

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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**MARQUETTE COUNTY SHERIFF'S DEPARTMENT CORRECTIONS AND  
COMMUNICATION OFFICER'S ASSOCIATION, LOCAL #426,  
WISCONSIN PROFESSIONAL POLICE ASSOCIATION, Complainant,**

vs.

**MARQUETTE COUNTY, Respondent.**

Case 70  
No. 71904  
MP-4751

**Decision No. 34084-B**

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**Appearances:**

**Roger W. Palek**, Staff Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin 53713, appearing on behalf of the Complainant.

**Andrew T. Phillips, Daniel J. Borowski and Jacob J. Curtis**, Phillips Borowski, S.C. 10140 North Port Washington Road, Mequon, Wisconsin 53092, appearing on behalf of the Respondent.

**ORDER DISMISSING COMPLAINT**

On December 21, 2012, the instant complaint was filed. On March 6, 2013, Respondent filed a motion to dismiss based in part upon the end of Complainant's status as the collective bargaining representative of the Respondent's employees. On March 20, 2013, I issued an Order to Show Cause why the complaint should not be dismissed on that basis. The parties thereafter filed additional written argument-the last of which was received May 5, 2013.

Having considered the matter, I conclude that the complaint is moot.

NOW, THEREFORE, I make and issue the following

No. 34084-B

**ORDER**

The complaint is dismissed.

Dated at Madison, Wisconsin this 28th day of June, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Peter G. Davis, Examiner

MARQUETTE COUNTY

MEMORANDUM ACCOMPANYING ORDER DISMISSING COMPLAINT

The complaint filed by WPPA in December 2012 alleges that the County violated its duty to bargain a successor to a 2009-2011 agreement covering certain WPPA represented employees. By letter dated February 6, 2013, WPPA advised the County that it was withdrawing as the exclusive collective bargaining representative of said employees “effective immediately.” On March 6, the County filed a motion to dismiss the complaint arguing among other matters that the complaint is moot.

In support of its mootness argument, the County points to the decisions of the courts in Maple Dale-Indian Hill School District, Case 00-CV-007694 (Cir. Ct. Milw. 4/01) aff’d Court of Appeals, Dist. 1 (Case 01-1016 4/02). In Maple-Dale, the matter in dispute before the circuit court was whether the Wisconsin Employment Relations Commission had properly dismissed a petition for interest arbitration filed by a union as to a collective bargaining unit that the union represented. During the pendency of the proceedings, the union disclaimed interest in representation of the bargaining unit. The Commission moved to dismiss the petition for review as moot and the circuit court agreed. The court concluded that in light of the union’s disclaimer, the matter was moot because further proceedings would have no practical effect upon an existing controversy. The court further determined that there were no exceptional or compelling circumstances that warranted resolution of the merits of a moot case. The Court of Appeals summarily affirmed the circuit court and adopted the court’s decision as its opinion.

Underlying the Maple-Dale decisions is the premise that if even if the union prevailed, it could not pursue the interest arbitration matter and create a labor agreement because it no longer represented the employees in question. That same premise is present here. Even if the WPPA prevailed, it would not have a right to bargain a successor to the 2009-2011 agreement because it no longer represents the employees. Thus, I am satisfied that the matter is now moot. I further conclude that this case does not present an issue of great public import and is

not likely to recur. Therefore, there are no exceptional or compelling circumstances that warrant resolution of a moot matter. See, State v. Gray, 225 Wis. 2d 39, 66 (1998). Thus, I have dismissed the complaint.<sup>1</sup>

Dated at Madison, Wisconsin this 28th day of June, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis /s/

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Peter G. Davis, Examiner

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<sup>1</sup> The complaint also generally alleges a Sec. 111.70(3)(a) 5, Stats. violation of contract. That allegation is dismissed because the grievance arbitration procedure contained in that contract is presumed to be the exclusive means by which that contract can be enforced. See Mahnke v WERC, 66 Wis. 2d 524 (1975).