

Wisconsin Supreme Court
Tuesday, December 5, 2017
9:45 a.m.

2015AP2224 Wis. Assoc. of State Prosecutors v. Wis. Employment Relations Comm.

Supreme Court case type: Petition for Review

Court of Appeals: District I

Circuit Court: Milwaukee County, Judge John J. DiMotto, affirmed

Long caption: Wisconsin Association of State Prosecutors and Service Employees International Union, Local 150, plaintiffs-respondents, v. Wisconsin Employment Relations Commission, James R. Scott, and Rodney G. Pasch, defendants-appellants-petitioners

Issues presented: This case examines the recertification requirements for collective bargaining units under provisions of Wisconsin 2011 Act 10. The Supreme Court reviews whether rules promulgated by the Wisconsin Employment Relations Commission (Commission) relating to filing deadlines for petitions to seek recertification exceeded the commission's authority as established by the Legislature.

Some background: Wis. Admin. Code § ERC 80 and § ERC 70 require that labor unions representing state employees or municipal school employees annually file a recertification petition by the end of business hours on Sept. 15, if they wish to appear on the next annual election's ballot.

The Wisconsin Association of State Prosecutors (WIASP) is a labor organization, as defined by Wis. Stat. § 111.81(12), representing a bargaining unit consisting of all assistant district attorneys in Wisconsin as set forth in Wis. Stat. § 111.825(2)(d). Local 150 is the exclusive collective bargaining agent for building helpers and food service workers employed by Milwaukee Public Schools and custodians employed by the Saint Francis School District.

Here is a brief timeline of some of the significant events in this case:

- On Sept. 15, 2014, both WIASP and Local 150 filed petitions for certification with the Commission, but about an hour or so after the 4:30 p.m. close of business hours. WIASP and Local 150 submitted their filing fees the following day, on Sept. 16, 2014.
- On Sept. 16, 2014, the Commission notified both WIASP and Local 150 that their petitions were untimely because: (1) they were not filed prior to 4:30 p.m. on Sept. 15, 2014; and (2) the filing fees had not been received by that date.
- On Oct. 14, 2014, the Commission advised WIASP and Local 150 that the petitions were not timely filed, that the election petitions would not be processed, and that no recertification elections would be held.
- On Nov. 11, 2014, WIASP filed an action for a declaratory judgment and writ of prohibition seeking to invalidate the provision in Wis. Admin. Code § ERC 80 requiring an existing exclusive representative to file an election petition and seeking relief in the form of a recertification election. On Nov. 13, 2014, Local 150 filed a similar lawsuit concerning Wis. Admin. Code § ERC 70.

- On Nov. 14, 2014, the Commission issued formal decisions with respect to the petitions of WIASP and Local 150, concluding in part, that a timely petition must be filed as “prerequisite to our conducting a certification election.”
- Following the Commission’s decision to dismiss the petitions, WIASP and Local 150 requested a rehearing pursuant to Wis. Stat. § 227.49; these requests were denied.
- On Jan. 15, 2015, WIASP and Local 150 filed petitions for judicial review.
- On March 18, 2015, WIASP and Local 150 filed a motion for summary judgment seeking its requested declaratory judgment, writ of prohibition, and orders setting aside the Commission’s decision dismissing the plaintiffs’ petitions for recertification elections.
- On July 31, 2015, the trial court issued a written order declaring those provisions of Wis. Admin. Code §§ ERC 70 and 80 requiring an existing exclusive representative to file a petition in order to qualify for a recertification election invalid. The trial court’s order also reversed the Commission’s decision denying the plaintiffs’ recertification elections under Wis. Stat. §§ 111.83(3)(b) and 111.70(4)(d)3.b., and directed the Commission to hold such elections.

Following the circuit court’s July 31, 2015 order, annual recertification elections were conducted in the fall of 2015 for both the WIASP and Local 150.

The Commission appealed the circuit court’s order, unsuccessfully. It argued that the provisions of Wis. Admin. Code §§ ERC 70 and 80 at issue are presumptively valid and reasonable, and that they do not exceed the Commission’s statutory authority. The Court of Appeals noted that when a statute and an administrative rule conflict, the statute prevails. *See DeBeck v. DNR*, 172 Wis. 2d 382, 388, 493 N.W.2d 234 (Ct. App. 1992). The Court of Appeals ruled that, because the Legislature instructed that the Commission “shall” conduct an election to certify the representative of a collective bargaining unit that contains a general employee, the Commission failed to do something that was obligatory.

The Commission argued that without requiring the filing of an election petition, the Commission would have no way of knowing whether the incumbent labor organization maintains an “interest” in representing the general employees. The Commission further argued that holding elections without requiring the filing of a petition would lead to the absurd result of holding an election without any names on the ballot.

The Court of Appeals ruled that under plain language of the statute, an incumbent labor organization remains the representative of the bargaining unit until it is decertified by the Commission after the votes are tallied.

The Commission contends that its enactment of Wis. Admin. Code §§ ERC 70 and 80 fell within its legislatively delegated authority to promulgate reasonable rules. The Commission also argues that the “shall conduct an election” language in §§ 111.83(3)(b) and 111.70(4)(d)3.b. does not impose a bar on requiring the filing of an election petition.

WIASP and Local 150 argue that if the statutes were intended to require an election petition as a prerequisite for holding a recertification election, the Legislature would not have used the mandatory term “shall” in directing the Commission to hold a recertification election. But the Legislature chose to use the word “shall,” and the statute trumps the Commission’s rules.