

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
KENOSHA EDUCATION SUBSTITUTES ASSOCIATION
Involving Certain Employees of
KENOSHA UNIFIED SCHOOL DISTRICT NO. 1

Case ID: 160.0002
Case Type: E_ME

DECISION NO. 35442

Appearances:

Joel S. Aziere, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the Kenosha Unified School District No. 1.

Rebecca Ferber Osborn, Legal Counsel, Wisconsin Education Association Council, 13805 West Burleigh Road, Brookfield, Wisconsin, appearing on behalf of the Kenosha Education Substitutes Association.

DIRECTION OF ELECTION

On September 18, 2014, the Kenosha Education Substitutes Association filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether substitute teachers employed by the Kenosha Unified School District No. 1 want to be represented for the purposes of collective bargaining by the Association.

On October 20, 2014, the District filed an objection to the petition asking that it be dismissed as untimely, raising certain legal issues, and asking that a hearing be held. On October 28, 2014, the Association filed a reply.

Having considered the matter, we conclude the petition is timely and that there are no relevant factual matters that warrant the conduct of a hearing.

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction among substitute teachers employed by the Kenosha Unified School District No. 1, excluding supervisors, confidential, managerial and executive employees who were employed on November 13, 2014, except such employees as may prior to the election leave or be removed from the potential bargaining unit, for the purpose of determining whether a majority of employees who vote want to be represented for the purposes of collective bargaining by the Kenosha Education Substitutes Association or do not want to be so represented.

Signed at the City of Madison, Wisconsin, this 13th day of November 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In *Kenosha Unified School District*, Dec. No. 34694, we issued an order pursuant to the provisions of § 111.70(4)(d)3.b, Stats., and Wis. Admin. Code § ERC 70.03(7), which stated that: (1) the Kenosha Education Substitutes Association was no longer the collective bargaining representative of Kenosha Unified School District No. 1 employees effective 4:31 p.m. on August 30, 2013; and (2) the employees previously so represented by the Association are prohibited from being included in a substantially similar bargaining unit for at least one year.

Pursuant to the terms of our order, the instant Petition for Election, filed on September 18, 2014, is clearly timely because, if the employees select the Association as their bargaining representative, more than one year will have passed before they are again included in a bargaining unit. Contrary to the District's argument, the current September 15 deadline created by Wis. Admin. Code § ERC 70.01 for the filing of a petition for annual certification election (and filing fee) only applies to labor organizations that are then serving as the collective bargaining representative and are seeking to continue to do so. *See* Wis. Admin. Code § ERC 70.02. The September 15 deadline does not apply where, as here, a labor organization is seeking to represent currently unrepresented employees.

Where, as here, the employees are currently unrepresented and a labor organization seeks to become the bargaining representative, § 111.70(4)(d)1, Stats., specifies that the organization needs the votes of "a majority of municipal employees voting" to win the election. Given this statutory language, we reject the District's request that the § 111.70(4)(d)3.b, Stats., annual certification election standard of fifty-one percent (51%) of all eligible voters be used in this election.

The District also contends that we should require that the petition be accompanied by a showing of interest. As reflected by the terms of Wis. Admin. Code § ERC 11.02(3), a showing of interest is only required where currently represented employees seek to end that representation or a rival labor organization seeks to replace the current representative. Therefore, we reject the District's request.

Given all of the foregoing, there are no relevant factual issues that would warrant the conduct of a hearing, and we have issued a Direction of Election consistent with our determinations.

Signed at the City of Madison, Wisconsin, this 13th day of November 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner