



Wisconsin Elections Commission

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July 31, 2020

Sere Leber
1122 100th St.
New Richmond, WI 54017

Deina Shirmer, Clerk
Town of Warren
720 112th St.
New Richmond, WI 54023

Sent via USPS and email to: wsl@frontiernet.net and office@townofwarren.com

Re: In the Matter of: Sere Leber v. Deina Shirmer, Clerk, Town of Warren
Case No. EL 20-15

Dear Ms. Leber and Clerk Shirmer:

This letter is in response to the verified complaint filed by Sere B. Leber with the Wisconsin Elections Commission (“Commission”) on May 18, 2020 in response to Warren Town Clerk Deina Shirmer’s decision to remove Ms. Leber from the Town of Warren Election Official list (“Election Official list”) following incidents that occurred during the February 18, 2020 election. The complaint alleges that Clerk Shirmer does not have the authority to remove her from the Election Official list.

The Commission has reviewed Ms. Leber’s complaint, Clerk Shirmer’s response, and Ms. Leber’s reply along with all supporting documentation and provides the following analysis and decision. In short, the Commission finds that it was within Clerk Shirmer’s authority under Wis. Stat. § 7.15(1)(f) and 7.30(6)(c) to discharge Ms. Leber for failure to comply with instructions provided by the clerk to not have political conversations while working at the polls. However, given that there is some dispute as to whether the other alleged conduct (electioneering or improper assistance of a voter) occurred as recounted in the affidavits of the chief inspector and other election inspector at the February primary, it is Commission’s opinion that Ms. Leber may be reinstated to the Town of Warren Election Official list for future elections. This decision provides formal notice to Ms. Leber that additional infractions of failing to comply with instructions regarding political conversations at the polls could lead to permanent removal from the list.

Procedural Background

Ms. Leber was a poll worker for the Town of Warren who worked during the February 18, 2020 election signing in electors and issuing ballots. During this time, Ms. Leber was discussing the Lincoln Day Dinner and other Republican Party issues with a fellow poll worker. The chief election inspector, Doreen Kruschke, informed Ms. Leber that her conversation regarding partisan issues was improper at the polling place and requested that she refrain from continuing

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the conversation. According to Ms. Kruschke's affidavit, Ms. Leber continued the conversation regardless of the chief inspector's instructions and was told to stop again.

Later in the day, a man brought his ballot to Ms. Leber to ask a question. It is disputed whether Ms. Leber answered the voter's question or assisted the voter in any other way. Ms. Kruschke and another inspector, Max Hansen, allege that Ms. Leber answered the voter's question and pointed to a specific spot on his ballot, but they could not hear what Ms. Leber said. Ms. Leber states that she informed the voter that she could not answer his question and did not point at the ballot.

Ms. Kruschke and Mr. Hansen informed Clerk Shirmer of Ms. Leber's conduct at the February 18, 2020 election and provided sworn affidavits regarding the incidents during the election. Based upon these sworn statements, Clerk Shirmer removed Ms. Leber from the Election Official list, informed her that she had done so, and provided the reason.

On May 20, 2020, Ms. Leber filed a complaint with the Commission appealing Clerk Shirmer's decision to remove her from the list, pursuant to Wis. Stat. § 5.06. The complaint alleges that Clerk Shirmer did not have the authority to remove Ms. Leber from the Election Official list. The complaint also alleges that Ms. Leber's conversation regarding partisan issues did not occur while a voter was present. Finally, the complaint acknowledges that a voter did approach Ms. Leber to ask a question, but that she shrugged and put her hands in the air to motion that she could not answer his question.

On June 8, 2020, Clerk Shirmer filed a verified response with the Commission. The response states that after being notified by Ms. Kruschke and Mr. Hansen of Ms. Leber's conduct at the February 18, 2020 election, Clerk Shirmer obtained sworn affidavits from the two individuals and determined that removal of Ms. Leber from the Election Official list was appropriate. The response states that Ms. Leber was asked twice to stop conversing about partisan issues in front of voters and did not stop. The response states that these incidents were deemed by Clerk Shirmer to be potential instances of electioneering, which is prohibited by Wis. Stat. § 12.03. The response also states that Clerk Shirmer was informed by Commission staff that it is within her authority as a municipal clerk to dismiss a poll worker if she believes she has credible evidence of the poll worker's infraction under Wis. Stat. § 7.30(6)(c).

Ms. Leber filed a reply on June 12, 2020. She agreed with many of the basic events that occurred but also objected to the assertion that "certain conversations and actions" upset Ms. Kruschke and Mr. Hansen and stated that those claims are false. She also stated that the affidavits submitted by Ms. Kruschke and Mr. Hansen were not filed with the Wisconsin Elections Commission. There is no requirement that any such information be filed with the Commission, so it is unclear why this was stated in her reply. Finally, she asserts that she did nothing wrong and that she is being persecuted under false allegations, Clerk Shirmer is biased against her based on her political party, she requests to be reinstated as an election inspector and requests that the Commission inform Clerk Shirmer that she does not have the authority to remove her as an inspector.

Commission Authority and Role in Resolving Complaints Filed Under Wis. Stat. § 5.06

Under Wis. Stats. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the inherent, general, and specific authority to consider the submissions of the parties to a complaint and to issue findings. In instances where no material facts appear to be in dispute, the Commission may summarily issue a

decision and provide that decision to the affected parties. This letter serves as the Commission's final decision regarding the issues raised by Ms. Leber's complaint.

The Commission's role in resolving verified complaints filed under Wis. Stat. § 5.06, which challenge the decisions or actions of local election officials, is to determine whether a local official acted contrary to applicable election laws or abused their discretion in administering applicable election laws.

Commission Findings

"Subject to the supervision of the municipal clerk..., the chief inspector shall direct the conduct of activities assigned to the inspectors at the polling place." Wis. Stat. § 7.36. "The chief inspector shall refer any question as to the proper procedure to be employed in carrying out the inspectors' duties to the municipal or executive director." Id. "The inspectors shall possess full authority to maintain order and to enforce obedience to their lawful commands during the election and the canvass of votes." Wis. Stat. § 7.37(2).

Wis. Stat. § 7.15(1)(f) provides municipal clerks with the authority to discharge election officials for improper conduct or willful neglect of duties. Wis. Stat. § 7.30(6)(c) provides further guidance on the removal of elections officials specifically, stating that if any election official lacks the statutory qualifications, fails to attend training sessions, neglects official duties, or commits official misconduct then the municipal clerk shall remove the official from office. The terms "improper conduct" and "official misconduct" are not defined in statute or administrative rule and are generally left to the discretion of the municipal clerks. Conduct which may be deemed improper could include failing to follow instructions given by the municipal clerk or chief election inspector regarding official duties or failing to follow poll worker training guidelines. Official misconduct often involves more serious offenses, such as engaging in prohibited election practices outlined in Chapter 12 of the Wisconsin Statutes.

Training documents and webinars provided by the Wisconsin Elections Commission specifically state that electioneering is prohibited at the polling place. Additionally, poll workers should not engage in conversations about ballot candidates, political platforms of candidates, incumbency information, or opinions on ballot initiatives such as referenda. These training materials also state that poll workers should avoid other political topics of conversation that could violate electioneering rules or infringe upon a voter's ability to cast a ballot free of political conversation or influence. Voters are all eligible for assistance, regardless of disability, from either a poll worker or anyone of their choosing with few exceptions. Wis. Stat. § 6.82.

Wis. Stat. § 12.03(4) defines electioneering as any activity which is intended to influence voting at an election. Wis. Stat. § 12.03(2)(a)1. Prohibits electioneering at polling places during polling hours. Wis. Stat. § 12.03(1) specifically prohibits election officials from electioneering at any place on election day.

Ms. Leber had conversations with a fellow poll worker consisting of political subject matter at a polling place while working as a poll worker. These conversations were in direct contradiction to Ms. Leber's training as a poll worker. Additionally, the Chief Election Inspector, Ms. Kruschke, instructed Ms. Leber to stop having conversations of a political nature and she disregarded these instructions. It is disputed however, whether these conversations occurred in the presence of a voter where such conversations would be more likely to have an impact or "influence" voting at an election. Disregarding instructions of the chief inspector alone could be considered improper conduct for the purposes of Wis. Stat. § 7.15(1)(f). Certainly, Clerk

Shirmer believed it was improper and exercised her authority under the statute to discharge Ms. Leber from the Election Official list.

It is unclear whether Ms. Leber assisted the voter who asked her a question at the February 18, 2020 election. However, instructional materials provided by the Wisconsin Elections Commission which are used for training indicate that it is appropriate for poll workers to assist voters when requested. The Commission does not believe there is enough credible evidence provided here that would cause the Commission to conclude that Ms. Leber engaged in improper conduct in either possible situation.

Facts necessary to determining whether Ms. Leber intended to influence voting are disputed. First, it is disputed whether Ms. Leber's conversation with another poll worker regarding partisan issues occurred in the presence of voters. If the conversation did not occur in the presence of any voters, then there is little evidence of intent to influence voting as there would be no one to influence. Second, it is disputed whether Ms. Leber's interaction with the voter was intended to, or actually in fact influenced the voting by that individual. If Ms. Leber told the voter that she could not assist him in making selections, then there is clearly no intent to influence or actual influence the voting that occurred. If Ms. Leber did assist the voter by pointing at his ballot and saying something as alleged, there are still issues of proof here, and the Commission cannot conclusively determine that she influenced or even intended to influence his vote. For these reasons, the Commission believes that the conduct in question does not constitute electioneering under Wis. Stat. § 12.03(4).

Commission Decision

Based upon the above review and analysis, the Commission finds that Clerk Shirmer acted within her authority by taking the claims of Ms. Kruschke and Mr. Hansen seriously and removing Ms. Leber from the Town of Warren Election Official list because she failed to follow the instructions of the chief inspector to discontinue political conversations while in the polling location. The Commission finds that there is no evidence that Ms. Leber engaged in electioneering during her interaction with a voter. Election inspectors are specifically allowed to assist voters and help them navigate the voting process.

The Commission determines that Ms. Leber may be reinstated to the Town of Warren Election Official list but cautions that additional infractions of disregarding instructions from the chief inspector could result in permanent removal from the Election Official list.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of this complaint. Wis. Stat. § 5.06 (2). Pursuant to Wis. Stat. § 5.06 (8), any aggrieved party may appeal this decision to circuit court no later than 30 days after the issuance of this decision.

If either of you have questions about this letter or the Commission's decision, please feel free to contact me.

Sincerely,

WISCONSIN ELECTIONS COMMISSION

A handwritten signature in black ink that reads "Megan L.M. Wolfe". The signature is written in a cursive style with a large, stylized 'M' at the beginning.

Meagan Wolfe
Administrator

cc: Deina Shirmer, Warren Municipal Clerk (via email)
Sere Leber (via email)