

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

VIROQUA EDUCATION ASSOCIATION, WEAC REGION 4

Involving Certain Employees of

VIROQUA AREA SCHOOL DISTRICT

Case ID: 603.0000

Case Type: E_ME

DECISION NO. 38746-A

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Pursuant to a Direction of Election issued on October 13, 2020, the Wisconsin Employment Relations Commission conducted a mail ballot election on November 19, 2020, to determine whether at least fifty-one percent (51%) of all eligible employee voters employed by the Viroqua Area School District (District) wished to be represented for the purpose of collective bargaining by the Viroqua Education Association, WEAC Region 4 (Union). On November 25, 2020, the Union filed an objection to the conduct of the election asserting that certain ballots received after November 19, 2020 should be counted. The District filed a response on December 7, 2020.

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

FINDINGS OF FACT

1. Pursuant to a Direction of Election issued on October 13, 2020, the Commission conducted a secret mail ballot election in the following bargaining unit:

All regular full-time and regular part-time certified teaching personnel employed by the Board including classroom teachers and librarians, but excluding confidential, managerial, or supervisory employees; substitute and per diem teachers; interns, student teachers, teacher aides and office and clerical employees

to determine whether at least 51% of the employees in said bargaining unit wished to be represented for the purposes of collective bargaining by the Viroqua Education Association, WEAC Region 4.

2. The mail ballots sent to the eligible voters were accompanied by a Notice of Election, which provide instructions and stated in pertinent part:

If you desire to vote, please do so promptly. Ballots will be opened and counted in the Commission's office in Madison, Wisconsin, on Thursday, November 19, 2020, commencing at 1:30 p.m. Ballots must be received in the Commission's office prior to the count to be valid.

3. On Thursday, November 19, 2020, the Commission had received ballots from 47 of the 100 eligible voters and advised the parties that 45 ballots had been cast for representation and 2 ballots had been cast against representation.

4. On Monday, November 23, 2020, the Commission received 20 additional ballots and advised the parties of that receipt, as well as the following postmarks on said ballots:

1 ballot postmarked November 9
2 ballots postmarked November 10
3 ballots postmarked November 12
3 ballots postmarked November 13
4 ballots postmarked November 14
5 ballots postmarked November 16
2 ballots postmarked November 18

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

CONCLUSION OF LAW

Balancing the competing interests of maximizing the voters' reasonable expectation of election participation against finality of result and delay inherent in litigation, ballots postmarked on or before November 13, 2020 will be deemed timely cast.

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

ORDER

Ballots postmarked on or before November 13, 2020 will be opened and counted in the Commission's office on Monday, December 28, 2020 at 1:30pm.

Issued at the City of Madison, Wisconsin, this 18th day of December, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

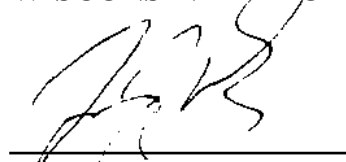
James J. Daley, Chairman

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

In Flambeau School District, Dec. No. 26238-A (WERC, 5/90), the Commission concluded that the interests in finality of election result and avoidance of litigation based on delay predominated over the interest of voter participation and decided not to count mail ballots received after the deadline communicated to voters. The Commission continues to hold that view but in the unique circumstance present here concludes that a partial departure is appropriate on a non-precedential basis. A voter mailing a ballot on or before Friday, November 13, 2020, would reasonably conclude that it would be received by the Commission on or before the following Thursday, November 19, 2020. For such voters, honoring their reasonable belief of being able to participate in the election outweighs the interests in finality of result and avoidance of delay. Therefore, such ballots will be counted when determining the final result of this election.¹

Issued at the City of Madison, Wisconsin, this 18th day of December 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman

¹During and after the count, appropriate steps will be taken to maintain the secrecy of the ballot choice made by each of these voters.