

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MONTELLO EDUCATION ASSOCIATION

Involving Certain Employees of
MONTELLO SCHOOL DISTRICT

Case ID: 271.0001
Case Type: REC_ME

DECISION NO. 35957-A

Appearances:

John Horn, Director, WEAC Region 5, 135 – 3rd Avenue, Baraboo, Wisconsin, appearing on behalf of the Montello Education Association.

Kirk D. Strang, Strang, Patteson, Renning, Lewis & Lacy, S.C., 660 West Washington Avenue, Suite 303, Madison, Wisconsin, appearing on behalf of the Montello School District.

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 teachers employed by the Montello School District wanted to continue to be represented by the Montello 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 | 63 |
| 2. | Total votes cast | 33 |

- | | | |
|----|---|----|
| 3. | Votes cast for Montello Education Association | 32 |
| 4. | Votes cast for no representation | 1 |

On December 2, 2015, the Montello Education Association filed an objection to the election results asserting that an eligible voter on leave had not received a notice of the election from the District. The parties thereafter filed written argument, the last of which was received January 18, 2016.

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

- | | | |
|----|---|----|
| 1. | Number of eligible voters | 63 |
| 2. | Total votes cast | 33 |
| 3. | Votes cast for the Montello Education Association | 32 |
| 4. | Votes cast for no representation | 1 |

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 teacher bargaining unit failed to select the Montello Education Association to continue as their bargaining representative.

NOTICE IS HEREBY GIVEN that:

1. If no collective bargaining agreement is currently in effect, the Montello 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 Montello 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 5th day of February 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 Montello Education Association (MEA) and the Montello School District (District) 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 teachers employed by the District voted to continue to be represented for the purposes of collective bargaining by MEA. That tally indicated that MEA 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 2, 2015, MEA filed an objection asserting that an eligible voter on leave had not received the required notice of election from the District and thus was deprived of the opportunity to vote.

It is undisputed that on October 16, 2015, the Commission electronically provided the District and MEA with a Notice of Election that contained the information needed by voters to cast a ballot during the November 4 through November 24, 2015, voting period. The cover letter accompanying the Notice stated:

The Employer should post and / or distribute the Notice of Election *as soon as possible* wherever / however necessary to provide eligible voters with notice of the election.

It is also undisputed that, in addition to physically posting the notice in the workplace, the District emailed a copy of the notice to all eligible voters (including the teacher on leave) using their District email addresses.

MEA acknowledges the District's actions but asserts that the employee did not in fact open the email in question and thus remained unaware of the election. MEA contends that to meet the Commission's distribution requirements, the District was obligated to mail the voter in question a copy of the notice.

We disagree. We initially note that mailing a copy of the notice to the voter (as requested by MEA) would not have provided actual notice of the election unless that mail was opened and read. More importantly, just as the District was not obligated to make sure that any voter actually read the notice physically posted in the workplace, it was not obligated to ensure that the email to voters was opened and read. As with any election, voters themselves have

some responsibility for seeking the readily available information about an upcoming opportunity to cast a ballot. Here, the District met its posting / distribution obligations and we find MEA's contention otherwise to be without merit.

The voter tally reflects 50.79 percent votes cast in support of continued representation by MEA. We have previously held that the statutorily established fifty-one percent (51%) standard is not subject to "rounding up."¹ Thus, we have certified that MEA did not receive the number of votes necessary to continue as the collective bargaining representative.

Signed at the City of Madison, Wisconsin, this 5th day of February 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

¹ *Elmbrook School District*, Dec. No. 33414-A (WERC, 3/12).