

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

NSEA - MAPLE DALE-INDIAN HILL CHAPTER, WEAC R7

Involving Certain Employees of

MAPLE DALE-INDIAN HILL SCHOOL DISTRICT

Case ID: 199.0005
Case Type: E_ME

DECISION NO. 38751-B

Appearances:

Rebecca Ferber Osborn, Wisconsin Education Association Council, 13805 W. Burleigh Road, Brookfield, Wisconsin, appearing on behalf of North Shore Education Association, Maple Dale-Indian Hill Chapter, WEAC Region 7.

Michael Weaver, 8377 N. Port Washington Road, Fox Point, Wisconsin, appearing on behalf of Maple Dale-Indian Hill School District.

ORDER GRANTING PETITION FOR REHEARING

On December 10, 2020, the Wisconsin Employment Relations Commission issued a Certification as to a mail ballot election conducted on December 1, 2020 reflecting that at least fifty-one percent (51%) of all eligible employees of the Maple Dale Indian Hill School District (District) in the collective bargaining unit failed to select NSEA - Maple Dale-Indian Hill Chapter, WEAC R7 (Union) as their bargaining representative.

On December 30, 2020, the Union filed a petition for rehearing pursuant to Wis. Stat. § 227.49, asserting that ballots which arrived in the Commission's offices after December 1, 2020 should be counted. The District filed a response to the petition on January 8, 2021 and on January 11, 2021 the Commission provided the parties with additional information as to ballots received after December 1, 2020.

Having considered the matter, the Commission concludes the petition for rehearing should be granted because at least some of the ballots received after December 1, 2020 constitute new evidence within the meaning of Wis. Stat. § 227.49(3)(c) that is sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

NOW, THEREFORE, it is

ORDERED

1. The petition for rehearing is granted.
2. The three ballots postmarked on or before November 25, 2020 will be counted on January 27, 2021 at 10:00 am in the Commission's offices.

Issued at the City of Madison, Wisconsin, this 20th day of January, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING ORDER
GRANTING PETITION FOR REHEARING

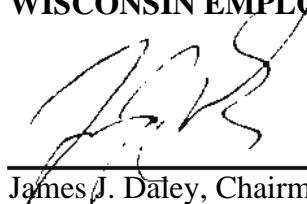
As reflected in the Tally Sheet the parties received the same day the mail election ballots were counted on December 1, 2020, the Union fell two votes short of the 51% threshold it needed to be certified as the collective bargaining representative of certain employees of the District.

After December 1, 2020, the Commission received eight additional ballots. Each of those eight ballots had multiple postmark dates reflecting that the ballots had been processed at multiple locations which delayed receipt by the Commission. The Commission is satisfied that the earliest discernible postmark reflects the date the voter placed the ballot in the mail. On three ballots (from CJ, CW and RJ), that first date cannot be determined. Of the remaining five ballots, while it is difficult to determine, the Commission concludes that two ballots were first postmarked November 24 (from KL and JP), one ballot was first postmarked November 25 (from JM), one ballot was postmarked November 27 (from BM) and one ballot was postmarked November 28 (from LS).

In *Viroqua School District*, Dec. No.38746-A (WERC, 12/20), the Commission was confronted with a similar situation and concluded that voters who placed their ballots in the mail at least six days prior to the known date for the ballot count had a reasonable expectation their ballots would be timely received. Balancing the competing interests of maximizing the voters' reasonable expectation of election participation against finality of result and delay inherent in litigation, the Commission concluded that those ballots mailed within the voters' reasonable expectation of timely receipt would be deemed timely cast. Applying that standard here, the Commission concludes that the three ballots postmarked on or before November 25 will be opened and counted.¹

Issued at the City of Madison, Wisconsin, this 20th day of January, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman

¹As to those ballots for which it cannot be determined when they were first postmarked, it follows that it cannot be determined whether they would or would not have met the "on or before November 25" standard for being counted. In the event the counting of the three "timely" ballots does not produce an election result, it is the Commission's judgment that the election itself should be conducted again in its entirety.