

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**MILWAUKEE DISTRICT COUNCIL 48,  
AFSCME, AFL-CIO**

To Initiate Arbitration Between Said Petitioner and

**MILWAUKEE COUNTY**

Case 680  
No. 68675  
INT/ARB-11328

**Decision No. 33812**

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**Appearances:**

**Mark F. Vetter** and **Mark L. Olson**, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186, appearing on behalf of Milwaukee County.

**Mark Sweet**, Sweet and Associates, 2510 East Capitol Drive, Milwaukee, Wisconsin 53211-5231, appearing on behalf of Milwaukee District Council 48, AFSCME, AFL-CIO.

**ORDER DISMISSING PETITION FOR INTEREST ARBITRATION**

On June 30, 2011, Milwaukee County filed a motion with the Wisconsin Employment Relations Commission requesting that the Sec. 111.70(4)(cm) 6, Stats. petition for interest arbitration filed by Milwaukee District Council 48, AFSCME, AFL-CIO be dismissed. The parties thereafter filed written argument in support of and in opposition to the motion. On November 7, 2011, the Commission advised the parties that it had voted to grant the motion to dismiss.

No. 33812

NOW, THEREFORE, it is

**ORDERED**

The petition for interest arbitration filed by Milwaukee District Council 48, AFSCME, AFL-CIO is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of March, 2012.

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

Milwaukee County

**MEMORANDUM ACCOMPANYING**  
**ORDER DISMISSING PETITION FOR INTEREST ARBITRATION**

On February 23, 2009, Milwaukee District Council 48, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission seeking interest arbitration pursuant to Sec. 111.70(4)(cm) 6, Stats. The petition asserted that a deadlock had been reached between AFSCME and Milwaukee County as to negotiations over a successor to an agreement that had expired December 31, 2008. On June 30, 2011, the County moved to dismiss AFSCME's interest arbitration petition asserting that 2011 Wisconsin Act 10 had repealed the interest arbitration procedures in question. We granted the County's motion on November 7, 2011.

When granting the motion, we considered the following arguments raised by AFSCME but found them to be unpersuasive.

AFSCME first generally asserted that there are relevant factual matters as to which a hearing must be held before it is permissible to consider granting a motion to dismiss. We disagreed. Section 237 of 2011 Wisconsin Act 10 repealed Sec. 111.70(4)(cm) 6 interest arbitration and Section 9332 of Act 10 made the repeal effective June 29, 2011 as to AFSCME's petition. Thus, there was no fact finding relevant to the motion.

AFSCME then argued more specifically that the motion to dismiss should not be granted because of the ongoing litigation over the Commission's order (Dec. No. 33001-D) that the County take a ratification vote on a tentative agreement reached with AFSCME on a 2009-2010 collective bargaining agreement. We disagreed. If the Commission's order is affirmed and if the County does not ratify the tentative agreement, the Commission's order does not mandate use of the then existing statutory interest arbitration process to create a 2009-2010 agreement. Thus, no matter what the outcome of that litigation may prove to be, the pending litigation over the Commission's order had no bearing on the motion to dismiss.

AFSCME next contended that there would be an unconstitutional impairment of the right to contract if it was not able to use the statutory interest arbitration process to create a successor to the expired 2007-2008 agreement. We disagreed as we found no support in the law for such an impairment.

Lastly, AFSCME asserted that dismissal was improper without a hearing as to the impact of a memorandum of understanding between it and the State of Wisconsin which extended a collective bargaining agreement as to certain County employees through December 31, 2011. We disagreed. The AFSCME interest arbitration petition was applicable

to negotiations over a successor to an expired 2007-2008 agreement with the County. Thus, the memorandum referenced by AFSCME was not relevant to the granting of the motion to dismiss.<sup>1</sup>

Given all the foregoing, we dismissed AFSCME's interest arbitration petition on November 7, 2011 and hereby confirm that dismissal.

Dated at Madison, Wisconsin, this 6th day of March, 2012.

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>1</sup> In any event, we note that the alleged agreement has now expired.

