

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Involving Certain Employees of
MILWAUKEE PUBLIC SCHOOLS

DECISION NO. 35447

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.

Donald L. Schriefer, Assistant City Attorney, Milwaukee City Attorney's Office, 200 E. Wells
Street, Room 800, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Public Schools.

ORDER DISMISSING PETITIONS FOR ANNUAL CERTIFICATION ELECTION

At 5:25 p.m. and 5:27 p.m., respectively, on September 15, 2014, the Wisconsin Employment Relations Commission (Commission) received two Petitions for Annual Certification Election from the Service Employees International Union, Local 150 (Local 150), seeking elections to determine if certain Milwaukee Public School (MPS) 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 fees applicable to the Petitions.

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

On September 26, 2014, Local 150 filed argument asking that the Petitions be processed and the certification elections conducted. On October 1, 2014, MPS filed argument opposing the Local 150 request and asking that the Commission issue a notice stating the consequences of the untimely filing.

On October 14, 2014, the Commission advised the parties of its determination that the Local 150 Petitions were not timely filed and therefore would not be processed further. This order confirms that determination.

ORDER

The Petitions 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

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

**MEMORANDUM ACCOMPANYING ORDER DISMISSING
PETITIONS 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 petitions were not timely filed under Wis. Admin. Code § ERC 70 because the petitions and filing fees were not received by the Commission on or before 4:30 p.m. on September 15. 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 petitions 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 filings were 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.¹ 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.² Therefore, we have dismissed the petitions.

As requested by MPS, we further provide notice pursuant to Wis. Admin. Code § ERC 70.03(7) that:

1. If no applicable collective bargaining agreement was in effect on September 15, 2014, Service Employees International Union, Local 150, lost its status as the collective bargaining representative of certain building service and food service employees of the Milwaukee Public Schools effective on 4:31 p.m., September 15, 2014. If an applicable collective bargaining agreement was in effect on September 15, 2014, Service Employees International Union, Local 150, loses its status as the collective bargaining representative of certain building service and food service employees of the Milwaukee Public Schools effective upon the expiration of said agreement.

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 Local 150 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 70.

2. The employees in question shall not be included in a substantially similar bargaining unit for at least one year following the applicable date in (1) above.

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