

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

TOWN OF SHEBOYGAN

Involving Certain Employees of the

TOWN OF SHEBOYGAN

Case 4
No. 68274
ME-4188

Decision No. 32616

Appearances:

Mary Lynne Donohue, Hopp Neumann Humke LLP, 607 North Eighth Street, Suite 400, Sheboygan, Wisconsin 53081, appearing on behalf of the Town of Sheboygan.

Samuel Gieryn, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 187 Maple Drive, Plymouth, Wisconsin 53073, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER GRANTING MOTION TO DISMISS PETITION FOR ELECTION

On September 8, 2008, the Wisconsin Employment Relations Commission received a letter from the Town of Sheboygan and Town of Sheboygan Sanitary Districts No. 2 and No. 3 (herein the Town) requesting that an election be conducted by the Commission to determine whether certain employees of the Town wish to continue to be represented for the purposes of collective bargaining by Town of Sheboygan (DPW) Employees Local 1749, AFSCME, AFL-CIO. The letter was accompanied by four documents entitled PETITION FOR ELECTION- each signed by an employee of the Town who became represented by Local 1749 by virtue of a settlement agreement reached between the Town and Local 1749 in July 2008.

On September 9, 2008, Local 1749 filed a motion to dismiss the request for an election.

The parties waived hearing and filed written argument-the last of which was received October 15, 2008.

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

FINDINGS OF FACT

1. Town of Sheboygan and Town of Sheboygan Sanitary Districts No. 2 and No. 3, herein the Town, is a municipal employer.

2. Town of Sheboygan (DPW) Employees Local 1749, AFSCME, AFL-CIO, herein Local 1749, is a labor organization that serves as the collective bargaining representative of certain employees of the Town.

3. The Town and Local 1749 are parties to a collective bargaining agreement with a stated expiration date of December 31, 2009. Article 22.01 of that agreement provides in pertinent part:

Either party wishing to amend the Agreement shall notify the other Party by September 1st of the year the Agreement expires.

4. By agreement of the parties, during the term of the existing collective bargaining agreement, employees of the Town were added to the collective bargaining unit represented by Local 1749. On September 2, 2008, Local 1749 then asked the Town to bargain over the wages, hours and conditions of employment of the newly added employees and suggested October 13 or 20, 2008 as dates for bargaining to begin.

5. On September 8, 2008, the Town requested that an election be conducted among all employees currently represented by Local 1749 to determine whether the employees wish to continue to be represented by Local 1749.

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

CONCLUSION OF LAW

The request for election is untimely filed.

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

ORDER

The request for election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of November, 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

TOWN OF SHEBOYGAN

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER GRANTING MOTION TO DISMISS PETITION FOR ELECTION**

Where, as here, the parties have a collective bargaining agreement which specifies a date by which intent to reopen bargaining for a successor agreement must be given, we have consistently concluded that during the stated term of that agreement, a request for election to determine whether employees wish to continue to be represented by a labor organization is only timely if filed within the 60 day period prior to the contractually specified reopening date. MUKWONAGO SCHOOLS, DEC. NO. 24600 (WERC, 6/87). Our conclusion in this regard strikes what we believe to be the appropriate balance between the right of employees to determine whether they wish to continue to be represented by a labor organization and the interest in stability of collective bargaining relationships.

Here, Local 1749 argues that application of the “60 day rule” means that a timely request for an election can only be filed during the 60 days prior to the September 1, 2009 contractual reopening date. Thus, Local 1749 asks that the request for election filed on September 8, 2008 be dismissed as untimely. The Town urges us to conclude that the request for an election is timely because it was filed with the 60 day period prior to the October 2008 dates Local 1749 proposed for bargaining over the terms of the contract that will apply to the employees recently added to the bargaining unit.

The parties agree that where, as here, employees are added to a collective bargaining unit, the existing contract does not automatically apply to the newly added employees and thus that the wages, hours, and conditions of employment of such employees are established through collective bargaining and, if necessary, interest arbitration over an initial contract. LOCAL 60 v. WERC, 217 Wis. 2d 602 (Ct. App. 1997). In this context, the Town argues that such bargaining in effect reopens the existing contract and ought to trigger a 60 day window period. We disagree. In the circumstances present herein, the existing contract is not reopened and continues to establish the wages, hours and conditions of employment for all bargaining unit employees except those added by agreement of the parties. As to the newly added employees, the parties bargain a separate initial contract for those employees with a term that runs from a date the employees were added to the unit through the date the existing contract covering the remainder of the bargaining unit expires. In this context, because the request for election of necessity covers all bargaining unit employees (including those already covered by the existing contract) it is apparent that conducting an election would severely undermine the stability of the existing collective bargaining relationship and, depending on the outcome, end the bargaining relationship for all employees despite the fact that more one year remains in the term of the existing contract. Therefore, particularly where, as here, the Union correctly points out that an election petition can be timely filed in July and August of 2009, we conclude

that the balance between stability in collective bargaining relationships and the right of employees to determine if they wish to continue to be represented by a labor organization should be struck in favor of stability at this point in time. Therefore, we conclude that the request for election is untimely and we have dismissed same.

Dated at Madison, Wisconsin, this 20th day of November, 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