

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of  
GATEWAY FEDERATION OF TEACHERS,  
LOCAL 1924

Involving Certain Employees of

KENOSHA VOCATIONAL, TECHNICAL AND  
ADULT EDUCATION DISTRICT NO. 6 (GATEWAY  
TECHNICAL INSTITUTE)

Case VI  
No. 18678 ME-1144  
Decision No. 14381-B

Appearances:

Goldberg, Previant and Belmen, Attorneys at Law, by Mr. Thomas J. Kennedy, for the Petitioner.  
Mulcahy and Wherry, S.C., Attorneys at Law, by Mr. John T. Coughlin, for the Municipal Employer.  
Mr. Wayne Schwartzman, Staff Counsel, Wisconsin Education Association for the Gateway Technical Education Association, a/k/a Kenosha Technical Education Association.

ORDER DISMISSING OBJECTIONS TO CONDUCT OF ELECTION  
AND RULING ON CHALLENGED BALLOTS  
AND  
CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Direction of Election previously issued by it in the above entitled matter, the Wisconsin Employment Relations Commission, on March 30, 1976, conducted an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employes of Kenosha Vocational, Technical and Adult Education District No. 6 (Gateway Technical Institute) specifically in an appropriate collective bargaining unit consisting of

"All full-time and regular part-time instructional personnel, including teachers, counselors, librarians, program chairmen, developers, Opportunity Center teachers, certified teaching assistants, and aviation teaching assistants, but excluding the ABE teachers and the ABE Counselor, the Recruiters, the Women's Bureau Counselors, the Consumer Consultant, Community Services Division instructional personnel, supervisory, managerial and confidential employes, custodial employes and clerical employes, and all other employes."

to determine whether said employes desired to be represented by Gateway Federation of Teachers, Local 1924, or by Kenosha Technical Education Association, or by neither; that, following the counting of the ballots, the parties, as well as the Commission's agent supervising the election, executed a tally sheet, reflecting the results as follows:

1.	Total number claimed eligible to vote . . . . .	182
2.	Total ballots cast . . . . .	162
3.	Total ballots challenged . . . . .	9
4.	Total ballots void . . . . .	0
5.	Total ballots blank . . . . .	1
6.	Total valid ballots counted . . . . .	152
7.	Ballots cast for Gateway Federation of Teachers, Local 1924 . . . . .	80
8.	Ballots cast for Kenosha Technical Education Association . . . . .	69
9.	Ballots cast for no representation . . . . .	3

As apparent in said tally, the challenged ballots could possibly affect the results of the election. Further, Gateway Technical Education Association (Kenosha Technical Education Association) having timely filed objections to the conduct of the election. Pursuant to an Order issued by it, the Commission, on May 25, 1976, by Hearing Officer Amedeo Greco, conducted a hearing at Kenosha, Wisconsin, during which the parties were afforded the opportunity to present evidence and argument with respect to the matters in issue, and following the close of the hearing, all parties having filed post-hearing briefs; and the Commission having considered the record, the arguments and briefs of counsel, and being satisfied that the objections to the conduct of the election are without merit, that the challenges to the ballots of six individuals should be sustained, that the challenges to the ballots of three individuals be overruled, inasmuch as the three remaining challenged ballots do not affect the result of the election, and further that, the result should be certified;

NOW, THEREFORE, it is

ORDERED

1. That the objections to the conduct of the election filed herein be, and the same hereby are, denied and dismissed.

2. That the challenges to the ballots of John Hamill, Gregory Hanson, Elizabeth Hayes, Mike Klett, Donald Meracle, and Pat Lanke be, and the same hereby are, sustained; and therefore said individuals are not included among the employes eligible to vote in the election involved herein.

3. That the challenges to the ballots of Terry Sullivan, Pat Cease, and Theresa Hanson be, and the same hereby are, overruled, and therefore said individuals are included among the employes eligible to vote in the election involved herein.

