

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
SOUTHERN DOOR UNITED EDUCATORS, WEAC REGION 3  
Involving Certain Employees of  
SOUTHERN DOOR COUNTY SCHOOL DISTRICT

Case ID: 293.0002  
Case Type: E\_ME

DECISION NO. 39499-A

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**Appearances:**

Justin Delfosse and Erin Karsten, Wisconsin Education Association Council, 1136 N. Military Avenue, Green Bay, Wisconsin, appearing on behalf of Southern Door United Educators, WEAC Region 3.

Tony Renning, Attorney, Renning, Lewis & Lacy, 43 West 6th Avenue, Oshkosh, Wisconsin, appearing on behalf of Southern Door County School District.

**ORDER**

Pursuant to a Direction of Election, on October 31, 2022, the Wisconsin Employment Relations Commission conducted a mail ballot election to determine if certain employees of the Southern Door County School District wished to be represented by the Southern Door United Educators, WEAC Region 3. The tally sheet sent to the parties that day reflected the following:

ELIGIBLE TO VOTE	104
BALLOTS CAST (includes all ballots)	54
BALLOTS CHALLENGED	0
BALLOTS VOID	0
BALLOTS BLANK	0
VALID BALLOTS COUNTED (total ballots cast minus challenged ballots, void ballots, and blank ballots)	54
BALLOTS CAST FOR Southern Door United Educators, WEAC Region 3	52
BALLOTS CAST FOR NO REPRESENTATION	2

On November 7, 2022, the Commission advised the parties that five additional ballots had been received on November 3, 2022. The parties thereafter filed written argument by November 15, 2022 as to whether any of those ballots should be counted.

Having considered the matter, the Commission concludes that the three ballots postmarked at least six days prior to October 31, 2022 should be counted.

**NOW, THEREFORE, it is**

**ORDERED**

The three ballots postmarked on or before October 25, 2022, will be opened and counted at 10:00 am on Monday, November 28, 2022 in the Commission's offices.

Issued at the City of Madison, Wisconsin, this 23<sup>rd</sup> day of November, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

### **MEMORANDUM ACCOMPANYING ORDER**

As indicated in the preface to the Commission's Order, five additional ballots were received on November 3, 2022 – after the October 31 election. One ballot was postmarked October 24, two ballots were postmarked October 25, one ballot was postmarked October 26, and one ballot was postmarked October 29. The District contends that none of the late ballots should be counted while the Union asserts that the Commission should count the three ballots postmarked at least six days prior to the October 31 election.

In *Viroqua Area School District*, Dec. No. 38746-A (WERC, 12/20), the Commission cited to *Flambeau School District*, Dec. No. 26238-A (WERC, 5/90) and stated:

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

In *Maple Dale-Indian Hills School District*, Dec. No. 38751-B (WERC, 1/21), the Commission again concluded that a departure from *Flambeau* was appropriate and concluded it was appropriate to count ballots postmarked at least six days prior to the scheduled ballot count. The Commission stated:

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.

Here it is apparent that the unusual postal service delays that underlay the decisions in *Viroqua* and *Maple Dale* are ongoing. In that circumstance, the Commission concludes that it is again appropriate to count ballots postmarked at least six days prior to the scheduled ballot count. Applying that standard here, the Commission concludes that the three ballots postmarked on or before October 25 will be opened and counted.<sup>1</sup>

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<sup>1</sup>The District correctly cites to the Commission's decision in *Wabeno School District*, Dec. No. 39009-A (WERC, 11/21) wherein the Commission did not count a late ballot and reaffirmed the voters' responsibility to vote promptly or run the risk that a ballot will not be counted. However, in *Wabeno*, the ballot in question was postmarked only two days prior to the election.

Issued at the City of Madison, Wisconsin, this 23<sup>rd</sup> day of November, 2022.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman