

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**BRIAN P. HANSEN**

Involving Certain Employees of the

**VILLAGE OF SLINGER**

Case 7  
No. 72010  
ME-4714

**Decision No. 34131**

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**Appearances:**

**Brian P. Hansen**, 611 East Washington Street, Slinger, Wisconsin, 53086, appearing on his own behalf.

**David Dorn**, Staff Representative, AFSCME Council 40, 336 Doty Street, Fond du Lac, Wisconsin 54935, appearing on behalf of the Slinger Municipal Employees Union, Local 1061, AFSCME, AFL-CIO.

**Jessi Balcom**, Village Administrator, Village of Slinger, 300 Slinger Road, Slinger, Wisconsin 53086, appearing on behalf of the Village.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND CERTIFICATION OF ELECTION RESULTS**

Pursuant to a petition for election filed by Brian P. Hansen, the Wisconsin Employment Relations Commission directed that an election be held to determine whether a majority of eligible voting employees of the Village of Slinger wanted to continue to be represented for the purposes of collective bargaining by AFSCME Local 1061. The election was conducted by a mail ballot. Four employees voted for continued representation by Local 1061, four employees voted for no representation and one employee's ballot was challenged and not opened because his voting eligibility came into question when he left the Village's employ prior to the ballots being counted.

Hansen asserts, contrary to AFSCME, that the challenged ballot should not be opened and counted. The Village takes no position.

The parties waived hearing and stipulated to the facts that form the basis for our decision. The record was closed May 30, 2013.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. The Village of Slinger, herein the Village, is a municipal employer.
2. Slinger Municipal Employees Union, Local 1061, AFSCME, AFL-CIO, herein AFSCME, is a labor organization that at times material herein served as the collective bargaining representative of certain employees of the Village in a bargaining unit described in the most recent collective bargaining agreement between the Village and AFSCME as:  
  
    . . . all employees of the Village of Slinger, excluding elected officials, supervisory, managerial and confidential and professional employees, police department employees who exercise the power of arrest and fire department employees . . . .
3. On March 3, 2013, Village employee Brian P. Hansen filed a petition and sufficient showing of interest with the Commission seeking an election to determine whether AFSCME should continue to be the collective bargaining representative of certain Village employees including Hansen. Hansen, AFSCME and the Village subsequently signed a Stipulation for Election and agreed that nine Village employees (including Hansen and Mike Feiter) were eligible to vote in the election.
4. Pursuant to the Stipulation for Election, on April 16, 2013, the Commission issued a Direction of Election that in pertinent part defined those eligible to vote as “. . . employees, who were employed on April 16, 2013, except such employees as may prior to the election quit their employment . . . .”
5. Ballots were placed in the mail to the nine Village employees on April 24, 2013. The instructions that accompanied the ballots advised employees that ballots will be opened and counted on May 14, 2013 and that ballots must be received in the Commission’s offices prior to the count to be valid.
6. By letter dated Thursday April 25, 2013, Mike Feiter advised the Village that he would not be returning to work from a leave of absence on Monday April 29 and requested that his then existing leave of absence be extended to July 1, 2013. By letter dated Friday April 26, 2013, the Village denied Fieter’s request for an extension of his leave of absence and

advised him that if he did not report for work on April 29, the Village would consider his failure to report as a voluntary resignation. Feiter received the Village's letter on Saturday April 27, 2013.

7. Fieter did not report for work April 29, 2013.

8. The envelope in which Feiter's ballot is enclosed was postmarked April 29, 2013 and received by the Commission May 1, 2013.

9. On or about May 8, 2013, the Village advised the Commission that Feiter was no longer employed by the Village as of April 29, 2013. On May 8, 2013, based on the information provided by the Village, the Commission advised the parties that it would not open Feiter's ballot on May 14, 2013 absent agreement by all parties. Later that day, Hansen advised the Commission that he did not believe Feiter's ballot should be counted.

10. On May 14, 2013, the Commission counted the unchallenged ballots and advised the parties that four votes had been cast for continued representation by AFSCME and four votes had been cast for no representation.

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

#### CONCLUSIONS OF LAW

1. Feiter quit his employment with the Village "prior to the election" within the meaning of the April 16, 2013 Direction of Election.

2. Because Feiter quit his employment with the Village "prior to the election", he is not eligible to vote in the election.

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

**CERTIFICATION OF ELECTION RESULTS**

A majority of the voting employees in the bargaining unit consisting of all employees of the Village of Slinger, excluding elected officials, supervisory, managerial and confidential and professional employees, police department employees who exercise the power of arrest and fire department employees did not select AFSCME Local 1061 as their collective bargaining representative.

Given under our hands and seal at the City of Madison, Wisconsin, this 10<sup>th</sup> day of June, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner

**VILLAGE OF SLINGER**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND CERTIFICATION OF ELECTION RESULTS**

As reflected in the portion of the Direction of Election quoted in Finding of Fact 4, Village employees in the AFSCME bargaining unit were eligible to vote if employed on April 16, 2013 “except such employees as may prior to the election quit their employment”. Application of this standard language is straight forward in the context of an on-site election. If the employee quits prior to (or on) the date votes are cast, the employee is not eligible to vote because he or she no longer has a sufficient ongoing interest in the election outcome. However, in the context of a mail ballot election with ballots being cast at varying times during a 20 calendar day period, application of this standard “prior to the election” language becomes problematic.

Hansen argues that Feiter is not an eligible voter because he quit before the ballots were counted on May 14, 2013. AFSCME asserts that Feiter is an eligible voter because he did not quit until after the ballots were mailed to voters. We conclude that the determinative question in a mail ballot is the same as the determinative question in an on-site election. Did the voter quit prior to (or on) the date they actually cast their ballot? In effect, on the day the ballot was cast, did the voter still have the requisite and appropriate stake in the outcome of the election as evidenced by their ongoing employment? Here, based on the evidence presented, we conclude Feiter cast his ballot on the date he placed it in the mail-as evidenced by the April 29 postmark on the ballot envelope. It can well be argued that Feiter quit his employment on April 27 when he received the Village’s letter advising him that it would not grant his request for an extension of his leave of absence. However, even allowing for the possibility that Feiter could have had a last minute change of heart as to his previously announced intention not to report for work on April 29, he quit his employment on April 29 when he did not to report for

work. Thus, on the date he cast his ballot, Feiter's employment had ended as did his voter eligibility. Therefore, we have not opened and counted his ballot and have certified the election results.

Dated at Madison, Wisconsin, this 10<sup>th</sup> day of June, 2013.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott /s/

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James R. Scott, Chairman

Rodney G. Pasch /s/

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Rodney G. Pasch, Commissioner