

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN ASSOCIATION OF STATE PROSECUTORS

Involving Certain Employees of

STATE OF WISCONSIN

DECISION NO. 35445

Appearances:

Nathan D. Eisenberg, The Previant Law Firm, S.C., 1555 N. RiverCenter Drive, Suite. 202
Milwaukee, appearing on behalf of the Wisconsin Association of State Prosecutors.

Danielle L. Carne, Office of State Employment Relations, 101 East Wilson Street, 4th Floor,
P.O. Box 7855, Madison, Wisconsin, appearing on behalf of the State of Wisconsin.

ORDER DISMISSING PETITION FOR ANNUAL CERTIFICATION ELECTION

At 5:37 p.m. on September 15, 2014, the Wisconsin Employment Relations Commission (Commission) received a Petition for Annual Certification Election from the Wisconsin Association of State Prosecutors (WASP) seeking an election to determine if certain State of Wisconsin (State) employees represented by WASP for the purposes of collective bargaining wished to continue to be so represented.

On September 16, 2014, the Commission advised WASP and the State that, because the Petition had not been received on or before 4:30 p.m. on September 15, 2014, and the fee required to complete filing had also not been received, it was anticipated that the Petition would not be processed. Later on September 16, 2014, the Commission received a filing fee from WASP related to the Petition.

On September 26, 2014, WASP filed argument asking that the Petition be processed and the certification election conducted. On October 8, 2014, the State filed argument opposing the WASP request.

On October 14, 2014, the Commission advised the parties of its determination that the WASP Petition was not timely filed and therefore would not be processed further. This Order confirms that determination.

ORDER

The Petition for Annual Certification Election filed by the Wisconsin Association of State Prosecutors is dismissed.

Signed at the City of Madison, Wisconsin, this 14th day of November 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING ORDER DISMISSING
PETITION FOR ANNUAL CERTIFICATION ELECTION**

Section 111.83(3)(b) of the State Employment Labor Relations Act (SELRA) provides in pertinent part:

Annually, no later than December 1, the commission shall conduct an election to certify the representative of a collective bargaining unit that contains a general employee.

* * *

The commission shall assess and collect a certification fee for each election conducted under this paragraph.

Section 111.94(1) of SELRA provides in pertinent part:

The commission may adopt reasonable and proper rules relative to the exercise of its powers and authority and proper rules to govern its proceedings and to regulate the conduct of all elections and hearings.

Consistent with its authority under § 111.94(1), Stats., the Commission adopted Wis. Admin. Code § ERC 80 to regulate the conduct of § 111.83(3)(b) annual certification elections. Wis. Admin. Code § ERC 80 provides in pertinent part that:

- (1) An annual certification election petition must be filed on or before September 15 of each year during normal business hours of 7:45 a.m. to 4:30 p.m. (*see* Wis. Admin. Code §§ ERC 80.01, 80.03(2) and 80.03(7)(a));
- (2) A petition is not filed unless a filing fee is also timely received on or before September 15 (*see* Wis. Admin. Code § ERC 80.03(2)); and
- (3) If a petition is not timely filed, the Commission will not conduct an annual certification election and the labor organization loses its status as the collective bargaining representative (*see* Wis. Admin. Code § ERC 80.03(7)(b)).

It is undisputed that the WASP petition was not timely filed under Wis. Admin. Code § ERC 80 because the petition was not received by the Commission on or before 4:30 p.m. on September 15, and the requisite filing fee was not received until September 16. It is also undisputed that the Commission has dismissed annual certification election petitions in similar circumstances under parallel administrative rule provisions (Wis. Admin. Code § ERC 71) governing municipal employee annual certification elections. *City of Cuba City Electric and Water Utility*, Dec. No. 34998 (WERC, 4/14); *Village of Sauk City*, Dec. No. 35003 (WERC, 4/14). Nonetheless, WASP contends that we should process its petition because: (1) § 111.83,

Stats, does not give the Commission the option of refusing to conduct a certification election; (2) the filing of a petition is not statutorily required; and (3) the WASP filing was sufficient to meet the purposes of § 111.83, Stats. We do not find these arguments to be persuasive.

Section 111.83 elections provide the mechanism by which unions that currently represent State employees for the purposes of collective bargaining can seek to retain that status. A union that currently so represents employees can choose to relinquish that status by electing not to seek such an election. In that statutory context, it cannot reasonably be argued that the § 111.83 use of the word “shall” and absence of a statutory reference to a “petition” means that unions interested in retaining their status as the bargaining representative cannot be required to express that interest (by filing a petition) within the timeframe (in this instance September 15) that allows for the orderly conduct of the “no later than December 1” election.¹ Therefore, particularly in light of our § 111.94 obligation to adopt rules that regulate elections, we conclude that requiring a timely petition to be filed as a prerequisite to our conducting a certification election is not at odds with the language of § 111.83, Stats.² Therefore, we have dismissed the petition.

Signed at the City of Madison, Wisconsin, this 14th day of November 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

¹ After a petition is received, time is needed to prepare and review voter eligibility lists, provide notice of the election to voters, and make other necessary logistical arrangements. Because the Commission is typically conducting multiple elections at the same time (305 in this November 5 – November 25, 2014 round) with thousands of eligible voters (more than 54,000 in this November 5 – November 25, 2014 round), a specific deadline is essential to the orderly conduct of the elections. Thus, to the extent WASP asserts that substantial compliance with the September 15 deadline should be sufficient, we reject that assertion.

² It is also important to acknowledge that the administrative rulemaking process provides the Legislature an opportunity to review and block the proposed promulgation of administrative rules if the Legislature believes their content to be at odds with the law. The Legislature allowed the Commission to adopt Wis. Admin. Code § ERC 80.