

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WAUKESHA COUNTY TECHNICAL EDUCATORS
ASSOCIATION/WEAC/NEA**

Involving Certain Employees of
WAUKESHA COUNTY TECHNICAL COLLEGE

Case 3 Case 99
No. 14667 No. 56024
ME-661 ME-3650

Decision No. 11076-G

In the Matter of the Petition of
**WAUKESHA COUNTY TECHNICAL COLLEGE
PART-TIME UNITED FACULTY/WEAC/NEA**

Involving Certain Employees of
WAUKESHA COUNTY TECHNICAL COLLEGE

Case 100
No. 56025
ME-3651

Decision No. 29564-D

Appearances:

Ms. Leigh Barker, Wisconsin Technical College System Consultant, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Waukesha County Technical Educators Association, WEAC, NEA and the Waukesha County Technical College Part-Time United Faculty/WEAC/NEA.

Quarles & Brady, S.C., by **Attorney Michael Aldana**, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of Waukesha County Technical College.

Dec. No. 11076-G
Dec. No. 29564-D

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 60 days from the date of this Direction among all regular full-time and regular part-time unrepresented professional employees of the Waukesha County Technical College excluding supervisors, and confidential, managerial and executive employees who were employed on April 23, 2001 and who worked a minimum of 12 hours of unrepresented instructional work in the Spring 2001, Fall 2000 or Summer 2000 semesters, except such employees as may prior to the election, quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented for the purposes of collective bargaining by the Waukesha County Technical Educators Association or desire to be unrepresented.

If a majority of the voting employees elect to be so represented by the Association, all currently unrepresented professional employees and all professional employees in the existing Association bargaining unit will then be combined in a new collective bargaining unit consisting of all regular full-time and regular part-time professional employees of the Waukesha County Technical College excluding supervisors and confidential, managerial and executive employees.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of April, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Waukesha County Technical College

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In a January 22, 2001 decision, Waukesha County Circuit Court Judge Foster concluded that the Commission erred when it did not allow employees who were already represented for the purposes of collective bargaining by the Association to vote in an election conducted in April, 1999. Judge Foster remanded the matter to the Commission for further proceedings consistent with her decision.

Neither the Commission nor the College elected to appeal Judge Foster's decision and the matter is now ripe for the conduct of a new election. However, the parties have a disagreement over voter eligibility that needs to be resolved before a new election can be conducted.

Contrary to the College, the Association contends that the eligible voters in the upcoming May 2001 election should include all current WCTC employees who do not meet the general agreed upon eligibility standard of 12 hours of unrepresented work in any of the last three semesters but who either were eligible to vote in the 1999 election or who should have been eligible to vote under Judge Foster's decision. The Association argues that it is only fair to now allow employees to vote who were improperly denied that opportunity in 1999.

At least as to the employees who we did not allow to vote in 1999, the Association is in effect making a "make whole" argument. If an employee should have been able to vote in 1999 but was improperly denied that opportunity, the only way to make that employee whole is to allow them to vote now. While that argument has some appeal, we conclude that granting the Association's request would be so at odds with the fundamental premises behind voter eligibility determinations that it must be denied.

In WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NOS. 11076-C, 29564 (WERC, 2/99) at page 14:

Absent agreement of the parties, our standard practice is to use the date the Direction of Election is issued as the basis for determining voter eligibility. **This practice reflects the obviously appropriate interest in having the most current employe complement determine the question of representation.** (emphasis added).

Here, as directed by Judge Foster, the election will determine whether employees performing evening work wish to be represented by the Association for the purposes of collective bargaining. As reflected in the above quoted decision, those presently performing evening work have the most direct interest in the outcome of the election and, given their current or recent work assignments, are best positioned to evaluate whether they wish to be represented.

In contrast, the employees the Association asserts should be eligible have not performed the requisite amount of unrepresented work for at least a year and may never perform such work in the future. These employees simply do not have a sufficient present interest in the election to warrant eligibility.

Dated at Madison, Wisconsin this 23rd day of April, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner