

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WABENO EDUCATION ASSOCIATION, WEAC REGION 3

Involving Certain Employees of

WABENO SCHOOL DISTRICT

Case ID: 481.0005
Case Type: E_ME

DECISION NO. 39009-A

Appearances:

Erin Karsten, Regional Director, WEAC Region 3, 1136 N. Military Avenue, Green Bay, Wisconsin appearing on behalf of the Wabeno Education Association.

Jeffrey Walsh, District Administrator, 4346 Mill Lane, P.O. Box 460, Wabeno, Wisconsin appearing on behalf of the Wabeno School District.

CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Direction of Election issued on September 20, 2021, the Wisconsin Employment Relations Commission conducted a mail ballot election on October 14, 2021, to determine whether at least fifty-one percent (51%) of all eligible employees employed by the Wabeno School District (District) in the collective bargaining unit set forth in the Commission's Direction wished to be represented for the purpose of collective bargaining by the Wabeno Education Association, WEAC Region 3 (Association). On October 14, 2021, the parties received a tally of the timely ballots received and opened indicating that 21 of the 42 eligible voters had voted for the Association.

On October 15, 2021, the Association filed an objection to the conduct of the election asserting that two ballots had been mailed back to the Commission within a time frame which those voters had a reasonable expectation of timely receipt. Those two ballots were received on October 15, 2021. The Association subsequently filed an affidavit in support of its objection related to one of the two late ballots. The District filed a response on October 25, 2021 opposing the objection and the parties thereafter filed written argument through November 12, 2021.

Having considered the matter, the Commission concludes that the Association's objection should be overruled, and no late ballots should be counted.

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

IT IS HEREBY CERTIFIED that least fifty-one (51%) of all eligible employees in the collective bargaining unit failed to select the Wabeno Education Association, WEAC Region 3 as their bargaining representative.

Issued at the City of Madison, Wisconsin, this 22nd day of November, 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

MEMORANDUM ACCOMPANYING CERTIFICATION OF RESULTS OF ELECTION

Any election procedure balances the need to give voters a reasonable opportunity to cast a ballot with the need for the finality created by a known end point when that opportunity ends and timely cast ballots will be counted. Here, the Commission concluded that it would use its standard mail ballot procedure.

On September 20, 2021, the parties were advised by email that ballots would be mailed to eligible voters on September 24, 2021 and counted on October 14, 2021. The parties were provided with a copy of the instructions the voters would receive with their ballots. Among other matters, those instructions stated in bold print that ballots should be returned “promptly” if the voter wanted to cast a ballot and further advised in bold print that only ballots received on or before October 14, 2021 would be counted.

The ballots were mailed to voters on September 24, 2021. Twenty-one of the 42 eligible voters timely returned their ballot, and the ballots were counted on October 14. All 21 voters voted to be represented by the Wabeno Education Association. On October 15, 2021, two additional ballots were received. The Association, contrary to the District, contends that the ballot of voter Habeck should be counted because it was mailed back to the Commission within a time frame that Habeck would reasonably have expected it to be timely received.

Habeck submitted an affidavit asserting that she did not receive her ballot until October 7 or 8 and that she placed it in a mailbox on October 9. The return envelope containing her ballot indicates a postmark of October 12.

Use of a mail balloting procedure has some inherent risk of possible delay as to when ballots are received by voters and how long it takes for mailed ballots to be received by the Commission. In acknowledgement of those risks, the Commission provides a 20-calendar day window within which ballots are mailed to voters and ultimately counted. It is the Commission’s experience that the 20-day window provides a more than reasonable period for voting to be accomplished. In acknowledgement of those risks, the parties are provided advance notice of when ballots will be mailed so that they have the opportunity to alert voters as to the election details in advance of the voter’s receipt of the ballot. In acknowledgement of those risks, voters are themselves advised of the importance of voting promptly and of the deadline for timely return ballots.

A mail balloting procedure also requires that voters who wish to cast a ballot accept some responsibility for doing so. Voters need to be vigilant when checking their incoming mail for the ballot. Voters need to promptly place their ballot back in the mail. Voters need to be aware of weekends or holidays that may impact mail service. Voters need to be aware of the well-publicized reductions in the timeliness of mail service. Voters who do not receive a ballot promptly can contact the Commission and ask that another ballot be mailed. Voters concerned that time is running short have the option of using priority mail to return the ballot to the Commission or having the ballot hand-delivered to the Commission’s offices.

Here, Habeck apparently received her ballot 13 or 14 days after it was mailed to her by the Commission. Assuming her recollection to be accurate, she should have realized that such a substantial delay in receipt of the ballot might recur as to the return of the ballot to the Commission. She also should have realized that the upcoming weekend and October 11 holiday might well impact the timing of the ballots return and the timing of her placement of her ballot in a mailbox. However, even assuming for the sake of argument that Habeck had a reasonable expectation that her ballot would have been timely received, the Commission is not persuaded that such a belief would be a basis for counting her late ballot. Just like a voter in an in-person election who fails to timely arrive at the polls despite leaving to vote within a reasonable time frame, the voter with a late arriving mail ballot does not have a right to vote. The interest in certainty and finality of a result is determinative where, as here, the mail ballot procedure provided a reasonable opportunity for Habeck to vote. Therefore, the Commission has overruled the Association's objection to this election and certified the result of the timely cast ballots.¹

Issued at the City of Madison, Wisconsin, this 22nd day of November 2021.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

¹ The Commission acknowledges that where unprecedented mail delays produced numerous late mail ballots, it has determined on a non-precedential basis it was appropriate to count certain late ballots. *See Viroqua Area School District*, Dec. No. 38746-A (WERC, 12/20) and *Maple Dale-Indian Hill School District*, Dec. No. 38751-B (WERC, 01/21). That factual scenario is not present here.