

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
AFT-WISCONSIN, AFL-CIO
Involving Certain Employees of
UNIVERSITY OF WISCONSIN SYSTEM (SUPERIOR)

Case 66
No. 70486
FE-5

Decision No. 33294-A

Appearances:

Donna Dahlvang, Senior Student Services Coordinator, University of Wisconsin-Superior, 110 Old Main, P.O. Box 2000, Belnap & Catlin, Superior, Wisconsin 54880, appearing on her own behalf

Rob Russell, Organizer, AFT-Wisconsin, 6602 Normandy Lane, Madison, Wisconsin 53719, appearing on behalf of AFT-Wisconsin, AFL-CIO.

Christopher Ashley, Deputy General Counsel, University of Wisconsin System, 1802 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706, appearing on behalf of the University of Wisconsin-Superior.

CERTIFICATION OF REPRESENTATIVE

Pursuant to a Direction of Election issued May 2, 2011, the Wisconsin Employment Relations Commission conducted an election on May 17 and 18, 2011 pursuant to Sec. 111.990, Stats., to determine whether certain academic staff employees of the University of Wisconsin System (Superior) wished to be represented by AFT-Wisconsin, AFL-CIO for the purposes of collective bargaining with the University of Wisconsin System.

The result of the election was as follows:

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1.	Total claimed number eligible to vote	<u>174</u>
2.	Total ballots cast	<u>106</u>
3.	Total ballots challenged	<u>12</u>
4.	Total valid ballots counted	<u>94</u>
5.	Ballots cast for AFT-Wisconsin, AFL-CIO	<u>89</u>
6.	Ballots cast for no representation	<u>5</u>

On May 26, 2011, Donna Dahlvang filed a statement with the Commission raising concerns as to whether sufficient steps were taken to make eligible voters aware of the election and whether all eligible voters were properly identified.

On June 6, 2011, AFT-Wisconsin filed a response to Dahlvang's statement asserting that she lacked standing to file objection to the conduct of the election under ERC 61.11 and 11.11 and that her concerns were without merit, and asking that the Commission proceed to certify the election results. On June 9, 2011, the University filed a response to Dahlvang which echoed the position of AFT-Wisconsin. Dahlvang's opportunity to reply to the position statements of AFT-Wisconsin and the University expired on June 15, 2011.

Pursuant to ERC 61.11, ERC 11.11 is the administrative rule that governs the filing of objections to the conduct of this election. ERC 11.11(1) states in pertinent part:

Within 8 days after receiving the tally of ballots, any party may file with the Commission objections to the conduct of the election or conduct affecting the results of the election.

As noted above, AFT-Wisconsin and the University contend that Dahlvang is not a "party" within the meaning of ERC 11.11 and thus that she lacks standing to file an objection to the May 17-May 18 election. We agree. While ERC 11.11 does not contain a specific definition of "party", we think it apparent from its usage throughout ERC 11¹ that "party" status is limited to the entity that filed the election petition, the employer, and any

¹ **ERC 11.01 Scope.** This chapter governs the general procedure for filing and processing of a petition to determine a collective bargaining representative or an appropriate bargaining unit of municipal **employees** under s. 111.70 (4) (d), Stats., or of supervisory law enforcement or supervisory fire fighter **personnel** under s. 111.70 (8) (b), Stats.

ERC 11.02 Petition for election. (1) WHO MAY FILE. A petition to determine a collective bargaining representative or an appropriate collective bargaining unit may be filed by a municipal employee or law enforcement or fire fighting supervisor, or by a labor organization acting on their behalf, or by a municipal employer or anyone authorized to act on its behalf.

(2) FORM, NUMBER OF COPIES, AND FILING. The petition shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the **party** or representative filing the petition. A petition is not filed unless it contains the required signature or signature facsimile and unless and until the petition has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The petition shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the petition is filed in paper form, a total of 2 copies of the petition shall be included. If a showing of interest in support of the petition is required by sub. (3), the showing of interest shall be transmitted to the commission in paper form by physical delivery or mail. A petition requiring a showing of interest is not filed until both the petition and the showing of interest have been received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1).

