

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 150

Involving Certain Employees of  
ST. FRANCIS SCHOOL DISTRICT

DECISION NO. 35446

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**Appearances:**

Mathew R. Robbins, The Previant Law Firm, S.C., 1555 N. RiverCenter Drive, Suite. 202  
Milwaukee, appearing on behalf of the Service Employees International Union, Local 150.

John Thomsen, Superintendent of Schools, St. Francis School District, 4225 South Lake Drive,  
St. Francis, Wisconsin, appearing on behalf of the St. Francis School District.

**ORDER DISMISSING PETITION FOR ANNUAL CERTIFICATION ELECTION**

At 6:19 p.m. on September 15, 2014, the Wisconsin Employment Relations Commission (Commission) received a Petition for Annual Certification Election from the Service Employees International Union, Local 150 (Local 150), seeking an election to determine if certain St. Francis School District (District) employees represented by Local 150 for the purposes of collective bargaining wished to continue to be so represented. On September 16, 2014, the Commission received the filing fee applicable to the Petition.

On September 16, 2014, the Commission advised Local 150 and the District that, because the Petition and filing fee had not been received on or before 4:30 p.m. on September 15, 2014, it was anticipated that the Petition would not be processed.

On September 26, 2014, Local 150 filed argument asking that the Petition be processed and the certification election conducted. On October 6, 2014, the District advised the Commission that it was not taking a position as to the Local 150 request.

On October 14, 2014, the Commission advised the parties of its determination that the Local 150 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 Service Employees International Union, Local 150, is dismissed.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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

Section 111.70(4)(d)3.b. of the Municipal Employment Relations Act (MERA) provides in pertinent part:

Annually, the commission shall conduct an election to certify the representative of a collective bargaining unit that contains a general municipal employee. The election shall occur no later than December 1 for a collective bargaining unit containing school district employees ... .

\* \* \*

The commission shall assess and collect a certification fee for each election conducted under this subd. 3.b.

Section 111.71(1) of MERA provides in pertinent part:

The commission may adopt reasonable 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 § 111.71(1), Stats., the Commission adopted Wis. Admin. Code § ERC 70 to regulate the conduct of § 111.70(4)(d) annual certification elections. Wis. Admin. Code § ERC 70 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 §§ 70.01, 70.03(2) and 70.03(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 70.03(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 70.03(7)(b)).

It is undisputed that the Local 150 petition was not timely filed under Wis. Admin. Code § ERC 70 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, Local 150 contends that we should process its petition because: (1) § 111.70(4)(d)3.b., 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 Local 150 filing was sufficient to meet the purposes of § 111.70(4)(d)3.b., Stats. We do not find these arguments to be persuasive.

Section 111.70(4)(d)3.b. elections provide the mechanism by which unions that currently represent municipal 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 § 111.70(4)(d)3.b. 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.<sup>1</sup> Therefore, particularly in light of our § 111.71 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 § 111.40(4)(d)3.b., Stats.<sup>2</sup> Therefore, we have dismissed the petition.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner

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<sup>1</sup> 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 Local 150 asserts that substantial compliance with the September 15 deadline should be sufficient, we reject that assertion.

<sup>2</sup> 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 70.