

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS UNION LOCAL 662
Involving Certain Employees of
BARRON SCHOOL DISTRICT

Case 65
No. 71170
ME-4492

Decision No. 33834

Appearances:

Scott D. Soldon, Soldon Law Firm LLC, 3541 North Summit Avenue, Shorewood, Wisconsin 53211-2661, appearing on behalf of Teamsters Union Local 662.

Monti Hallberg, District Administrator, 100 West River Avenue, Barron, Wisconsin 54812, appearing on behalf of the Barron School District.

ORDER DISMISSING PETITION FOR ELECTION

On October 4, 2011, Teamsters Union Local 662 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 Barron School District wanted to continue to be represented for the purposes of collective bargaining by Teamsters. On October 5, 2011, the Commission advised the Teamsters and the District that the petition had been received and raised the question of whether the petition had been timely filed under ERC 71. That same day, Teamsters responded seeking confirmation that the petition had been postmarked on or before September 30, 2011 and stating its understanding that a petition would be timely if postmarked on or before the September 30, 2011. The Commission then advised the parties that the envelope that contained the petition was postmarked September 29, 2011.

Neither the Teamsters nor the District filed written argument by the October 14, 2011 deadline for receipt of same.

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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), Teamsters Union Local 662 ceased to be the collective bargaining representative of certain employees of the Barron School District 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.

BARRON SCHOOL DISTRICT

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.

ERC 71 is clear as to how and when to file a timely election petition. As reflected in the above-quoted portions of ERC 71.03(2), a petition is filed upon its physical receipt in the Commission's offices-not when placed in the mail. ERC 71 is also clear as to the consequences of a failure to timely file and 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. Pursuant to ERC 71.03(7), we are also hereby advising that the Teamsters ceased to be the collective bargaining representative of the employees in question as of 4:31pm on September 30, 2011, and that Teamsters are eligible to seek to regain their 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.