

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**RHONDA JANKOWSKI**

Involving Certain Employees of

**MIDDLETON-CROSS PLAINS AREA SCHOOL DISTRICT**

Case 90  
No. 70741  
ME-4262

**Decision No. 33321**

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**Appearances:**

**Rhonda Jankowski**, 7106 South Avenue, Middleton, Wisconsin 53562, appearing on her own behalf.

**Debra Eveland**, Business Agent, 437 South Yellowstone Drive, Suite 112, Madison, Wisconsin 53719, appearing on behalf of Office & Professional Employees International Union Local 39.

**Tabatha Gundrum**, Director of Human Resources, 7106 South Avenue, Middleton, Wisconsin 53562, appearing on behalf of the Middleton-Cross Plains Area School District.

**ORDER DISMISSING PETITION FOR ELECTION**

On April 28, 2011, Rhonda Jankowski filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Middleton-Cross Plains Area School District wished to continue to be represented for the purposes of collective bargaining by Office & Professional Employees International Union Local 39.

On May 16, 2011, Local 39 asked the Commission to dismiss the petition as untimely. Jankowski responded to the Local 39 request on May 26, 2011 and Local 39's reply was received on June 6, 2011.

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All parties agreed that that there is an existing contract between the Local 39 and the District which contains a March 1, 2011 deadline for Local 39 or the District to advise the other party that it wishes to reopen negotiations for a successor contract. The parties further agree that if the Commission concludes there is relevance to the facts surrounding Jankowski's dissatisfaction with Local 39's representation, then an evidentiary hearing will be held before any action is taken on the Local 39 request.

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 27<sup>th</sup> day of June, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Judith Neumann /s/

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Judith Neumann, Commissioner

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

**MIDDLETON-CROSS PLAINS AREA SCHOOL DISTRICT**

**MEMORANDUM ACCOMPANYING ORDER**  
**DISMISSING PETITION FOR ELECTION**

The Middleton-Cross Plains Area School District and Office & Professional Employees International Union Local 39 are parties to a collective bargaining agreement which contains a March 1, 2011 deadline for Local 39 or the District to advise the other party that it wishes to reopen negotiations for a successor contract. Jankowski's election petition was filed on April 28, 2011.

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.<sup>1</sup> On the one hand, we have the interest of encouraging stability in collective bargaining relationships which enhances the potential for labor peace.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.

Local 39 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 March 1, 2011. Jankowski asserts that Local 39 has not properly represented the bargaining unit's interests and thus that the employees should have the opportunity to vote on whether Local 39 should continue to be the collective bargaining representative. We conclude that employee dissatisfaction is not relevant to the question of whether an election petition is timely filed. We further conclude that the election petition should be dismissed as untimely.

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

<sup>2</sup> Secs. 111.70(1)(a), and 111.70(6) Stats.

<sup>3</sup> 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.

<sup>4</sup> 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 based on the quality of the representation provided by the incumbent union, we would be undermining the currently existing predictability as to when a petition is or is not timely. <sup>5</sup>

Dated at the City of Madison, Wisconsin, this 27<sup>th</sup> day of June, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Judith Neumann /s/

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Judith Neumann, Commissioner

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

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<sup>5</sup> We note that during the term of any future contract between the District and Local 39, there will be a guaranteed opportunity to timely file an election petition.