4. That the blank ballot be, and the same hereby is, deemed not to be a "cast" ballot.

NOW, FURTHER THEREFORE, by virtue of, and pursuant to the power vested in the Wisconsin Employment Relations Commission by Section 111.70 (4)(c)3 of the Municipal Employment Relations Act;

1. The Commission concludes that the final result of the election is as follows:

a. Total number eligible to vote . . . . .	176
b. Total valid ballots cast . . . . .	155
c. Total valid ballots remaining closed . . . . .	3 <u>a/</u>
d. Total valid ballots counted . . . . .	152
e. Ballots cast for Gateway Federation of Teachers, Local 1924 . . . . .	80
f. Ballots cast for Kenosha Technical Education Association . . . . .	69
g. Ballots cast for no representation . . . . .	3

2. IT IS HEREBY CERTIFIED that Gateway Federation of Teachers, Local 1924, has been selected by a majority of the eligible employes of Kenosha Vocational, Technical and Adult Education District No. 6 (Gateway Technical Institute), who voted at said election, in the bargaining unit consisting of

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a/ Since said three ballots will not affect the results of the election, they shall remain sealed.

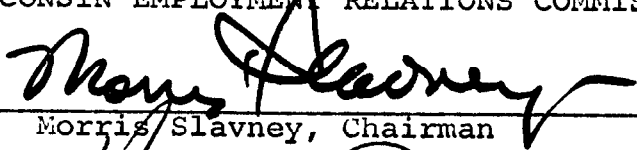
"All full-time and regular part-time instructional personnel, including teachers, counselors, librarians, program chairmen, developers, Opportunity Center teachers, certified teaching assistants, and aviation teaching assistants, but excluding the ABE teachers and the ABE Counselor, the Recruiters, the Women's Bureau Counselors, the Consumer Consultant, Community Services Division instructional personnel, supervisory, managerial and confidential employes, custodial employes and clerical employes, and all other employes."

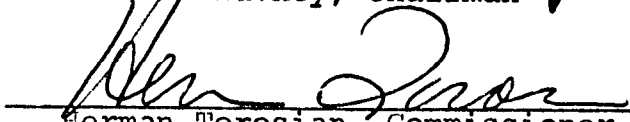
as their representative, and that pursuant to the provisions of the Municipal Employment Relations Act, said Union is the exclusive collective bargaining representative of all the employes in said unit for the purposes of collective bargaining with the above named Municipal Employer, or its lawfully authorized representatives, on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 29th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER DISMISSING OBJECTIONS  
TO CONDUCT OF ELECTION AND RULING ON CHALLENGED  
BALLOTS AND CERTIFICATION OF RESULTS OF ELECTION

The Objections

In its objections to the conduct of the election, the Association contended as follows:

- "1. The eligibility list furnished by the employer did not reflect the total number of employees that fall within the unit description in Decision No. 14381. Specifically, the undersigned has reference to a grossly incomplete listing of the regular part time classification. Said conduct by the Employer severely hampered the Intervenor in its organizing efforts.
2. During the week prior to the election, the Employer furnished the Intervenor with an amended eligibility list adding approximately eighteen (18) names to the list it had originally submitted. Said conduct by the Employer did not allow Intervenor enough time to contact the additions to the list.
3. The correct name of the Intervenor was listed incorrectly on the ballot. Intervenors [sic] correct name is Gateway Technical Education Association. The ballot reflected Intervenor's name as Kenosha Technical Education Association. The Commission when notified by an agent of Intervenor that the error had been made was told that it was too late to remedy the situation.
4. The eligibility list which was used by the observers at the election differed from the list submitted by the Employer."

The Employer and Local 1924, on the other hand, both maintain that the election was conducted properly and urge that the objections should be dismissed in their entirety.

As to the eligibility list, it is true, as the Association points out, that the initial list of March 16, supplied by the Employer, omitted the names of certain regular part-time employees who were eligible to participate in the election. However, the Employer on March 24 provided a corrected list to the parties, which contained the names of those regular part-time employees, thus adding 20 more employees to the eligibility list. The parties therefore had knowledge of said added employees at least six days prior to the scheduled March 30 election.

The purpose of furnishing the eligibility list to the unions involved in an election is to provide a reasonable time prior to the election for examination of such list in order to properly challenge the eligibility of any of the individuals listed thereon. b/ The Commission does not require that the list contain the addresses of the employees thereon, c/ and therefore the Commission does not view the eligibility list as a vehicle for organization purposes. Accordingly,

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b/ Stoughton Hospital Association (10436), 8/71.

c/ Ibid.

and inasmuch as the record does not establish that any employes failed to vote because of the Employer's earlier inadvertence in omitting certain names from the eligibility list, and because the Association has failed to prove that the Employer's second list was incomplete, d/ the Commission concludes that the Employer's inadvertence with regard to the initial list did not affect the results of the election. It therefore dismisses said objection.

The Association also contends that the election ballot incorrectly listed its name as "Kenosha Technical Education Association" when in fact it's correct name is "Gateway Technical Education Association", and that upon hearing of this fact, the Association immediately requested the Commission to print new ballots to reflect its correct name, that the Commission refused to do so, that voters were confused by the ballot's failure to reflect the Association's correct designation, and that, therefore, the election should be set aside.

The record discloses that the Association's prior name was "Kenosha Technical Education Association" (KTEA), and that its name was changed in May, 1975, to "Gateway Technical Education Association". However, in the hearing on the election petition, held in April and May, 1975, the Association intervened under its original name. In its brief filed with the Hearing Officer on September 9, 1975, the Association referred to itself under its original name. The Direction of Election, issued on March 1, 1976, referred to the Association under its original name and a copy thereof was sent to Jane Rocque, President, Kenosha Technical Education Association. Notices of the election, required to be posted by the Employer, were sent to the parties on March 22, 1976, and referred to the Association under its original name. Said Notice contained a sample ballot listing the Association under its original name.

It was not until late in the afternoon of Thursday, March 25, or early Friday, March 26, after the ballots had been already printed, and within only a few days of the March 30 election, with an intervening weekend, that the Association first called the Commission's attention to its change in name. Reprinting of the ballots would have delayed the holding of the election. Further, the election involved the use of mail ballots which were sent to certain employes prior to March 25. Under all the aforementioned circumstances, we conclude that said objection is without merit.

#### The Challenged Ballots

The ballots of nine individuals were challenged during the conduct of the election. During the hearing, the Employer and both organizations agreed that three of said individuals, namely Terry Sullivan, Pat Cease and Theresa Hanson are in the unit and eligible to vote. The Employer challenged the ballots of the remaining six individuals, contending that they fall within the exclusions set forth in the unit found to be appropriate by the Commission. Both organizations contend otherwise, and urge the Commission to include their ballots in the final results of the election. Four of the six, namely, John Hamill, Gregory Hanson, Elizabeth Hayes, and Mike Klett are employed in the Employer's Community Services Division, and teach driver's education for approximately 18-24 hours per week. It should be noted that the unit specifically excludes, among others, "Community Services Division instructional personnel". Accordingly, said four individuals are excluded from the unit, and are not eligible to vote, and therefore the challenges to their ballots

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d/ The only evidence adduced at the hearing on this point by the Association centered on testimony which was either hearsay in nature or incomplete, and which, as such, was lacking in any probative value.

have been sustained. Likewise, the challenges to the ballots of Donald Meracle, who teaches adult education and adult high school courses, also in the Community Services Division, and of Pat Lauke, who is also employed in said division, are sustained.

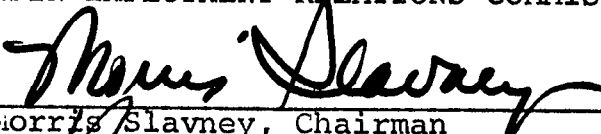
One employe cast a blank ballot. The Commission's agent mistakenly included said ballot in the original tally as a "cast ballot". Blank ballots are not considered by the Commission as a valid ballot. e/ Another employe, who was among the employes receiving mail ballots, deleted his or her name on the envelope returning the ballot (in an additional sealed envelope), thus making it impossible to determine the identity of the employe so voting. If said ballot were to be included in the results, there exists the possibility that the same employe could have cast two ballots, one by mail, and the other in person. Therefore, the Commission will not include that ballot as being "cast".

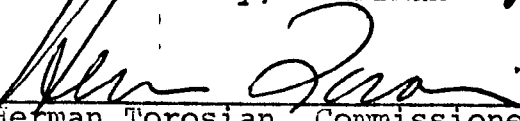
Since it is apparent from the final tally that the ballots of Terry Sullivan, Pat Cease and Theresa Hanson would not affect the final results of the balloting, the Commission sees no need to order that their ballots be opened and counted.

The results of the election indicates that a majority of the employes in the unit has selected Gateway Federation of Teachers, Local 1924, as the bargaining representative and we have so certified such results.

Dated at Madison, Wisconsin this 29th day of June, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

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e/ Dickten and Masch Manufacturing Company (4648), 12/57.