

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MILWAUKEE TEACHERS' EDUCATION ASSOCIATION

Involving Certain Employees of
MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0012
Case Type: REC_ME

DECISION NO. 35948-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, between November 4 and November 24, 2015, conducted an election pursuant to § 111.70(4)(d)3.b. of the Municipal Employment Relations Act to determine whether at least fifty-one percent (51%) of the substitute teachers employed by the Milwaukee Public Schools wanted to continue to be represented by the Milwaukee Teachers' Education Association for the purposes of collective bargaining.

The result of the election reported to the parties by the Commission on November 25, 2015 was as follows:

1.	Number of eligible voters	429
2.	Total votes cast	220
3.	Votes cast for Milwaukee Teachers' Education Association	218
4.	Votes cast for no representation	2

On December 3, 2015, the Milwaukee Teachers' Education Association filed an objection to the election results asserting that three employees had lost eligible voter status. The parties thereafter agreed that the number of eligible voters should be reduced by one but continued to disagree as to other eligibility issues.

The parties thereafter filed written argument, the last of which was received December 23, 2015.

Having considered the matter, the Commission concludes that the election results are as follows:

1.	Number of eligible voters	428
2.	Total votes cast	220
3.	Votes cast for Milwaukee Teachers' Education Association	218
4.	Votes cast for no representation	2

NOW, THEREFORE, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by § 111.70(4)(d)3.b. of the Municipal Employment Relations Act;

IT IS HEREBY CERTIFIED that at least fifty-one percent (51%) of the employees in the substitute teacher bargaining unit failed to select Milwaukee Teachers' Education Association to continue as their bargaining representative.

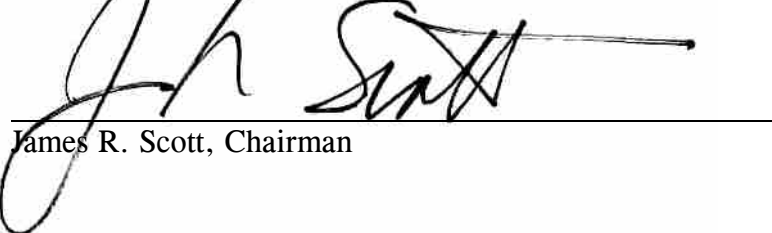
NOTICE IS HEREBY GIVEN that:

1. If no collective bargaining agreement is currently in effect, the Milwaukee Teachers' Education Association is no longer the collective bargaining representative as of the date of this Certification. If a collective bargaining agreement is currently in effect, the Milwaukee Teachers' Education Association 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.

Signed at the City of Madison, Wisconsin, this 19th day of January 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING CERTIFICATION OF RESULTS OF ELECTION

On November 25, 2015, the Wisconsin Employment Relations Commission provided the Milwaukee Teachers' Education Association (MTEA) and the Milwaukee Public Schools (MPS) with the tally of ballots counted in a November 4 through November 24, 2015, election held to determine whether at least fifty-one percent (51%) of the eligible substitute teachers employed by MPS voted to continue to be represented for the purposes of collective bargaining by MTEA. That tally indicated that MTEA had not reached the fifty-one percent (51%) threshold.

Wisconsin Administration Code § ERC 70.09 provides in pertinent part:

Within 8 days after receiving the tally of ballots, any party may file with the commission objections to conduct affecting the results of the election. ... The objections shall contain a brief statement of facts upon which the objections are based.

On December 3, 2015, MTEA filed objections asserting that three employees (Mallory, Umstot and Jimenez) who were on the list of eligible voters provided to the Commission by the parties were not in fact eligible and that the number of eligible voters reported on the tally sheet should be reduced by three. On December 9, 2015, MTEA filed "Additional Evidence In Support of Election Objection" asserting that an additional employee (Munoz) on the voter list was ineligible.

On December 14, 2015, MPS filed a response to MTEA's submissions: (1) conceding that Mallory should be removed as an eligible voter because she resigned from MPS employment prior to the election; (2) arguing that MTEA's December 9 submission was in fact an untimely objection and should be disregarded; and (3) contending that both Umstot and Jimenez had not resigned their employment and remained eligible voters. Subsequent argument was received until December 23, 2015.

As to MTEA's December 9 submission, we agree with MPS that it was, in fact, an untimely objection. Wisconsin Administration Code § ERC 70.09 has a specific tight timeframe for filing election objections which reflects the Commission's interest in promptly becoming aware of whether election results will be contested and the "facts upon which the objections are based." Here, a timely objection was filed contesting the eligibility of three employees. In our view, Wis. Admin. Code § ERC 70.09 limits our consideration to only those three employees (Mallory, Umstot and Jimenez).

MPS has conceded that Mallory became ineligible due to her resignation prior to the election and we have modified the election tally to reduce the number of voters by one.¹ As to Umstot and Jimenez, there is no contention by MTEA that either individual resigned their employment – only that they verbally advised MPS (which MPS contests) they would not be


¹ Commission records reflect that Mallory did not vote and there is no need to adjust any other portion of the tally sheet.

working as substitute teachers during the 2015 – 2016 school year. Particularly where, as here, the number of days worked by a substitute teacher can be sporadic and unpredictable (and the parties had constructed their eligibility list using the number of days worked in the 2014 - 2015 school year), a written letter of resignation is the only objective and persuasive measure for ending employment.² Because Umstot and Jimenez did not provide written resignations, they remained eligible voters.

Amending the voter tally by one voter (Mallory) leaves 428 eligible voters and 218 “yes” votes which yields 50.93% in support of continued representation by MTEA. We have previously held that the statutorily established standard is not subject to “rounding up.”³ Thus, we have certified that MTEA did not receive the number of votes necessary to continue as the collective bargaining representative.

Signed at the City of Madison, Wisconsin, this 19th day of January 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

² MPS policy requires written notice of intent to resign. MPS policy and our holding avoid the need for subjective credibility determinations as to whether verbal statements of intent to retire were made, whether an employee did or did not vote based on such intent, and whether an employee subsequently decided not to retire after all.

³ *Elmbrook School District*, Dec. No. 33414-A (WERC, 3/12).