

Wisconsin School and Municipal Employee Unions Must Petition for Election by September 15 to Avoid Decertification

March 6, 2018

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Wisconsin Statutes Section 111.70(4)(d)(3) provides that, “Annually, the [Wisconsin Employment Relations Commission] shall conduct an election to certify the representative of the collective bargaining unit that contains a general municipal employee.” (The law does not cover public safety or transit employees.) A union must receive at least 51 percent of the vote in the annual certification election to remain or become the representative.

To implement that requirement, the Wisconsin Employment Relations Commission (WERC) promulgated rules requiring that any municipal or state employee union seeking a certification election file a petition by the close of business on September 15. If the union failed to file the petition, it would be decertified either as of September 15 or at the expiration of the existing bargaining agreement. The employees in the bargaining unit could not be included in a substantially similar bargaining unit for one year.

In *Wisconsin Association of State Prosecutors v. WERC*, No. 2015AP2224 (Wisconsin Supreme Court, February 28, 2018), several unions that missed the September 15 filing deadline sought a declaration that WERC’s rules were invalid “because the requirement that labor organizations file a petition for election as a condition precedent to holding a certification election irreconcilably conflicts with the statutory mandate that WERC hold annual certification elections.” The lower courts agreed and found “that the use of ‘shall’ in Wis. Stat. §§ 111.70(4)(d)3.b. and 111.83(3)(b) imposes a mandatory duty to hold an annual certification election” (regardless of whether any petition is filed) and that WERC lacked the power to impose a condition precedent to its statutorily mandated duty. WERC argued that the petition requirement was necessary because, without it, WERC would not know which labor organizations to include on the ballot.

The Wisconsin Supreme Court held that WERC had express statutory authority to issue rules to implement the election requirement, that WERC's rules were reasonable, and that WERC had the authority to decertify any union that did not meet the September 15 petition deadline. The Wisconsin Supreme Court agreed with WERC that its rules were a practical necessity to know which unions (if any) were interested in appearing on the ballot in an election.

This means that public sector unions must once again meet the strict September 15 deadline to file a petition of interest to appear on the ballot to continue to represent public sector employees, or WERC will decertify the union.

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