

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WAUPACA TEACHERS' ASSOCIATION
Involving Certain Employees of
SCHOOL DISTRICT OF WAUPACA

Case 44
No. 71169
ME-4491

Decision No. 33833

Appearances:

Stephen Pieroni, Legal Counsel, Wisconsin Education Association Council, 33 Nob Hill Road, P.O. Box 8003, Madison, Wisconsin, appearing on behalf of the Waupaca Teachers' Association.

David P. Poeschl, District Administrator, 515 School Street, Waupaca, Wisconsin 54981, appearing on behalf of the School District of Waupaca.

ORDER DISMISSING PETITION FOR ELECTION

On October 3, 2011, the Waupaca Teachers' Association filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission conduct an initial annual certification election to determine whether certain employees of the School District of Waupaca wanted to continue to be represented for the purposes of collective bargaining by the Association. That same day, the Commission advised the Association and the District that the petitions had been received and raised the question of whether the petition had been timely filed under ERC 71.

On October 14, 2011, the Association filed written argument and affidavits asking that the petition be processed as timely filed. The District elected not to reply to the Association argument.

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After considering the matter, the Commission determined that the petition was untimely filed and advised the parties of its decision on October 31, 2011. This decision confirms that determination.

Consistent with the foregoing, the Commission makes the following

ORDER

1. The petition for election is dismissed.

2. Pursuant to ERC 71.03 (7)(b), the Waupaca Teachers' Association ceased to be the collective bargaining representative of certain employees of the School District of Waupaca as of 4:31pm on September 30, 2011 and said employees shall not be included in a substantially similar bargaining unit for at least one year following September 30, 2011.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of March, 2012.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

Commissioner Judith Neumann did not participate.

SCHOOL DISTRICT OF WAUPACA

MEMORANDUM ACCOMPANYING ORDER
DISMISSING PETITION FOR ELECTION

Initial annual certification elections for labor organizations that want to continue to represent school district employee bargaining units as to which no collective bargaining agreement was in effect on September 30, 2011 are conducted pursuant to ERC 71. ERC 71.01 provides in pertinent part:

The existing exclusive representative of such employees that wishes to continue said representation . . . must file a petition on or before September 30, 2011 requesting the commission to conduct a secret ballot election to determine whether at least 51% of the bargaining unit employees eligible to vote favor collective bargaining representation by the petitioner If no timely petition is filed, the result is the same as if . . . the existing representative filed a timely petition and the election resulted in decertification of the existing representative.

ERC 71.03 (2) specifies that:

A petition is not filed unless it is . . . actually received by the commission in its Madison office during normal business hours

ERC 71.03 (7) states the following in pertinent part:

(7) TIME FOR FILING, CONSEQUENCES OF FAILURE TO TIMELY FILE, NOTICE.

(a) *Time for filing.* To be timely, a petition must be filed on or before September 30, 2011.

(b) *Consequences of failure to timely file.* If no petition is timely filed by any labor organization, then the following consequences shall apply:

1. If no collective bargaining agreement is in effect, the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of September 30, 2011.

The Association acknowledged all of the foregoing but contended that the petition should nonetheless be processed because: (1) the petition was placed in the mail within a timeframe that could reasonably have been expected to yield Commission receipt on September 30, 2011; (2) there was no prejudice to any party because the election itself would not have been delayed; (3) the impact of dismissal is substantial; and (4) the election process is new.

We do not find the Association's arguments persuasive. ERC 71 is clear as to how and when to file a timely election petition. ERC 71 is clear as to the consequences of a failure to timely file. ERC 71 does not fall within the scope of ERC 10.01 which provides in pertinent part:

The commission or examiner may waive requirements of chs. ERC 10 to 19, 30 to 33, 40 and 50 to serve the purposes and provisions of the Municipal Employment Relations Act, unless a party shows it would be prejudiced by the waiver.

Thus, we conclude that strict application of ERC 71 is appropriate and dismissal of the petition is required. As required by ERC 71.03(7), we are also hereby advising that the Association ceased to be the collective bargaining representative of the employee in question as of 4:31pm on September 30, 2011, and that the Association is eligible to seek to regain its status as collective bargaining representatives of the employees in question after one year.

Dated at Madison, Wisconsin, this 20th day of March, 2012.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

Commissioner Judith Neumann did not participate.