not contain a date by which notice of intent to reopen bargaining for a successor agreement must be provided. In such circumstances, the Union argues that a timely election petition must be filed during the 60 day period prior to the stated December 31, 2008 expiration date of the contract. Thus, the Union contends that the petition filed by Gallagher is premature and untimely.

Contrary to the Union's arguments, the Commission does not have policy of requiring that election petitions be filed during the 60 day period prior to contract expiration where, as here, there is no reopener date in the contract.¹ Rather, when determining whether the petition is timely filed, the Commission balances the statutory interest in stability in collective bargaining relationships against the statutory right of employees to decide whether they wish to be represented for the purposes of collective bargaining. WILMOT GRADE SCHOOL DISTRICT, DEC. NO. 27433 (WERC, 10/92); VILLAGE OF SHOREWOOD, DEC. NO. 14262 (WERC, 1/76); VILLAGE OF GRAFTON, DEC. NO. 12718 (WERC, 5/74); CITY OF GREEN BAY, DEC. NO. 6558 (WERC, 11/63). Where, as here, at the time the election petition was filed, a reopening notice has been sent but no bargaining has occurred, the Commission has concluded that the employees' statutory right to determine whether they wish to be represented for the purposes of collective bargaining predominates over the interest in stability and thus found the election petition to be timely. VILLAGE OF SHOREWOOD, *supra*. We continue to find this to be the correct balance of interests and rights and thus find the Gallagher petition to be timely filed. Therefore, we have denied the Union motion to dismiss and directed the election Gallagher seeks.

Dated at Madison, Wisconsin, this 16th day of September, 2008.

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

¹ Where there is a reopener date in the contract, timely election petitions must be filed during the 60 day period prior to the reopening date.

