

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

AFSCME WISCONSIN COUNCIL 40

Involving Certain Employees of

MERRILL SCHOOL DISTRICT

Case 46
No. 72637
ME-5135

Decision No. 34674

MEMORANDUM DECISION

Pursuant to statute and administrative rule, unions representing school district bargaining units desiring to be recertified were required to file petitions with the requisite filing fee by August 30, 2013. Timely petitions with filing fees were received in the Wisconsin Employment Relations Commission offices at 1457 E. Washington Avenue, Madison, Wisconsin, from 406 bargaining units. Eight bargaining units did not do so, and six more were filed timely but without the requisite filing fee. All fourteen have sought exception from the strict application of Wis. Admin. Code § ERC 70.03, which on its face would deny participation in the election process and therefore result in the decertification of the bargaining units.¹

Post Office Box / Street Address

Some explanation of the process by which mail was delivered to the Commission in August of 2013 is necessary to understanding this issue. Mail sent to the post office box address was picked up at the United States main post office and delivered to the Commission by employees of the Wisconsin Department of Administration. The mail would then be date stamped by Commission employees at the Commission office on East Washington Avenue. Unless the mail was sent by priority mail there would be no record of the arrival at the post office. Mail sent to the street address would be delivered directly by United States post office personnel.

¹ All of the employers involved have received notice of the unions' "appeals" and none have opposed the appeals.

While the administrative rule requires that the petition is not considered filed until it is “actually received by the commission in its Madison office during regular business hours,” we believe that delivery to the post office box under these circumstances should constitute receipt by the Commission. The form petition provided by the Commission contains the post office box not the street address. The agency’s website also contained the post office box as the official address.²

Two of the petitioners here (Brillion and Hortonville) sent their petitions by priority mail to the post office box. One arrived at the post office box on August 29, 2013 at 8:52 a.m. and the other on August 30, 2013 at 10:07 a.m. Neither was physically delivered to the Commission until September 3, 2013.³ Given our view that delivery to the post office is constructive delivery to the Commission, there is no basis for treating these petitions as untimely.

We have six more bargaining units⁴ who can prove that they placed their petitions in the United States mail (addressed to the post office box) on either August 28 or 29, 2013. While their petitions were also physically received at the actual Commission offices on September 3, 2013, we have no way of knowing whether they arrived at the post office box on August 30, 2013 or earlier. Given the fact that two of the timely arrivals at the post office box were delivered late, it would appear likely that some or all of the remaining six suffered the same fate. Accordingly, we will exercise our discretion to permit these six units to participate in an election to determine whether they will be recertified.

Remaining Issues

The Building Trades unit of Milwaukee Public Schools mailed their petition on August 29, 2013, addressed to the Commission street address on East Washington Avenue. The petition arrived on September 3, 2013. At first blush this petition should be deemed untimely. The problem with doing so is that we excused other units that mailed their petition to the post office box on the same date. Accordingly, we will presume that the Building Trades petition arrived at the United States post office on August 30, 2013 and treat it as timely.

We have two units from the Manitowoc School District that filed timely petitions but with a filing fee that was less than that required under the rule. Similarly, we have the Beloit IBEW unit which filed a timely petition without any filing fee but which sent the filing fee separately to the post office box postmarked August 29, 2013. We also have two units from the Ashland School District which filed timely petitions without the required fee, and the fee payments were made well after the August 30, 2013 deadline. Typically, the payment of filing

² The Commission has since relocated and no longer utilizes a post office box.

³ The deadline, August 30, 2013, was a Friday preceding the Labor Day weekend and September 3, 2013 was the next regular business day.

⁴ D.C. Everest, Adams-Friendship, Cuba City, Merrill, Menasha and Jefferson.

fees is not considered jurisdictional. For example, in judicial proceedings, the failure to file a timely notice of appeal will deprive the appellate court of jurisdiction, but the filing of a timely notice without the requisite filing fee is not fatal to an appeal. In re Commitment of Sorenson, 200 WI 43 ¶ 18, 234 Wis.2d 648, 660, 611 N.W.2d 240.⁵ Our rule, however, sets forth three requirements for a petition to be considered filed and one of those is that the petition includes the applicable fee. That differentiates our rule from the statutory procedure applicable to judicial appeals. The underlying principle, however, is no different. The filing of the petition is a substantive act and attaching the correct filing fee is not. Accordingly, we will excuse the under-payment by the Manitowoc bargaining units and schedule a recertification election. As to the Beloit IBEW unit, their payment sent to the post office box on August 29, 2013 will be treated as having arrived by August 30, 2013 and their petition for recertification will be allowed and an election scheduled. Lastly, we will excuse the late payment by the Ashland units and conduct elections for those units.⁶

Signed and sealed at Madison, Wisconsin, on the 18th day of December 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

⁵ The same result was reached under federal law. Parissi v. Telechron Inc., 349 U.S. 46, 75 S.Ct. 577, 99 L.Ed.2d 867 (1955).

⁶ A word of caution to those petitioning for elections in future cycles is warranted. This decision should be treated as a “ticket good for one day only” and is not intended to establish a precedent for lax enforcement of our rules. The requirements for recertification elections is new and confusion surrounded its “on again / off again” status as a result of various judicial proceedings over the past two years. Going forward the rules will be strictly enforced.