

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
SOUTHWESTERN WISCONSIN ASSOCIATION OF TEACHERS, WEAC REGION 6  
Involving Certain Employees of  
SOUTHWESTERN WISCONSIN SCHOOL DISTRICT

Case ID: 269.0001

Case Type: E\_ME

DECISION NO. 39748-A

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**Appearances:**

Rebecca Ferber Osborn, Attorney, Wisconsin Education Association Council, 13805 W. Burleigh Road, Brookfield, Wisconsin, appearing on behalf of Southwestern Wisconsin Association of Teachers, WEAC Region 6.

Richard Verstegen, Attorney, Boardman & Clark LLP, 1 South Pinckney Street, Suite 410, Madison, Wisconsin, appearing on behalf of Southwestern Wisconsin School District.

**CERTIFICATION OF ELECTION RESULTS**

On November 21, 2022, the Wisconsin Employment Relations Commission conducted a mail ballot election to determine if at least 51% of all eligible professional employee voters employed by the Southwestern Wisconsin School District (District) wanted to be represented by the Southwestern Wisconsin Association of Teachers, WEAC Region 6 (Union) for the purposes of collective bargaining with the District. The tally of election results received by the parties that day reflected that 53 employees were eligible to vote and that the Union received 23 votes.

On November 29, 2022, the Union timely filed objections to the election asserting that one individual who did not cast a ballot was not eligible to vote and that five other employees did not have a reasonable opportunity to cast a timely ballot. The District subsequently concurred that one individual was not eligible to vote but disputed the Union contention that five other employees did not have a reasonable opportunity to vote in the timely manner.

The parties thereafter filed written argument by January 5, 2023. The Commission subsequently advised the parties that it would be taking notice of certain matters. Neither party objected and the record was closed on January 31, 2023.

Having considered the matter and being fully advised in the premises, the Commission is satisfied that the Union did not and could not receive the affirmative votes of at least 51% of all eligible voters. Therefore, the following Certification is issued:

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

IT IS HEREBY CERTIFIED that at least fifty-one percent (51%) of all eligible employees in the collective bargaining unit failed to select the Southwestern Wisconsin Association of Teachers, WEAC Region 6 as their bargaining representative.

Issued at the City of Madison, Wisconsin, this 17<sup>th</sup> day of February, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING CERTIFICATION OF ELECTION RESULTS**

In *Wabeno School District*, Dec. No. 39009-A (WERC, 11/21) the Commission noted:

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.

The parties have agreed that there were 52 eligible voters in this mail ballot election. To reach the 51% threshold, the Union needs to receive at least 27 votes – four more than were tallied on November 21. Thus, to potentially impact the election results by reaching the 27 vote threshold, at least four of its five objections need to be sustained.

Three of the objections are based on voters who did not cast a ballot – Crary, Ray and Vosberg. The remaining two objections address voters who did cast a ballot but whose ballots were received after (November 25 and 28) the ballots were counted on November 21.

Among those employees who did not vote is Ray. Commission records confirm that a ballot was mailed to Ray at her correct address on November 1. In support of the Union objections, Ray provided an affidavit indicating she never received the ballot. Consistent with the *Wabeno* rationale quoted above, a voter who has not received a ballot at some point prior to the ballot count has a responsibility to reach out to the Commission or the Union to request that another ballot be sent. Ray could have, should have but did not take the responsibility to do the same. Thus, the Commission does not find this objection to be persuasive.

An employee who did vote is C. Brandt. Commission records confirm that a ballot was mailed to her on November 1 using the address she had provided to the District. Her ballot was received by the Commission on November 25 with a postmark of November 22. Aside from

general assertions of unusual delay in the receipt of mail, the record does not provide a more specific explanation as to why a ballot was not timely received by C. Brandt in Kieler, Wisconsin. The Commission notes that the postmark dates on the timely returned ballots range from November 4 to November 17. That range of time supports a general conclusion that there was no relevant unusual delay in mail service – ballots may well have generally been received within three days of being mailed and ballots return mailed no more than four days before the November 21 count were timely received. Given the foregoing, the Commission does not find this objection to be persuasive.

Even if sustained, the remaining three objections do not have the potential to impact the election outcome. Therefore, the Commission need not and will not address them.

In summary, given the two rejected objections, the Commission is satisfied that the Union did not and could not receive at least 51% of the votes of all eligible voters. That election result is hereby certified.

Issued at the City of Madison, Wisconsin, this 17<sup>th</sup> day of February, 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman