



WERC Recertification and Voting Records

WERC RECERTIFICATION DECISION SHOWS EVERY PERSON COUNTS

A recent Wisconsin Employment Relations Commission (“WERC”) decision involving a union recertification election reinforces the importance of checking bargaining unit voter eligibility. (See, Milwaukee Teachers Education Association and Milwaukee Public Schools, Decision No. 35948-A, January 19, 2016.) The Milwaukee Teachers Education Association (“MTEA”) filed a petition for recertification as representative of the substitute teachers working for Milwaukee Public Schools (“MPS”). An election was held in November 2015 to determine whether at least 51% of the substitute teachers employed by MPS wanted to continue to be represented by MTEA for the purpose of collective bargaining. The initial results of the election showed that of 429 eligible voters, 218 voted in favor of continued representation. This meant that 50.82% voted in favor of representation, which is less than the 51% required for continued representation.

MTEA filed objections to the election claiming that three employees had lost eligible voter status and, therefore, the number of eligible voters should be reduced. These three individuals were all on the list of eligible voters provided to the WERC by the parties. MPS conceded that one individual should be removed as an eligible voter because she resigned from MPS employment prior to the election. (The election records show she did not vote.) MTEA submitted “additional evidence in support of election objection” asserting that a fourth employee on the voter list was also ineligible.

The WERC determined that MTEA’s “additional evidence” was an untimely objection. The WERC noted that the election rules have a specific, tight timeframe for filing election objections (which is eight days after receiving the tally of ballots). In this case, the additional evidence was received after the eight-day window and, therefore, could not be considered.

With respect to the remaining two employees, MTEA claimed that they had verbally advised MPS that they would not be working as substitute teachers during the 2015-2016 school year. MPS disputed that fact. The WERC determined the only objective and persuasive evidence to determine when employment ended would be a written letter of resignation. Because the two employees did not provide a written resignation, they remained eligible voters.

Presumably these two individuals did not vote either. Under the new rules, not voting is treated the same as a “no” vote. MTEA must have believed they did not support recertification; otherwise, they would not have challenged their eligibility.

As a result, the amended tally of ballots showed 428 eligible voters with 218 “yes” votes. This yielded only 50.93% in support of continued representation, thereby meaning the MTEA was not recertified.

This case illustrates a few important points:

1. Districts should construct their bargaining unit voter eligibility list carefully. In the MTEA case, one less eligible voter would have resulted in a 51% “yes” total and would have resulted in recertification.
2. If you intend to file objections concerning eligibility or other conduct of the election, the eight-day window will be strictly construed and enforced.
3. Written resignations (or other written documents) may be the only evidence the WERC accepts with respect to continued employment.

Districts should also be aware of another issue not addressed in this case: The voter eligibility list that districts are required to submit to the WERC must contain names, addresses, and the last four digits of their social security numbers. The list districts must submit to the union should contain only names. See Eligibility List Guidelines.

The major lesson to be learned from this case is that while some recertification votes are a foregone conclusion and a formality, in some cases, little differences can change the result. Districts should take the time to read the rules and correspondence from the WERC carefully and consult with legal counsel if they have any questions regarding any election procedures.

MTI SUES WERC FOR VOTING RECORDS

Madison Teachers Incorporated (“MTI”) filed a lawsuit in Dane County Circuit Court against the WERC over its refusal to release voters’ names during the recertification election held in November of 2015. The recertification election was held from November 4 to November 24. On November 10 and November 17, MTI requested the names of those employees who had voted. MTI claimed the reason it was seeking the names during the election period was so that its volunteers could contact those who hadn’t voted yet and encourage them to do so. John Matthews stated “we could be much more effective and contact a lot more people if we are not also calling people who already have voted.”

The WERC stated that handing over the names during the election period may invalidate the secret ballot process since non-votes count as “no” votes under the law. The WERC also stated that under the Public Records Law balancing test, the potential for voter coercion while balloting is ongoing outweighed the interest in disclosure. The WERC refused to release the records during the election. The WERC does release the records of who voted after the election period is over.

Whether this issue will be decided or resolved before the next round of school district recertification elections is unknown.

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