(3) SHOWING OF INTEREST. If the petition is filed by other than the municipal employer, and if any or all of the personnel in the bargaining unit claimed appropriate in the petition are currently represented for purposes of collective bargaining by other than the petitioner, then the petition shall be supported by a showing of interest in writing, containing the printed names and signatures of at least 30% of the **personnel** in the collective bargaining unit involved, the dates on which the signatures were executed, and a statement that the **personnel** signing support the petitioner's request for an election.

(4) CONTENTS. The petition shall include all of the following:

(a) The name, address and affiliation, if any, of the petitioner, and the name, address and phone number of its principal representative. Fax numbers and email addresses shall be included, if available.

(b) The name and address of the municipal employer involved, if the municipal employer is not the petitioner, and the name, address and phone number of its principal representative. Fax numbers and email addresses shall be included, if available.

(c) A description of the claimed appropriate collective bargaining unit, specifying inclusions and exclusions, as well as the approximate number of **personnel** in the unit.

(d) The names and addresses of any known labor organizations who claim to represent any of the **personnel** in the claimed appropriate collective bargaining unit.

(e) A brief statement setting forth the nature of the question that has arisen concerning representation or unit determination.

(f) Any other relevant facts.

ERC 11.03 Withdrawal of petition. Any petition may be withdrawn at any time prior to the issuance of a final order based on it, by motion granted by the commission. A motion to withdraw shall be granted unless withdrawal would result in an injustice to any **party**.

ERC 11.04 Stipulation for election. (1) WHO MAY FILE. Where a municipal employer, and an individual municipal **employee** or law enforcement or fire fighting supervisor or a labor organization acting on their behalf, and the exclusive representative, if any, of an existing unit agree that a question of representation or unit determination has arisen concerning municipal **employees** or concerning supervisory law enforcement or fire fighting **personnel**, those parties may jointly file a stipulation for an election to resolve that question. A stipulation to determine a collective bargaining representative may be filed either to initiate an election proceeding or subsequent to the filing of a petition and prior to a direction of election based on a hearing on the petition.

(2) **FORM, NUMBER OF COPIES, FILING AND SERVICE.** The stipulation shall be in writing on a form provided by the commission, or a facsimile of the commission's form, and shall include the signature or a facsimile of the signature of the **parties** or representatives filing the stipulation. A stipulation is not filed unless it contains the required signatures or signature facsimiles and unless and until the stipulation has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The stipulation shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the stipulation is filed in paper form, a total of 2 copies of the stipulation shall be included.

(3) **CONTENTS.** The stipulation shall include all of the following:

(a) The names and addresses of the **parties** on whose behalf the election is stipulated, and the names, addresses and phone numbers of the **parties'** principal representatives. Fax numbers and email addresses shall be included, if available.

(b) An agreement that a hearing is waived and requesting the commission to conduct an election.

(c) A description of the collective bargaining unit agreed to be appropriate by the parties.

(d) A complete list of **personnel** agreed upon by the **parties** as being included in the collective bargaining unit and eligible to vote.

(e) Suggested days of the week, time and place for the conduct of the election.

(4) **PROCEDURE FOR RESOLVING ELECTION-RELATED DISPUTES.** Questions arising in connection with the conduct of, or results of, the election shall be processed in accordance with the procedures following an election directed as a result of a hearing under s. ERC 11.07.

ERC 11.05 Commission pre-hearing action on petition. (1) SERVICE OF PETITION. Upon receipt of a petition, the commission shall serve a copy of the petition on all interested **parties** identified in the petition.

(2) **DETERMINATION OF SHOWING OF INTEREST.** In cases in which a showing of interest is required under s. ERC 11.02 (3), the commission shall determine the sufficiency of the showing of interest.

(a) *Furnishing of personnel list by municipal employer.* The municipal employer involved shall, within a period of time established by the commission, furnish in writing to the commission a list containing the names of the **personnel**, in alphabetical order, employed in the collective bargaining unit involved. The period of time for furnishing a list of **personnel** may be extended by the commission for good cause shown.

(b) *Determination.* The commission shall determine the sufficiency of the showing of interest upon the receipt from the employer of the names of the **personnel** in the bargaining unit. No party, other than the party submitting the showing of interest, may receive a copy of, or examine, the showing of interest. The commission shall inform all **parties** as to its determination regarding the sufficiency of the showing of interest. The commission shall not reveal the number or identity of persons supporting a showing of interest.

(3) **CONCILIATION.** If the commission determines that further proceedings are warranted, the commission may cause an effort to reach informal settlement of all or part of an election petition to be undertaken by a commission designee. A conciliator so designated shall attempt through mediation to assist the parties in reaching an informal agreement resolving some or all of the issues that might otherwise require a hearing. The pendency of conciliation shall not preclude the scheduling or conduct of a hearing if scheduling is specifically requested by any party prior to the conclusion of conciliation. If the conciliator concludes that further conciliation efforts are unlikely to produce a settlement, the processing of the case shall proceed, including the scheduling of a hearing, if appropriate.

(4) **NOTICE OF HEARING.** (a) *When issued.* Following the filing of a petition and following conciliation, if further proceedings are warranted, the commission or assigned examiner shall schedule a date and time for the hearing and serve all parties and their representatives with a notice of hearing.

(b) *Contents.* The notice of hearing shall include all of the following:

1. A statement of the time, place, and nature of the hearing, including a statement that the election proceeding is a class 1 proceeding as defined in s. 227.01 (3) (a) to (c), Stats. Unless the **parties** have agreed otherwise or unless the commission or examiner finds that an emergency requires otherwise, the hearing shall be held not less than 10 days after the notice of hearing is served. The hearing may be rescheduled in the manner prescribed in s. ERC 18.06 (2) (d).

2. A statement of the legal authority and jurisdiction under which the hearing is to be held.

3. A statement that the purpose of the hearing is to determine whether the unit described in the petition is an appropriate unit, and, if so, to determine the issues, if any, with respect to whether there exists a question of representation or unit determination among the eligible **personnel** in that unit.

4. A statement that all **parties** are required to have with them for examination at the hearing any contract or correspondence between the municipal employer and any labor organization or person representing any of the **personnel** of the municipal employer relating to the representation of the municipal employer's personnel.

5. A statement that the municipal employer is required to have for examination at the hearing an organizational chart, if any, setting forth its entire organizational structure and a list setting forth the names of all the **personnel**, and their classifications or positions in the employ of the municipal employer.

ERC 11.06 Motions. Practice and procedure regarding motions in election proceedings shall be as set forth in s. ERC 18.06.

ERC 11.07 Hearings. Practice and procedure regarding hearings in election proceedings shall be as set forth in s. ERC 18.08.

ERC 11.08 Direction of election or other dispositional order. As soon as possible after submission of the case, the commission shall, in writing, either direct an election, dismiss the petition, or make other orders regarding the disposition of the petition or stipulation. In cases where the commission is directing an election, the direction shall establish the date on or before which an employee shall have been employed to be eligible to vote. In cases where the commission is resolving issues of fact or law, the commission's order shall be accompanied by its findings of fact and conclusions of law, and may be made available to the public through the commission website and in other commission publications.

ERC 11.09 Elections. (1) **NATURE OF BALLOTING; BY WHOM CONDUCTED; EXTENSION OF TIME TO CONDUCT.** All elections shall be conducted by secret ballot and under the supervision of the commission. The commission shall determine on a case by case basis whether balloting shall be conducted on-site or by mail. The time within which the commission has directed an election to be conducted may be extended by the commission.

(2) **NOTICE OF ELECTION.** The municipal employer shall post notices to **personnel** concerning the election and the commission's policy on absentee ballots, at times, locations and in a form specified by the commission.

(3) **OBSERVERS.** Any **party** may be represented by observers, selected in accordance with limitations, if any, established by the commission.

(4) **CHALLENGE OF VOTERS.** Any observer or commission agent conducting the election may challenge, for good cause, the eligibility of any **person** to vote in the election. The challenged ballots shall be impounded without being opened or counted.

(5) **COUNT AND TALLY OF BALLOTS.** Upon the conclusion of the election, the ballots shall be counted in the presence of the **parties** or their observers, and the commission agent conducting the election shall furnish a tally of ballots to the **parties**.

(6) **INCONCLUSIVE ELECTIONS.** When more than one proposed representative appears on the ballot and the results are inconclusive, the commission, on request of any **party**, may conduct a runoff election as provided in s. 111.70 (4) (d) 4., Stats. A request for a runoff election shall be made within 30 days from the date of the certification of the results of the election.

ERC 11.10 Certification of results of election. If challenged ballots are insufficient in number to affect the results, and no runoff election is needed, and no timely objections are filed under s. ERC 11.11, the commission shall issue to the **parties** a certification of the results of the election.

ERC 11.11 Objections to election. (1) FILING; FORM; COPIES. Within 8 days after receiving the tally of ballots, any **party** may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Objections shall be in writing and shall include the signature or a facsimile of the signature of the party or representative filing the objections. The objections shall contain a brief statement of facts upon which the objections are based. A statement of objections is not filed unless it contains the required signature or signature facsimile and unless and until it has been actually received by the commission at its Madison office during normal business hours specified in s. ERC 10.06 (1). The objections shall be transmitted to the commission as set forth in s. ERC 10.06 (1). If the objections are filed in paper form, a total of 2 copies of the objections shall be included.

(2) **SERVICE ON OTHER PARTIES.** The **party** filing objections shall, at the same time, serve each of the other parties with a copy as set forth in s. ERC 10.07.

ERC 11.12 Commission action on challenges or objections. (1) HEARING. If ballot challenges potentially affecting the election outcome or objections raise a substantial question which cannot be resolved without a hearing, the commission may issue and serve a notice of hearing concerning the issues to be resolved. Practice and procedure for hearings on challenges or objections shall be as set forth in ss. ERC 18.06 to 18.08.

(2) **AFTER HEARING.** As soon as possible after submission of the case, the commission shall, in writing, either sustain or overrule each challenge or objection.

(a) If the commission directs that challenged ballots be opened and counted, the ballots shall be opened and counted, and the commission shall issue a revised tally and a certification of election results.

(b) If the commission sustains one or more objections, it may direct a new election to be held at a time and under conditions specified by the commission.

(c) If the commission overrules all objections, it shall promptly issue a certification of the election results.

ERC 11.13 Petition for rehearing. Any person aggrieved by a final order of the commission may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. Practice and procedure for filing and processing a petition for rehearing shall be as set forth in s. ERC 18.11.

labor organization on the election ballot. Had the intent of the rule been to allow “employees”, “voters” or “personnel” to file objections, those terms could easily have been used-as they have been elsewhere in ERC 11.11. Thus, while an individual employee is a “party” within the meaning of ERC 11.11 if the employee is the entity that files an election petition, see UNITED COMMUNITY SERVICES OF GREATER MILWAUKEE, INC., DEC. NO. 11282-C (WERC, 10/73), individual employees otherwise do not qualify as having “party” status. Therefore, we hereby dismiss Dahlvang’s objections to the election and conclude it is appropriate to certify the election results.

NOW, THEREFORE, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by Sec. 111.990, Stats.;

IT IS HEREBY CERTIFIED that AFT-Wisconsin has been selected by the majority of the employees who voted at said election in the collective bargaining unit consisting of all academic staff employed at the University of Wisconsin System (Superior), excluding supervisors, management employees, and individuals who are privy to matters affecting the employer-employee relationship; and that pursuant to the provisions of Sec. 111.990, Stats., said labor organization is the exclusive collective bargaining representative of all such employees for the purposes of collective bargaining with the University of Wisconsin System, 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 27th day of June, 2011.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

James R. Scott, Chairman

Judith Neumann /s/

Judith Neumann, Commissioner

Rodney G. Pasch /s/

Rodney G. Pasch, Commissioner

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