

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**FIRE FIGHTERS LOCAL 311,  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS**  
Involving Certain Employees of  
**MIDDLETON FIRE PROTECTION DISTRICT**

Case 1  
No. 64341  
ME-4017

**Decision No. 31247-A**

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**Appearances:**

**Joseph M. Conway, Jr.**, President, Fire Fighters Local 311, IAFF, 821 Williamson Street, Madison, Wisconsin 53703, appearing on behalf of Fire Fighters Local 311, International Association of Fire Fighters.

**Philip C. Stittleburg**, Jenkins and Stittleburg, Attorneys at Law, P.O. Box 9, La Farge, Wisconsin 54639-0009, appearing on behalf of the Middleton Fire Protection District.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On March 25, 2005, Fire Fighters Local 311, International Association of Fire Fighters, filed objections to the conduct of the March 21, 2005 election held by the Wisconsin Employment Relations Commission to determine whether certain employees of the Middleton Fire Protection District wished to be represented by Local 311 for the purposes of collective bargaining with the District. Local 311 asserted that only three employees were eligible to vote and that the Wisconsin Employment Relations Commission erred by allowing a fourth employee to cast a ballot.

Following unsuccessful attempts by the parties to resolve the matter, hearing on the objections was held by Examiner Peter Davis on May 3, 2005 in Madison, Wisconsin. The parties made oral argument at the conclusion of the hearing and the record was closed on May 10, 2005, with the receipt of an additional exhibit.

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Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### FINDINGS OF FACT

1. Fire Fighters Local 311, International Association of Fire Fighters, herein Local 311, is a labor organization.

2. The Middleton Fire Protection District, herein the District, is a municipal employer.

3. On December 30, 2004, Local 311 filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether the District's "full-time paid Code Enforcers" wished to be represented by Local 311 for the purposes of collective bargaining with the District. The petition was served on the District along with a cover letter asking the parties if they could agree that a "full-time paid Code Enforcer" unit was appropriate and, if so, on the names of the employees who were eligible to vote.

4. On January 27, 2005, the Commission received a Stipulation for Election signed by the District and Local 311 whereby they agreed to an election in a "full-time paid Code Enforcer" unit and that Tom Weber, Bob Weber and Brad Subera were eligible to vote.

5. On February 1, 2005, Commission employee Davis sent the following memo to both parties:

I have received the Stipulation for Election. As I have indicated to you both, the WERC has a legal obligation to limit the number of potential bargaining units that might exist for any one employer. Therefore, we will modify the existing "full-time" only unit description to read:

All regular full-time and **regular part-time** paid Code Enforcers. . . .

To make sure that sometime in the future we are not asked to create a unit of part-time Code Enforcers if the District were to employ such individuals.

As I understand it, there is a regular part-time Code Enforcer position now but that position is being converted into a full-time job and has not yet been filled. Therefore, only the three employees you have listed are eligible to vote. If the Union wins the election and if the new full-time job is filled, the Union will represent that new employee as well (sic) the three current employees.

Neither party thereafter objected to the content of the February 1, 2005 memo.

6. On February 21, 2005, the Commission issued a Direction of Election in a unit of "all regular full-time and regular part-time Code Enforcers." Because the election would be conducted by mail ballot, the Commission asked that the District provide the home addresses of the eligible voters to Commission employee Georgann Kramer. On February 25, 2005, the District provided Kramer with the home addresses of Tom Weber, Bob Weber, and Brad Subera and added the name and address of Casey Kakuske who the District identified as a regular part-time employee. Local 311 did not receive a copy of the District's February 25, 2005 submission and Commission employees Davis and Kramer did not confer about the addition of a fourth voter.

7. On March 1, 2005, ballots were mailed to Tom Weber, Bob Weber, Brad Subera and Casey Kakuske. On March 21, 2005, Kramer counted the four ballots that had been cast and advised the parties that two ballots had been cast for no representation and two ballots had been cast for representation by Local 311.

8. On March 22, 2005, Commission employee Davis sent the parties the following memo:

This will confirm that Mr. Conway called me 3/21 and asked how four votes were cast when the Stipulation and initialed eligibility list and confirming 2/1/05 memo from me (all attached) reflect only three eligible voters.

I reviewed the file and found a 2/25 email from Aaron Harris to Georgann Kramer providing the names and addresses of four eligible voters which Ms. Kramer then used when conducting the mail ballot.

Please contact me by phone, letter, or email ([peter.davis@werc.state.wi.us](mailto:peter.davis@werc.state.wi.us)) to discuss how we should proceed. In the meantime, I would suggest that Mr. Conway file objections to the conduct of the election. If filed within 5 working days of Mr. Conway's receipt of the election Tally Sheet, the objections will postpone any Certification of the election results until we come (sic) with an acceptable way of resolving this matter. If we can't find a voluntary solution, then the Commission will decide how it wishes to proceed and either certify the election results or order that another election be conducted.

I apologize for the role we obviously played in this situation and hope that we can find an acceptable solution.

On March 25, 2005, Local 311 filed objections to the conduct of the election.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

**CONCLUSIONS OF LAW**

1. The District and Local 311 are bound by the terms of the February 1, 2005 memo regarding who is eligible to vote in the election.
2. Casey Kakuske was not eligible to vote in the election.
3. It is appropriate to conduct a new election in which the eligible voters are Tom Weber, Bob Weber and Brad Subera.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

**ORDER**

Pursuant to Sec. 111.70(4)(d)2.a., Stats., a new election shall be conducted within 45 days of the date of this Order for the purpose of determining whether all regular full-time and regular part-time Code Enforcers wish to be represented for the purposes of collective bargaining by Local 311.

Given under our hands and seal at the City of Madison, Wisconsin, this 8<sup>th</sup> day of June, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**Middleton Fire Protection District**

**MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

In our view, the resolution of Local 311's objections turns on the February 1, 2005 memo set forth in Finding of Fact 5. That memo confirms that although there was a regular part-time Code Enforcer, the parties had agreed that only the three full-time employees were eligible to vote because the status of that part-time position was in flux and the identity of the new full-time employee was unknown.<sup>1</sup> Having reached that agreement, the parties must honor it. To hold otherwise opens the door to the delay and uncertainty which these parties have experienced. Therefore, we have sustained Local 311's objection to our allowing Kakuske to vote and we will conduct the election again among the original three eligible voters.

Dated at Madison, Wisconsin, this 8<sup>th</sup> day of June, 2005.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

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<sup>1</sup> The evidence presented at hearing is not inconsistent with the personnel scenario recited in the February 1, 2005 memo.