

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS LOCAL UNION NO. 43

Involving Certain Employees of the
VILLAGE OF TWIN LAKES

Case 28
No. 71983
ME-4712

Decision No. 34132-A

Appearances:

Kyle A. McCoy, Soldon Law Firm, LLC, 6319 29th Avenue NW, Rochester, Minnesota 55901, appearing on behalf of Teamsters Local Union No. 43.

Robert W. Mulcahy, Michael Best & Friedrich, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202-4108, appearing on behalf of the Village of Twin Lakes.

ORDER GRANTING MOTION TO DISMISS

On February 13, 2013, Teamsters Local Union No. 43 filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Village of Twin Lakes want to be represented for the purposes of collective bargaining by Teamsters.

On February 28, 2013, the Village filed a motion to dismiss the petition as untimely citing the Teamsters' loss of an annual certification election for the same bargaining unit on March 28, 2012.

On April 19, 2013, the Commission asked the Village as to whether further action was needed on the motion to dismiss because more than one year had elapsed since the March 28, 2012 election. On May 1, 2013, the Village responded by asking when the Commission would be certifying the results of the March 2012 election.

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On May 6, 2013, the Commission issued a Certification of the March 28, 2012 election result confirming that: (1) when the ballots were counted on March 28, 2012, both eligible voters had voted with Teamsters receiving one vote and one vote being cast for no representation; and thus that (2) Teamsters did not receive 51% of the votes of the eligible voters.

On May 10, 2013, the Village again asked that the petition be dismissed arguing that pursuant to Sec. 111.70(4)(d) 3.b., Stats. the affected employees cannot be included in a bargaining unit until May 6, 2014. On May 24, 2013, Teamsters filed a response asserting that the Village's interpretation of the statutory provision is unreasonable in the context of the delay between the conduct of the election and the certification of the results. On June 3, 2013, the Village filed a reply contending that the Commission lacks the discretion to modify the express terms of the statute in question and that the delay cited by Teamsters was not caused by the Village.

On June 10, 2013, the Commission asked the parties to state their views as to the status of the employees in question (unrepresented or represented by Teamsters) during the period of March 28, 2012 to May 6, 2013. On June 14, 2013, Teamsters indicated that the status of the employees was "represented". On July 2, 2013, the Village responded that it "was not aware of the extent of union representation but we have no reason to doubt that claim."

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER

The election petition is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

VILLAGE OF TWIN LAKES

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO DISMISS

Section 111.70(4)(d) 3.b., Stats. states in pertinent part:

. . . if a representative is decertified under this subd. 3.b., the affected general municipal employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

As reflected in the preface to our Order, the March 28, 2012 ballot count revealed that Teamsters had lost the annual certification election in the administrative employee bargaining unit. But for the decision by the Commission to suspend further processing of all annual certification election in response to a federal court order, the election results would have been certified by the Commission in April 2012. However, due to the suspension, the certification of the election results did not occur until May 6, 2013.

The Village asserts that pursuant to the above-quoted language from Sec. 111.70(4)(d) 3.b., Stats., Teamsters cannot become the representative of the administrative bargaining unit until May 6, 2014 and thus that a February 2013 petition seeking to acquire representative status is premature and must be dismissed. Teamsters argue that given the delay between the conduct of the election in March 2012 and the May 2013 certification, the Village's literal reading of the statute is at odds with the legislative intent and should be rejected.

At least where, as here, there is an assertion and an acquiescence that the employees continued to be represented during the period of time between the March 2012 balloting and the May 2013 certification, we are persuaded that Sec. 111.70(4)(d) 3.b., Stats. mandates dismissal of the petition.

Dated at Madison, Wisconsin, this 24th day of July, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

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