

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

AFSCME COUNCIL 24

Involving Certain Employees of

STATE OF WISCONSIN

Case 870
No. 72329
SE-120

DECISION NO. 34479-A

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 November 21, 2013, conducted an election pursuant to Sec. 111.83(3), Stats., to determine whether employees of the State of Wisconsin, in the collective bargaining unit set forth in the Commission's Direction, wanted to continue to be represented by AFSCME Council 24 for the purposes of collective bargaining with the State.

On November 21, 2013, the Commission provided AFSCME Council 24 and the State with election results that reflected the following:

1.	Number of Eligible Voters	664
2.	Total Votes Cast	344
3.	Votes Cast for AFSCME Council 24	329
4.	Votes Cast for No Representation	15

On November 27, 2013, AFSCME Council 24 filed objections to the conduct of the election. Thereafter, at the request of the Commission and pursuant to one of the AFSCME Council 24 objections, additional information was received as to voter eligibility. Having reviewed that information, the Commission concludes that 15 voters lost their eligibility when they left the bargaining unit prior to the start of the election and that none of those employees voted. The Commission further concludes that the remaining objections filed by AFSCME Council 24 either have no merit or have been abandoned. Thus, the results of the election are:

1.	Number of Eligible Voters	649
2.	Total Votes Cast	344
3.	Votes Cast for AFSCME Council 24	329
4.	Votes Cast for No Representation	15

NOW, THEREFORE, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by Sec. 111.83(3), Stats.;

IT IS HEREBY CERTIFIED that at least fifty-one percent (51%) of the employees in the education bargaining unit failed to select AFSCME Council 24 to continue as their bargaining representative.

NOTICE IS HEREBY GIVEN that:

1. If no collective bargaining agreement is currently in effect, AFSCME Council 24 is no longer the collective bargaining representative as of the date of this Certification. If a collective bargaining agreement is currently in effect, AFSCME Council 24 ceases to be the collective bargaining representative as of the date that agreement expires.

2. For a minimum of one year from the applicable date in (1) above, the employees shall not be included in a substantially similar collective bargaining unit.

Dated at the City of Madison, Wisconsin, this 29th day of May 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

MEMORANDUM ACCOMPANYING CERTIFICATION OF RESULTS OF ELECTION

AFSCME Council 24 objections can be summarized as follows:

1. Employees on leave of absence may not have received notice of the election.
2. Employees lost voter eligibility by leaving the bargaining unit prior to the election.
3. The conduct of the Joint Committee on Employment Relations interfered with the conduct of a fair election.
4. The telephone voting system confused voters and thus some votes were not counted.
5. The voting system for deaf voters was confusing.
6. The message on the telephone voting system was confusing.

Using information provided by the State (and not contested by AFSCME Council 24), the Commission determined that:(1) there were no employees on leave of absence; and (2) 15 employees on the original voter list did lose eligibility because they left the bargaining unit before the election began. Thus, objection 1 has no merit and we have adjusted the voter tally based on the information received as to objection 2.

As to objection 3, we are satisfied that the timing of the ratification of the tentative agreement reached between the State and AFSCME Council 24 did not interfere with the conduct of a fair election.

As to objections 4 through 6, on March 13, 2014, we requested that AFSCME Council 24 provide sworn affidavits providing details as to the voting efforts/problems allegedly experienced by voters on or before April 7, 2014. The March 13 request stated that if the affidavits were not provided, "... it will be presumed that the Union has abandoned the objection related to that individual." On April 4, 2014, AFSCME Council 24 asked for and received a two-week extension "to get these affidavits finished." On April 21, 2014, AFSCME Council 24 did not provide any sworn affidavits but instead asserted that the requested affidavits improperly infringed on the secret ballot process.

We reject the contention that the affidavit request was improper. One way or another, employees asserting voting problems were going to need to provide sworn testimony as to the nature of the problem they experienced. Without such evidence, appropriate and comprehensive fact finding could not occur. Affidavits provided the potential for avoiding the need for a hearing and the additional delay and expense that a hearing would produce. While the documents provided by AFSCME Council 24 on April 21, 2014 are relevant to the objections, and

AFSCME Council 24 asserted in its response that witnesses are prepared to testify, AFSCME Council 24 was warned on March 13, 2014 that “it will be presumed that the Union has abandoned the objection” if sworn affidavits were not provided. Prior to April 21, 2014, AFSCME Council 24 did not object to providing the affidavits and indeed sought and received an extension for the express purpose of doing so. Therefore, we conclude that objections 4 through 6 have been abandoned.¹

Dated at the City of Madison, Wisconsin, this 29th day of May 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

¹We have reviewed the message on the telephone voting system and do not find it confusing. Therefore, even if affidavits had been provided as to objection 6, we would not have found those affidavits to be a basis for conducting a new election.