

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
  
**RICHARD J. JOHNSON**  
  
Involving Certain Employees of  
  
**SCHOOL DISTRICT OF ONALASKA**

Case 33  
No. 71672  
ME-4672

**Decision No. 33977**

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**Appearances:**

**Richard J. Johnson**, 1020 Monroe Street, Onalaska, Wisconsin 54650, appearing on his own behalf.

**Marianne Goldstein Robbins**, The Previant Law Firm, S.C. 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin 53212, appearing on behalf of Service Employees International Union, Local 150.

**Kirk D. Strang**, Davis Kuelthau, Ten East Doty Street, Suite 401, Madison, Wisconsin 53703, appearing on behalf of the School District of Onalaska.

**ORDER DISMISSING PETITION FOR ELECTION**

On July 3, 2012, Richard J. Johnson filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the School District of Onalaska want to continue to be represented by Service Employees International Union, Local 150 for the purposes of collective bargaining with the District.

On August 17, 2012, Local 150 filed a motion to dismiss the election petition as untimely because a July 1, 2012-June 30, 2013 collective bargaining agreement existed at the time the petition was filed.

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On August 29, 2012, the District filed a statement that took no position as to the motion to dismiss. Following the exchange of additional correspondence, the record was closed October 25, 2012.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. The School District of Onalaska, herein the District, is a municipal employer.
2. Service Employees International Union, Local 150, herein Local 150, is a labor organization that at all times material herein served as the collective bargaining representative of certain employees of the District including Richard J. Johnson.
3. On July 3, 2012, Johnson filed the instant election petition with the Commission. On July 3, 2012, a July 1, 2012-June 30, 2013 collective bargaining agreement existed and established the wages for the employees represented by Local 150. Said agreement does not include a date by which notice must be provided of intent to bargain a successor to the 2012-2013 agreement.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

### **CONCLUSIONS OF LAW**

1. When an election petition is filed during the term of a contract that does not contain a reopener date, the Commission determines whether the petition is timely by balancing the interest in stability in collective bargaining relationships against the statutory right of employees to decide whether they wish to be represented for the purposes of collective bargaining.
2. In the context of a July 1, 2012-June 30, 2013 agreement and an election petition filed on July 3, 2012, the interest in stability in the collective bargaining relationship is currently stronger than the statutory right of employees to decide whether they wish to be represented for the purposes of collective bargaining.
3. Johnson's petition is untimely.
4. A timely election petition can be filed any time between March 4, 2013 and May 2, 2013.<sup>1</sup>

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<sup>1</sup> "At the present time, due to the ongoing litigation over the legality of the Secs. 111.70(4)(d)3.b and 111.83(3)(b), Stats. annual certification elections, the Commission has concluded that it will not be conducting

Based on the above and foregoing Findings of Fact and Conclusions of Law, 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 1<sup>st</sup> day of November, 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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any annual certification elections. If there are further developments in that litigation which lead the Commission to conclude that it is appropriate to resume the conduct of those annual certification elections, then it is possible that an election over the status of Local 150 as the collective bargaining representative will be held before spring 2013. Any such annual certification election would require that Local 150 file a petition requesting such an election and receive the votes of at least 51% of all eligible voters to remain the collective bargaining representative. If the Commission resumes the conduct of annual certification elections, such an election will end the need for any petition to be filed by employees. If the Commission does not resume the conduct of annual certification elections, in any election held as a result of a timely filed employee petition, Local 150 will need to receive the votes of a majority of those who vote to continue as the collective bargaining representative.

SCHOOL DISTRICT OF ONALASKA

MEMORANDUM ACCOMPANYING ORDER  
DISMISSING PETITION FOR ELECTION

As reflected in the Findings of Fact, it is undisputed that a July 1, 2012-June 30, 2013 collective bargaining agreement was in effect at the time Johnson filed the election petition. It is also undisputed that the agreement did not contain a date by which notice of intent to reopen bargaining on a successor agreement must be provided.

When an election petition is filed during the term of a contract that does not contain a reopener date, the Commission determines whether the petition is timely by balancing the interest in stability in collective bargaining relationships against the statutory right of employees to decide whether they wish to be represented for the purposes of collective bargaining. Village of Mount Pleasant, Dec. No. 32562 (WERC, 9/08); Wilmot Grade School District, Dec. No. 27433 (WERC, 10/92); Village of Shorewood, Dec. No. 14262 (WERC, 1/76); Village of Grafton, Dec. No. 12718 (WERC, 5/74); City of Green Bay, Dec. No. 6558 (WERC, 11/63).

Because the petition was filed so early during the term of the agreement, we conclude that the interest in stability in the collective bargaining relationship between Local 150 and the District was stronger at that point in time than the statutory right of employees to decide whether they wish to be represented for the purposes of collective bargaining. Thus, we find Johnson's petition to be untimely.

As reflected above, a balancing of interests analysis does not provide any measure of certainty as to when an election petition can be timely filed where, as here, a collective bargaining agreement is in effect but does not include a reopener date. We conclude that employees, unions and employers would be well served if we were to provide a specific timeframe for timely filing of future petitions that strikes the appropriate balance between stability and the right to determine whether union representation should continue. When an agreement includes a reopener date, we have long held that an election petition is timely if filed anytime during the sixty day period prior to the reopener date. Wauwatosa Board of Education, Dec. No. 8300-A (WERC, 6/68). Consistent with that long standing precedent, we conclude that a sixty day period for filing is also appropriate where no reopener date is present in the agreement. We further conclude that the last day of sixty day period for timely filing

should fall on the sixtieth day prior to the expiration of the agreement.<sup>2</sup> Thus, in the context of the June 30, 2013 expiration of the instant agreement, the sixty day period for filing a timely future petition runs from March 4, 2013 through May 2, 2013.<sup>3</sup>

Dated at Madison, Wisconsin, this 1<sup>st</sup> day of November, 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>2</sup> Our determination as to when the sixty day period expires coincides with the expiration of the timely filing period utilized by the National Labor Relations Board when administering the National Labor Relations Act.

<sup>3</sup> Given the substantial length of time between Johnson's July 3, 2012 petition and March 4, 2013, we will not hold this petition in abeyance and will conduct an election only if a new petition is timely filed with a fresh showing of interest.