

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

OCONOMOWOC AREA SCHOOLS ADMINISTRATIVE ASSISTANTS

Involving Certain Employees of

OCONOMOWOC AREA SCHOOL DISTRICT

Case 46
No. 70740
ME-4261

Decision No. 33313

Appearances:

Joy Soderstrom, W269 Allen Road, Oconomowoc, Wisconsin 53066, appearing on behalf of the Oconomowoc Area Schools Administrative Assistants.

Scott D. Soldon, Soldon Law Firm, LLC, 3541 North Summit Avenue, Shorewood, Wisconsin, 53211, appearing on behalf of Teamsters Union Local No. 695.

Mark L. Olson, Buelow, Vetter, Buikema, Olson & Vliet, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53816, appearing on behalf of the Oconomowoc Area School District.

ORDER DISMISSING PETITION FOR ELECTION

On April 28, 2011, the Oconomowoc Area Schools Administrative Assistants filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Oconomowoc Area School District wished to continue to be represented for the purposes of collective bargaining by Teamsters Union Local No. 695 or to be so represented by the Assistants or not to be so represented by either labor organization.

On May 16, 2011, Teamsters filed a motion with the Commission requesting that the petition be dismissed as untimely.

The parties thereafter stipulated to the evidence that the Commission should consider when ruling on the motion and filed written argument. The record was closed on June 6, 2011.

Having considered the matter and being fully advised in the premises, 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 15th day of June, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Judith Neumann /s/

Judith Neumann, Commissioner

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

OCONOMOWOC AREA SCHOOL DISTRICT

MEMORANDUM ACCOMPANYING ORDER
DISMISSING PETITION FOR ELECTION

The Oconomowoc Area School District and Teamsters Union Local No. 695 are parties to a July 1, 2010-June 30, 2011 collective bargaining agreement. The agreement contains the following provision:

Either party shall notify the other party prior to one hundred eighty (180) days of the ending date of this Agreement of its desire to alter or amend this Agreement.

Determinations as to the timeliness of election petitions seeking to change or eliminate the existing bargaining representative require that we balance competing interests and rights.¹ On the one hand, we have the interest of encouraging stability in collective bargaining relationships which enhances the potential for labor peace.² On the other hand, we have the statutory right of employees to bargain collectively through representatives of their own choosing, which right necessarily includes the right to change or eliminate a chosen representative.³ Historically, we have balanced these competing interests and rights by concluding that there should be a guaranteed but limited time prior to commencement of bargaining for a successor agreement when an election petition can be timely filed. Thus, our contract bar policy provides that during the 60-day period prior to the reopening date for commencement of negotiations on a successor agreement, an election petition can be timely filed.⁴ The interests of stability have caused us to conclude that a petition filed during the term of a contract and prior to or after this 60-day period is untimely.

Teamsters asks that the petition be dismissed as untimely under existing WERC case law because the petition was not filed during the 60 day window period prior to the above-quoted contractually established deadline for reopening the 2010-2011 contract. The Assistants and the District ask that WERC create an exception to that existing case law where, as here, the employees were unaware of said law and had, in any event, advised their union of their dissatisfaction during the 60 day window period. We decline to create such an exception and dismiss the petition as untimely filed.

¹ DURAND UNIFIED SCHOOLS, DEC. NO. 13552, (WERC, 4/75).

² Secs. 111.70(1)(a), and 111.70(6) Stats.

³ Secs. 111.70(2) and 111.70(4)(d)5, Stats. Municipal employers are also able to raise questions concerning the continuing majority status of an incumbent union under Sec. 111.70(4)(d)5, Stats.

⁴ WAUWATOSA BOARD OF EDUCATION, DEC. NO. 8300-A, (WERC, 2/68) aff'd (CirCt Dane, 8/68).

We do so because we remain persuaded that the timeliness rule which has been in place for more the 40 years and which guarantees the right to timely file an election petition during the term of a collective bargaining agreement strikes the best balance between the interests of stability and the right to chose one's collective bargaining representative. Further, if we were to begin to make exceptions to this long-standing rule, we would be undermining the currently existing predictability as to when a petition is or is not timely. ⁵

Dated at Madison, Wisconsin this 15th day of June, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Judith Neumann /s/

Judith Neumann, Commissioner

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

⁵ We note that in January 2011, the employees in question were able to successfully seek and obtain information from the Commission regarding how and when to file an election petition. While the petition would already have been untimely at that point in time, their contact with us demonstrates the relatively easy access employees have to the law applicable to the timely filing of election petitions. We also note that during the term of the next contract between the District and Teamsters, the Assistants will have a guaranteed opportunity to timely file an election petition.