

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
FONTANA EDUCATION ASSOCIATION, WEAC REGION 7
Involving Certain Employees of
FONTANA JOINT 8 SCHOOL DISTRICT

Case ID: 210.0002
Case Type: REC_ME

DECISION NO. 36503-A

Appearances:

Elizabeth J. Ludeman, Regional Director, WEAC Region 7, 13805 West Burleigh Road, Suite 200, Brookfield, Wisconsin, appearing on behalf of the Fontana Education Association, WEAC Region 7.

Michael J. Julka, Attorney, Boardman & Clark LLP, 1 South Pinckney Street, Suite 410, Madison, Wisconsin, appearing on behalf of the Fontana Joint 8 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 conducted an election on November 16, 2016, pursuant to § 111.70(4)(d) 3.b., Stats., to determine whether teachers employed by the Fontana Joint 8 School District (District) wanted to continue to be represented by the Fontana Education Association, WEAC Region 7 (Association), for the purposes of collective bargaining.

On November 17, 2016, the Commission provided the parties with election results indicating that 14 of the 28 eligible voters had voted for continued representation by the Association. On November 22, 2016, the Association filed an objection to the election results pursuant to Wis. Admin. Code § ERC 70.09 asserting that a vote cast electronically had not been but should be counted. The Association subsequently provided an affidavit in support of the objection, and the Commission provided the parties with information received from the American Arbitration Association relevant to the electronic voting process. The matter became ripe for Commission action after the December 20, 2016 receipt of the District's statement that it was taking no position as to the objection.

Having considered the matter, we overrule the objection and certify the election results as follows:

1.	Number of eligible voters	28
2.	Total votes cast	15
3.	Votes cast for Fontana Education Association, WEAC Region 7	14
4.	Votes cast for no representation	1

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

IT IS HEREBY CERTIFIED that at least fifty-one percent (51%) of the employees in the bargaining unit did not vote to continue to be represented by the Fontana Education Association, WEAC Region 7, for the purposes of collective bargaining with the Fontana Joint 8 School District.

If no collective bargaining agreement is in effect on the date of this Certification, the Fontana Education Association, WEAC Region 7, is no longer entitled to exclusive representative status as the collective bargaining representative as of the date of this Certification. If a collective bargaining agreement is currently in effect, the Association loses its exclusive representative status for the purposes of collective bargaining as of the expiration of that agreement.

Further, the employees in the bargaining unit shall not be included in a substantially similar bargaining unit for at least a period of one year following the applicable date when representative status is lost.

Signed at the City of Madison, Wisconsin, this 4th day of January 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING CERTIFICATION OF RESULTS OF ELECTION

Voters in this election could vote anytime between noon Thursday, October 27, 2016, and noon November 16, 2016, by accessing a website to vote electronically or by calling a toll-free telephone number. A Notice of Election provided to the parties for distribution to voters included instructions as to how to cast a ballot. One of the instructions stated:

3. After you vote “yes” or “no,” you will be asked to confirm your choice. You must confirm your choice for your vote to be counted.

The Notice also advised voters of a toll-free number to call if they had questions. Commission staff were also available during the election to answer questions and resolve problems.

The affidavit provided by the employee indicates that at 11:56 a.m. on November 16, 2016, she used a cell phone to vote “yes” as to continued representation by the Association. The “screen” the employee viewed on her cell phone showed her “yes” vote but also stated in pertinent part:

The following shows how you voted. Your selections are shown in bold and underlined. Please review carefully. If everything is correct, press the Submit Vote button to process your ballot. If you would like to change your vote, press the Change Vote button.

You MUST press the Submit Vote button to have your vote counted!


If the employee had scrolled further on her cell phone screen, she would have seen a “Submit Vote” button, and her vote would have been counted if she had pressed that button. She did not do so, did not see a “Submit Vote” button, and believed that by pressing her “yes” vote she had “submitted” her ballot. Because she did not follow the voting instructions, her vote was not counted.

While we regret her inability to cast her ballot, this electronic voting system has been successfully used by thousands of voters during the hundreds of certification elections we have conducted. Because we believe the voting system to be sound and the voting instructions to be readily available and clear, we conclude that a voter’s inability to navigate the system is not a sufficient basis for counting her ballot or conducting a new election. Therefore, we have certified the election results based on the votes successfully cast.¹

¹ The result we have reached is consistent with our decision in *Herman School District*, Dec. No. 34318-A (WERC, 4/14), where we rejected a request for a new election based on the inability of a voter to successfully navigate the telephone key pad used to cast a ballot telephonically.

Signed at the City of Madison, Wisconsin, this 4th day of January 2017.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner