

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Request of  
  
KENOSHA UNIFIED SCHOOL DISTRICT  
  
Involving Certain Employees of  
  
KENOSHA UNIFIED SCHOOL DISTRICT  
  
DECISION NO. 34694

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NOTICE OF CONSEQUENCES

On September 6, 2013, pursuant to § 111.70(4)(d)3b, Stats., and Wis. Adm. Code § ERC 70.03(7),<sup>1</sup> the Kenosha Unified School District has requested that the Wisconsin Employment Relations Commission issue a Notice of Consequences following the failure of the Kenosha Education Association to file a request for an annual certification petition. Said request was held in abeyance as a result of an order entered by the Dane County Circuit Court on October 21, 2013. That decision was subsequently appealed to the Wisconsin Supreme Court and that Court vacated the decision of the Dane County Circuit Court on November 21, 2013.

Following that decision, the labor organizations representing employees at the Kenosha Unified School District, the Kenosha Education Association, responded to the request for the issuance of the Notice of Consequences by letter dated December 6, 2013.

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<sup>1</sup> ERC 70.03(7) provides:

(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 August 30, 2013.

(b) *Consequences of failure to timely file.* If no timely petition is filed by any labor organization, then the following consequences shall apply:

1. The existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30, 2013.

2. The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following August 30, 2013.

(c) *Notice of consequences of failure to timely file petition.* At the request of the municipal employer or of any interested party, the commission shall issue a notice of the consequences set forth in par. (b). Before issuing such a notice, the commission will provide the exclusive representative an opportunity to respond to the propriety of the request. When issued, copies of the notice shall be sent to the municipal employer, the former exclusive representative and any interested party who requested the issuance of the notice.

The Commission having given due consideration to the District's request and the Kenosha Education Association's opposition issues the following;

### **DECISION**

We note at the outset that the Kenosha Education Association was one of the non-party unions which sought and obtained a contempt order from the Dane County Circuit Court. The result of which was to prevent us from issuing a Notice of Consequences regarding their status. The Wisconsin Supreme Court effectively dissolved that order by issuance of its November 21, 2013 order. *Madison Teachers, Inc. v. Walker*, 2012AP2067.

The Kenosha Education Association, in its December 6, 2013 letter to General Counsel Peter G. Davis, repeats the same arguments it made in the judicial proceedings relying on the decision of the Dane County Circuit Court as authority for the proposition that § 111.70(4)(d)3.b, Stats., is unconstitutional and that because no stay was issued we have no authority to proceed.

That argument blindly overlooks the conclusion of the Supreme Court that no stay of the Dane County Circuit Court order was necessary as it had no impact on non-parties. The Kenosha Education Association's parent organization, the Wisconsin Education Association Council, was a party to an unsuccessful constitutional challenge to Act 10. *Wisconsin Education Association Council v. Walker*, 705 F.3d 640 (7th Cir. 2013). That decision further undercuts the Kenosha Education Association's position relative to whether we should enforce the law pending a final decision of the Wisconsin Supreme Court in *Madison Teachers, Inc.*, *supra*.

Ultimately, we conclude there is no legal impediment to enforcing the notice of consequences requirement and, accordingly, we issue the following;

### **ORDER**

1. Effective on 4:31 p.m., August 30, 2013, the Kenosha Education Association having failed to timely file a petition for election is no longer the collective bargaining representative of certain employees of the Kenosha Unified School District.

2. The employees previously represented by the Kenosha Education Association for the purposes of collective bargaining, shall not be included in a substantially similar bargaining unit for at least one year following August 30, 2013.

Dated at Madison, Wisconsin, on the 5th day of February 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner