



Wisconsin Elections Commission

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February 16, 2026

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Re: **Ken Charneski v. Bobbi Birk-LaBarge (EL 24-26)**
David M. Baker v. Bobbi Birk-LaBarge et al. (EL 24-68)
Faye Buchberger v. Bobbi Birk-LaBarge (EL 24-89)
Daniel Kindelberger v. Bobbi Jo Birk-LaBarge (EL 24-126)

Dear Mr. Charneski, Mr. Baker, Ms. Buchberger, Mr. Kindelberger, Clerk Birk-LaBarge, President Voll, Trustee Coyle, Trustee Eiden, and Trustee Vedvik:

This letter constitutes the decision of the Wisconsin Elections Commission (“the Commission”) for four interrelated complaints brought pursuant to Wis. Stat. § 5.06 regarding the Village of Kronenwetter (Marathon County). The complaints focus on the policies and decisions of Clerk

Commissioners

Ann S. Jacobs, chair | Marge Bostelmann | Don M. Millis | Carrie Riepl | Robert Spindell | Mark L. Thomsen

Administrator
Meagan Wolfe

Birk-LaBarge¹ with respect to the appointment, selection, and scheduling of partisan election inspectors in Kronenwetter.

Given that these complaints are brought primarily against the same election official and concern related allegations of actions that are contrary to law or an abuse of discretion, the Commission is addressing each complaint in one decision letter and issuing one order that addresses each finding of a violation or abuse of discretion. The complaints are addressed below in the order in which they were received, followed by a single order section that addresses each finding of probable cause within the four complaints.

The Commission finds that the complaints of Ken Charneski, Faye Buchberger, and Daniel Kindelberger establish probable cause that clerk Birk-LaBarge violated election procedures, and accordingly orders the Village of Kronenwetter clerk to conform future conduct to the law.

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

Under Wis. Stat. §§ 5.05(1)(e) and 5.06(6), the Commission is provided with the authority to consider the submissions of the parties to a complaint and to issue findings. 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 in these complaints.

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.

Complaints "shall set forth such facts as are within the knowledge of the Complainant to show probable cause to believe that a violation of law or abuse of discretion has occurred or will occur." Wis. Stat. § 5.06(1). Probable cause is defined in Wis. Admin. Code § EL 20.02(4) to mean "the facts and reasonable inferences that together are sufficient to justify a reasonable, prudent person, acting with caution, to believe that the matter asserted is probably true."

EL 24-26 – Ken Charneski v. Bobbi Birk-LaBarge

Complaint

On March 25, 2024, the Commission received a sworn complaint from Complainant Charneski pursuant to Wis. Stat. § 5.06 alleging that Respondent Birk-LaBarge violated Wis. Stat. §§ 7.15(1) and 7.30 by failing to carry out her election related duties over multiple election cycles as well as improperly appointing election inspectors.

Complainant Charneski alleges that Respondent Clerk Birk-LaBarge took actions which were contrary to law with respect to appointing, removing, and scheduling election inspectors for Kronenwetter elections. Regarding Wis. Stat. § 7.30 he alleges that Respondent Birk-LaBarge:

¹ As of November 23, 2024, Bobbi Birk-LaBarge is no longer the municipal clerk for the Village of Kronenwetter. The Commission's order applies to the office, and the current clerk must comply with it under Wis. Stat. § 5.06(6).

1. Either removed or disregarded appointed election inspectors and instead hired workers whose names did not appear on a submitted political party list and who were not approved by the Village of Kronenwetter Board.
2. Did not provide for the proper balance between Republican and unaffiliated election inspectors for any election.
3. Split shifts for election inspectors without a village ordinance authorizing this act.
4. Admitted to removing at least one election inspector, Mr. Dan Joling, without cause, documentation, or notification.
5. Effectively removed Republican inspectors, namely Mr. James Wysocki and Mr. Dan Joling, on the submitted list, because they have never been asked to work an election while Clerk Birk-LaBarge has been in charge of conducting elections.
6. Did not break down the lists of potential election inspectors by party affiliation when submitted to the Village Board for approval, and stated that other nearby municipalities removed party information despite a lack of evidence in support of the claim. The Complainant alleges that the Respondent's reasoning for not breaking the list down was to "protect the privacy of the political party of these folks so they are not persuaded in any way."
7. Submitted lists of political party nominated election inspectors to the Village Board that were missing names, and thus failed to immediately forward the list under Wis. Stat. § 7.30(4)(b)2.a. and b.
8. Appointed a non-approved election worker, Cindy Aucutt, and also appointed someone who is not a resident of Kronenwetter, Cindy Falkowski, when other residents were available. He added an amendment saying that Ms. Aucutt was identified as an alternate chief inspector by the village board and was not approved as a regular election inspector.

The Complainant also included multiple exhibits.

- Exhibit A is the list of election inspectors approved by the Village Board in December of 2021 showing the inspectors as either Republican nominees, Democratic nominees, or non-affiliated.
- Exhibit B is an election inspector schedule for the August 9, 2022, primary, allegedly including two people who were not appointed as inspectors, Patty Tikalsky and Lucene Udulutch.
- Exhibit C is the same as exhibit A with highlighted names of the inspectors who worked the August 9, 2022, primary according to the list in exhibit B.
- Exhibit D is an election inspector schedule for the November 8, 2022, election, allegedly including 6 individuals who were not approved, Cindi Falkowski, Faye Buchberger, William Gau, Abby Wallis, Dennis Mueller, and Carol Howard.
- Exhibit E is the same as exhibit A with highlighted names of the inspectors who worked during the November 8, 2022, election.
- Exhibit F shows an election inspector schedule for the February 21, 2023, primary, allegedly including five individuals who were not appointed: William Gau, Cindy Falkowski, Carter Coyle, Dennis Meuller, and Lucene Udulutch.
- Exhibit G is the same as exhibit A with highlighted names of the inspectors who worked during the February 21, 2023, election.
- Exhibit H shows an election inspector schedule for the April 4, 2023, Spring Election, allegedly including nine individuals who were not appointed, Patty Tikalsky, Audrey Gray, Geraldine Kowalski, Abbi Wallis, Kay Palmer, Faye Buchberger, Cindy Falkowski, Dennis Meuller, and Lucene Udulutch.

- Exhibit I is the same as exhibit A with highlighted names of the inspectors who worked during the April 4, 2023, Spring Election.
- Exhibits J and K are email threads between the Complainant and Respondent concerning the removals of election officials, including a statement by the Respondent that “If he was taken off, it was most likely for a good reason. I, myself, removed Dan Joling in the best interest of the elections. That's the clerk's choice.” The email also shows that Respondent Birk-LaBarge was not the village clerk during the 2021 and 2022 elections. An email from Respondent La-Barge also states that Mr. Joling “never got a **formal** letter. I just never called him. If I ever DO need him, I will email him for assistance.”
- Exhibit L is an email thread between the Complainant, the Respondent, and Jim and Elaine Wysocki. The Wysocki’s email states that he was not called in to work as an election inspector after the 2022 Spring Primary, that he had been removed from the list, and that someone from the WEC explained to him that if he was removed he should have received a formal letter explaining why he was formally removed under Wis. Stat. § 7.30. The Respondent states that she had earlier “failed to rotate Republican/Democratic parties due to me not knowing.” She offers to include him on the list for 2023 elections.
- Exhibit M is an email thread between the Complainant and the Respondent concerning hiring poll workers and includes an email exchange with WEC staff stating that a clerk can appoint to fill vacancies.
- Exhibit N is another exchange between the Complainant, Respondent, and an Administrator for Kronenwetter concerning hiring election inspectors, and also includes Exhibit M.
- Exhibit O contains the list of nominated poll workers and the resolution appointing them for the 2024 to 2025 election cycle. It includes a list of names not broken down by party affiliation. It also includes a statement that three individuals notified the clerk that they did not wish to be included in the list - Daniel Joling, Cheryl A. Kempe, and Mark Hoffman - and the names do not appear on the appointed list. It also includes a statement that inspectors can be removed by the clerk under Wis. Stat. § 7.15(1)(e) and the vacancy can be filled by the clerk. It also provides that the clerk can schedule working hours for election inspectors and chief inspectors.
- Exhibit P is a letter sent to the Respondent by the Chairman of the Republican Party of Marathon County concerning political party lists of inspectors and lists of unaffiliated inspectors. It asks that all nominated individuals be appointed to inspector positions. It also includes the certified list of nominations.
- Exhibit Q is an email exchange between the Complainant and Respondent concerning the appointment of unaffiliated election inspectors and the scheduling of inspectors for an election.
- Exhibit R shows an election inspector schedule for the 2024 Spring Primary.
- Exhibit S is a letter from the Respondent to the Village Board describing the actions of the Complainant and stating that they were harassing in nature.
- Exhibit T is a version of Exhibit S that has been annotated with the Complainant’s responses to the Respondent’s letter disputing many of the points raised.

Response

On May 7, 2024, Respondent Birk-LaBarge submitted her verified response and argued against the allegations by responding to each individually:

1. The Respondent asserts she was not employed as the Village of Kronenwetter Clerk for any election or primary prior to July 18, 2022, and was therefore not responsible for the appointment or scheduling of election inspectors prior to that date. She states she did not receive on the job training regarding elections from any previous clerk, and had to complete training, and learn how to conduct an election, including staffing election inspectors, during the three weeks before the August 9, 2022, Partisan Primary. She also alleges that she was not aware that there was a list of appointed election inspectors, and that she instead operated off of an email from the previous clerk containing a list of election inspectors. She alleges that all election inspectors received training and took their oath of office.

Regarding Dan Joling, the Respondent alleges that she had various email conversations with Mr. Joling, and that he declined to serve as an inspector during the August 9, 2022, Partisan Primary, and again declined to serve during the November 6, 2022, General Election due to the use of plexiglass at the polling place, which made it difficult for him to hear. She states that she did not contact him again for the 2023 Spring Primary and Election because she was still using plexiglass at the polling place. She states that she received an email in December 2023 from Mr. Joling declining to serve as an election inspector for the 2024-25 election cycle due to scheduling conflicts.

Regarding James Wysocki, the Respondent alleges his name was not on the email that she used to choose election officials and alleges that the word “no” was written next to his name for the 2022 Spring Election, which she understood to mean he was not able to serve during that election. Clerk Birk-LaBarge maintains that she did not know Mr. Wysocki should have been included in the pool of election inspectors until the Complainant brought it to her attention. Clerk Birk-LaBarge contacted Mr. Wysocki about being an election inspector, and while he declined to serve in 2023, he has since been added to the approved list of 2024-25 inspectors and worked both the 2024 Spring Primary and Spring Election.

2. The Respondent alleges that she did not provide schedules for the November 3, 2020, General Election or the April 5, 2022, Spring Election because she was not the clerk at the time and was not able to find any responsive records for the election official schedules.
3. Regarding the allegation that she did not attempt to achieve the statutory balance of election officials, the Respondent states that she disagrees with the allegation and that it is “the personal opinion” of the Complainant.
4. Regarding the allegation that she split shift without a village ordinance authorizing that action, she alleges that there are ordinances, §§ 41-1, 41-2, and 41-3, governing this action and refers to other materials provided by the village attorney. The village attorney provided copies of ordinances along with an explanation.
5. The respondent refers to her response in part 1 regarding the allegation that she removed at least one election inspector without cause.
6. Regarding the allegation that she effectively removed Republican nominees from the list of approved election inspectors by not scheduling them, she states that she disagrees and again says that the claim is the Complainant’s “personal opinion.”

7. Regarding the claim that she did not break the list of partisan and unaffiliated election inspector nominees down by affiliation, she states that “the list of party nominees does not necessarily need to be broken down when they are submitted to the village board.” She does state that the lists previously had been provided in a manner that showed party affiliation.
8. Regarding the allegation that she removed names from the list submitted by the Republican Party before forwarding them to the Village Board, she alleges that she never removed any names from the lists submitted by the Republican Party. Three individuals were removed from the list because they declined to serve or not consent to their inclusion on the list, but this was shown on the list and within the minutes. She states that the minutes from the December 11, 2023, show that the names were presented but that political affiliations were not shown “due to the impact it could have on their impartiality during elections.”
9. Regarding the allegation of choosing an election inspector who is not a resident of the municipality, the Respondent states that she assumes the Complainant is referring to Cindy Falkowski. The Respondent alleges that Ms. Falkowski is a resident of Marathon County and is a qualified elector. To be a poll worker, Clerk Birk-LaBarge asserts, a person must be a qualified elector of the county in which the municipality is located. Ms. Falkowski is a previous clerk for the Village of Kronenwetter for 10 years. The Respondent alleges that Ms. Falkowski attended all required training and was sworn in as an election inspector after being approved by the Village board on December 11, 2023.
10. Regarding the allegation that she had her favorite, previously illegal poll workers on the list approved by the Village Board, the Respondent states that she does not have “favorites” and that her poll workers were not “illegal.”
11. Regarding the allegation that she brought in Cindy Aucutt who was not an approved poll worker, for the February 20, 2024 primary, the Respondent alleges that Ms. Aucutt had been a chief inspector for many years prior to the Respondent becoming village clerk and that she is “a known and approved worker” who has “attended training fulfilling her . . . training hour requirements.” She states that Ms. Aucutt was sworn in as Chief Election Inspector and approved by the village board on December 11, 2023. She states that Ms. Aucutt “was sworn in and approved by me as the clerk to work the February 20, 2024, election.
12. Regarding the allegation that she did not immediately send the Republican Party list to the Village President and instead contacted the individuals and removed three of them from the list, the Respondent alleges that the attached list was also sent to the Village President, but that three individuals declined to serve. The individuals are Mark Hoffman, who stated that he did not want to be an inspector for the cycle, Dan Joling, who had scheduling conflicts, and Cheryl Kempe, who declined to serve.
13. Concerning exhibit C and the allegation that two individuals who were not appointed served during the primary, the Respondent alleges that both Patty Tikalsky and Lucene Udulutch received training and were sworn in and appointed by her.
14. Regarding exhibit E and the allegation that six individuals who served who were not appointed by the Village Board on December 21, 2021, all received training from the Respondent, took their oath, and were all appointed by her.

15. Regarding exhibit G and the allegation that five people served who were not appointed by the Village Board on December 21, 2021, the Respondent alleges that all received training from the Respondent, took their oath, and were all appointed by her.
16. Regarding exhibit I and the allegation that nine people served who were not appointed by the Village Board on December 21, 2021, the Respondent alleges that all received training from the Respondent, took their oath, and were all appointed by her.
17. Regarding the allegation that some election inspectors were scheduled several times, others never used, and that inspectors were arbitrarily brought in by the Respondent, the Respondent alleges that no one was displaced and that an email was sent before each election asking for availability, and that the available names are given to the Chief Inspectors to develop schedules for election day, meaning that the schedules are based on the availability of the inspectors.

The Respondent also included several exhibits:

- The first shows the village ordinances governing elections:
 - “§ 41-1 - Election Officials. Election officials shall be appointed as prescribed by Wis. Stats. § 7.30. (Ord. of 4-12-2004).”
 - “§ 41-2. – Hours for voting. The polls on each election day shall remain open for voting from 7:00 a.m. until 8:00 p.m. (Ord. of 4-12-2004).”
 - “§ 41-3. – Alternates. The village clerk may appoint alternate election inspectors, as needed, to work at elections held in the village. This includes wards one through 8. (Ord. of 4-12-2004).”
- The second is resolution 2021-026 creating election wards.
- The third is resolution 2023-016 appointing the 2024-2025 election inspectors. The resolution shows that the names of Daniel Joling, Cheryl Kempe, and Mark Hoffman were removed from the list because they notified the clerk that they did not wish to be included. It also shows that Marie Traska and Mary Ventzke were designated as Chief Inspectors with Cynthia Aucutt as an alternate, and that they will hold the position unless removed by the clerk or ceasing to be certified as a chief inspector. The resolution also notes that any inspector could be removed under § 7.15(1)(e). It also shows that the clerk is directed to schedule working hours for inspectors and chief inspectors.
- The fourth shows the election inspector schedule from February 24, 2024, Spring Primary. It shows three Democratic Inspectors, eight Republican Inspectors, and eight non-affiliated inspectors.
- The fifth shows the election inspector schedule from the April 2, 2024, Spring Election. It shows four Democratic Inspectors, twelve Republican Inspectors, and nine non-affiliated inspectors.
- The sixth shows an email, with a date of November 28, 2023, from the Respondent reaching out to the Democratic nominees and asking them if they are willing to work all elections in the 2024-2025 election cycle, listing the scheduled elections, stating that there is required training for each election, and asking them to verify their commitment to serving by December 6.
- The seventh shows the Democratic list of nominees sent to the Respondent and the Village President and received on November 27, 2023. It certifies that all nominees have been contacted and agreed to serve. The list appears to have five people on it. Another attachment shows a digital copy being sent on November 16, 2023, and an acknowledgement on December 1.
- The eighth is an email from the Democratic Party from February 29, 2024, asking to add Faye Buchberger as an election inspector.

- The ninth is an email, with a date of November 28, 2023, from the Respondent reaching out to the Republican nominees and asking them if they are willing to work all elections in the 2024-2025 election cycle, listing the scheduled elections, stating that there is required training for each election, and asking them to verify their commitment to serving by December 6.
- The tenth is a letter from the Republican Party requesting that all individuals nominated as election inspectors in a prior communication be appointed to the office by the governing body. The list containing 21 names certified by the Republican Party is also attached.
- The eleventh is an email from Mark Hoffman, who appears on the Republican Party list, stating that he did not intend to serve as a poll worker for the coming cycle.
- The twelfth is an email from Dan Joling, whose name appears on the Republican Party list, stating that he needed to decline serving as an inspector due to scheduling conflicts.
- The thirteenth is an email from Cheryl Kempe, who appeared on the Republican Party list, stating that she would not be able to serve as an election inspector.
- The fourteenth is an email exchange between the Respondent and WEC staff concerning individuals appearing on the Republican Party list that did not wish to serve as inspectors.
- Fifteenth is an email exchange between the Respondent and the Chair of the Republican Party of Marathon County, which includes a prior exchange between the Complainant and the Respondent. It asks the chair why a separate list was provided to the Complainant that contained additional names than the one provided to the Respondent and nominating individuals to serve as inspectors. There is also a response provided from the vice-chair, Deb Hadley. Ms. Hadley appears to confirm that the list of 21 names referenced by the Respondent was correct, and that the list sent to the Complainant was an earlier list. The email notes that all 21 agreed to work at the time they were contacted. The email states that the Republican Party was not notified that individuals on the list told the Respondent they would not be able to work. It also states that individuals can only be removed from the list with WEC authorization. She states that people who have indicated that they do not wish to serve are not included on the lists. The email also states that an additional name was provided on March 26, 2024.
- Sixteenth is training certificate for Cynthia Aucutt dated October 26, 2023, for chief inspector training conducted by Trent Miner as well as an oath of office document sworn before the Respondent and dated February 13, 2024. An oath of office for Cindra Falkowski is also provided.
- Seventeenth is a population and voting age population provided by the Wisconsin Department of Administration.

Response from Dempsey Law – On Behalf of Clerk Birk-LaBarge

On May 7, 2024, Attorney Lee D. Turonie of Dempsey Law submitted a letter to the Wisconsin Elections Commission to accompany the response from Clerk Birk-LaBarge. The letter specifically addressed paragraph number 4 of the Complaint related to Clerk Birk-LaBarge's ability to split shifts when there is not an authorizing Village ordinance to do so. Attorney Turonie contends that Complainant Charneski could have sought to enact an ordinance relating to the issues he raises regarding elections and that the existing ordinances seem "to contradict much of the Charneski complaint." Attorney Turonie further notes the Village has a combined polling place for all 11 wards and uses multiple voting machines during each election and argues that under Wis. Stat. 7.30(1)(a), this allows the municipality to provide for the appointment of additional inspectors. The municipality, under this statute, may also provide by ordinance for the election of alternate officials or two or more sets of officials to work at different times on Election Day, and that alternate officials shall be appointed in a number sufficient to maintain adequate staffing.

Attorney Turonie states that there is no required structure for election administration ordinances, and that the Village's should be sufficient.

Reply

In his reply, the complainant points out that the Response, while notarized, does not contain the sworn statement under Wis. Admin. Code § EL 20.03.

The Complainant asserts that while it may be true that Clerk Birk-LaBarge lacked training in election administration initially, she still should have availed herself of resources and information, including her village administrator, experienced election inspectors, the League of Wisconsin Municipalities, and the Election Administration Manual to understand her responsibilities as municipal clerk.

The Complainant alleges that the plexiglass mentioned as the reason Mr. Joling did not serve as an election inspector was removed during one of the elections. He alleges that Mr. Joling could have served in another position, and that Mr. Joling declined to serve for the 2024-2025 cycle in part due to his perception that the Respondent was discriminating against him. He alleges that in the Response, the Respondent states that Mr. Joling was never removed from the list, but that he was only told that after the last election within the cycle. He states that this claim contradicts statements made by the Respondent in Exhibit K that Mr. Joling was removed from the list. He states that this was a removal and was not compliant with Wis. Stat. § 7.30(6).

With respect to James Wysocki, the Complainant states that Mr. Wysocki declined to work due to the Respondent's "attitude and tone" toward him and that the email exchange provided in the response took place after the last election in the cycle was over. He also states that Mr. Wysocki was improperly excluded as an election official based on the word "no" simply appearing next to his name.

The Complainant alleges that Clerk Birk-LaBarge had an imbalance in partisan election inspectors and alleges that she instead preferred to use "unaffiliated" inspectors. The Complainant states that his exhibits C, E, G, and I show "a 2 to 1 imbalance of workers" and that the Respondent "shows no effort to contact the Democratic party to obtain more worker names."

The Complainant also mentions that he believes the Respondent did not provide the email containing the list of election inspectors from the prior clerk that the Respondent alleges to have used to schedule election officials.

The Complainant reasserts his position that the Village has not passed an ordinance pursuant to Wis. Stat. § 7.30(1)(a) to permit partial shifts, and that Clerk Birk-LaBarge did so impermissibly of her own discretion.

The complainant reiterates that his exhibits C, E, G, and I show that at least seven individuals were never called in to work an election.

The Complainant also argues that while it may not be a legal requirement for the list of election inspectors to be broken down by party affiliation, it is a practical necessity for the public to identify whether or not there is an ideological balance of election inspectors who are conducting an

election. He also alleges that five of the six surrounding municipalities do include party affiliation, which he states contradicts the Respondent's statements to the Village Board in December 2023. He notes that the Election Administration Manual says that the clerk should identify any election inspectors appointed by one of the two political parties. He also states that she did not immediately forward the list of nominations to the Village President. He also notes that the Respondent did not communicate with the Republican Party concerning the list until January after the nominations were made. He also states that the WEC would have needed to approve those removals under Wis. Stat. § 7.30(4)(e).

With respect to Cindra Falkowski, the Complainant alleges that since she is not a resident of the Village of Kronenwetter, she should not have been hired as an election inspector under Wis. Stat. § 7.30(4)(c) if there were others in the Village who were able and ready to serve. He states that Ms. Falkowski served illegally in those elections because she was not nominated by the board. He states that "there is no shortage of workers who are residents of this Village" and asks the WEC to remove her as an election inspector.

The Complainant reiterates that it is unclear how the Respondent located and approved the individuals who were not appointed by the Village Board. He states that he has not argued that they were not trained or did not take the oath, but that they were not appointed by the governing body. He notes that vacancies must be filled from any remaining names on the political party lists under Wis. Stat. § 7.30(2)(b). He alleges that the Respondent cannot appoint any election worker that has not been approved by the governing body.

The Complainant argues that the Respondent only alleges to have asked for election inspector availability for elections rather than directing them to serve at the appointed times, as they agreed to when they were nominated and appointed. He states that "[t]here is no indication that any of those people refused to work, only that they failed to volunteer." He states that "when not enough people stepped forward, LaBarge used that as a reason to bring in her own people to fill the positions under the assumed premise of 'not enough workers.'" He states that the "alleged 'shortage' seems to be of LaBarge's own making, since there were seven people that somehow never got called in to work, nor is there documentation that anyone actually refused to work, nor were they removed from the list as Dan Joling was.

Discussion

The allegations raised by the Complainant involve many subsections within Wis. Stat. § 7.30, which concerns nominating, appointing, and staffing election inspectors. The Commission provides the relevant statutory language in full below in this complaint and will refer to sections as necessary throughout this decision letter.

Election Inspector Appointment Statute:

Wisconsin Statute § 7.30(1)(a) concerns the required numbers and party balance of election inspectors, and states in full that:

Except as authorized under par. (b), there shall be 7 inspectors for each polling place at each election. Except as authorized in par. (b), in municipalities where voting machines are used, the municipal governing body may reduce the number

of inspectors to 5. A municipal governing body may provide for the appointment of additional inspectors whenever more than one voting machine is used or wards are combined under s. 5.15 (6) (b). A municipal governing body may provide by ordinance for the selection of alternate officials or the selection of 2 or more sets of officials to work at different times on election day, and may permit the municipal clerk or board of election commissioners to establish different working hours for different officials assigned to the same polling place. Alternate officials shall also be appointed in a number sufficient to maintain adequate staffing of polling places. Except for inspectors who are appointed under par. (b) and officials who are appointed without regard to party affiliation under sub. (4) (c), additional officials shall be appointed in such a manner that the total number of officials is an odd number and the predominant party under sub. (2) is represented by one more official than the other party.

Regarding qualifications, Wis. Stat. § 7.30(2)(a) states in relevant part that:

. . . each election official shall be a qualified elector of a county in which the municipality where the official serves is located, and each chief inspector shall be a qualified elector of the municipality in which the chief inspector serves. . . . Except as authorized under subs. (1) (b) and (4) (c), all inspectors shall be affiliated with one of the 2 recognized political parties which received the largest number of votes for president, or governor in nonpresidential general election years, in the ward or combination of wards served by the polling place at the last election. Excluding the inspector who may be appointed under sub. (1) (b), the party which received the largest number of votes is entitled to one more inspector than the party receiving the next largest number of votes at each polling place. . .

Regarding vacancies, Wis. Stat. § 7.30(2)(b) states in relevant part that:

When a vacancy occurs in an office under this section, the vacancy shall be filled by appointment of the municipal clerk. Unless the vacancy occurs in the position of an inspector appointed under sub. (1) (b), the vacancy shall be filled from the remaining names on the lists submitted under sub. (4) or from additional names submitted by the chairperson of the county party committee of the appropriate party under sub. (4) whenever names are submitted under sub. (4) (d). If the vacancy is due to candidacy, sickness or any other temporary cause, the appointment shall be a temporary appointment and effective only for the election at which the temporary vacancy occurs. The same qualifications that applied to original appointees shall be required of persons who fill vacancies

Regarding appointment by the governing body, Wis. Stat. § 7.30(4)(a) states in relevant part that:

Except in cities where there is a board of election commissioners, the mayor, president or board chairperson of each municipality shall nominate to the governing body no later than their last regular meeting in December of each odd-numbered year the necessary election officials for each polling place and any election officials required under s. 7.52 (1) (b).

Regarding party lists nominating election inspectors for municipalities outside of counties with populations over 750,000, Wis. Stat. § 7.30(4)(b) states in relevant part that:

The 2 dominant parties, under sub. (2), are each responsible for submitting a list of names from which all appointees to inspector positions, other than appointees to inspector positions authorized under sub. (1) (b), shall be chosen. Each person submitting the name of one or more nominees shall certify on his or her list of nominations that the person has contacted each nominee whose name appears on the list and that each nominee has agreed to serve as an election official. The nominations shall be submitted as follows:

. . . 2.a. [the parties] shall submit a list containing the names of nominees from that party. The chairperson of each of the 2 committees shall submit the list to the mayor, president, chairperson, or clerk of the municipality, or to his or her agent, or shall deliver or mail the list to the office of the municipality. If the chairperson submits the list to the municipal clerk or his or her agent, the clerk shall immediately forward the list to the mayor, president, or chairperson of the municipality. . . . Except as provided in par. (c), only those persons submitted by the chairperson of each committee under s. 8.17 may act as election officials. The chairperson of each committee under s. 8.17 may designate any individual whose name is submitted as a first choice nominee.

. . . c. Unless nonappointment is authorized under par. (e), upon submission of the lists of names as provided under subd. 2. a. or b., the governing body shall appoint each first choice nominee for so long as positions to be filled from that list are available. The governing body shall appoint other nominees in its discretion. If any nominee is not appointed, the mayor, president, or chairperson of the municipality shall immediately nominate another person from the appropriate lists submitted and continue until the necessary number of election officials from each party is achieved at that meeting.

Regarding the appointing process, Wis. Stat. § 7.30(4)(c) states in full that:

Except with respect to inspectors who are appointed under sub. (1) (b), for so long as nominees are made available by the political parties under this section, appointments may be made only from the lists of nominees submitted under this subsection. If the lists are not submitted by November 30 of the year in which appointments are to be made, the board of election commissioners shall appoint, or the mayor, president or chairperson of a municipality shall nominate, qualified persons whose names have not been submitted. The board of election commissioners shall give priority to appointing, and the mayor, president, or chairperson of the municipality shall give priority to nominating, qualified electors of the municipality for which no list of nominees was submitted. If an insufficient number of qualified electors of the municipality can be identified, the board of election commissioners may appoint, and the mayor, president, or chairperson of the municipality may nominate, qualified electors of a county within which the municipality is located. If an insufficient number of nominees appears on the lists

as of November 30, the board of election commissioners shall similarly appoint, or the mayor, president or chairperson shall similarly nominate, sufficient individuals to fill the remaining vacancies. In addition, the mayor, president, or board chairperson of the municipality shall similarly nominate qualified persons to serve in the inspector positions authorized under sub. (1) (b). Any appointment under this paragraph which is made due to the lack of availability of names submitted under par. (b) may be made without regard to party affiliation.

Regarding first choice nominees, Wis. Stat. § 7.30(4)(e) states that:

If an appointing authority believes that, for good cause, it should not appoint an individual whose name is submitted as a first choice nominee under par. (b), it may request the commission to authorize nonappointment. The commission may permit nonappointment of an individual for cause demonstrated by an appointing authority.

Regarding service as an election inspector, Wis. Stat. § 7.30(6)(a) states in relevant part that the inspectors “shall serve at every election held in their ward during their term of office.” However, despite service being mandatory, “[m]unicipal clerks may grant exceptions from service at any time.” Wis. Stat. § 7.33(3).

Regarding the appointment of chief inspectors, Wis. Stat. § 7.30(6)(b) states in relevant part that:

Prior to the first election following the appointment of the inspectors, the municipal clerk shall appoint one of the inspectors at each polling place, other than an inspector who is appointed under sub. (1) (b), to serve as chief inspector.

Regarding the dismissal of election inspectors, Wis. Stat. § 7.30(6)(c) states that:

If any election official appointed under this section lacks the qualifications set forth in this section, fails to attend training sessions required under s. 7.15 (1) (e) unless excused therefrom, is guilty of neglecting his or her official duties or commits official misconduct, the municipal clerk or board of election commissioners shall summarily remove the official from office and the vacancy shall be filled under sub. (2) (b).

Allegation of Improper Dismissal or Staffing of Election Inspectors:

The Complainant alleges that the Respondent either improperly dismissed, or simply disregarded, election inspectors appointed by the municipality, and instead hired additional election inspectors. He discusses two specific examples, Dan Joling and James Wysocki, as well as mentioning others in the provided exhibits. The exhibits show schedules in which not all inspectors who were appointed serve in the election and several people who were not appointed by the governing body serve in the election. The Complainant refers to the individuals who were not appointed by the governing body as illegal or improper inspectors.

Beginning with the specific examples of Mr. Joling and Mr. Wysocki, the Commission finds an abuse of discretion regarding the Respondent’s scheduling practices for these individuals. The

email exchange between the Respondent and Complainant concerning Mr. Joling at first appears to show a violation of Wis. Stat. § 7.30(6)(c) for an improper dismissal of an election official. The Complainant provided evidence of the Respondent stating that “I, myself, removed Don Joling in the best interest of the elections. That’s the clerk’s choice.” A removal “in the best interest of elections” does not meet the statutory dismissal standards without a more significant explanation. However, Respondent also stated that “Mr. Joling never got a formal letter. I just never called him. If I ever DO need him, I will email him for assistance” indicating that he was not dismissed, meaning that no permanent vacancy was created for his position. The Respondent provides additional details concerning the interactions with Mr. Joling, and shows evidence that Mr. Joling declined multiple times to serve as an inspector due to plexiglass used at the polling places making it difficult for him to hear. However, she also states that after these declinations to serve, she did not contact him again in 2023 to serve.

The emails concerning Mr. Wysocki also show that he was not contacted to serve at an election despite having been nominated by the Republican Party and appointed by the Village Board in 2021. The Respondent admits that she was not aware of the list of election inspectors appointed by the governing body and instead used an email from the previous clerk containing inspector names. Regarding Mr. Wysocki, the Respondent alleges that his name was not on the email from the previous clerk, that the word “no” was written next to his name on the 2022 Spring Election schedule, and that she did not know Mr. Wysocki should have been included as an election inspector until the Complainant notified her. She further alleges that Mr. Wysocki declined to serve during 2023 after being contacted, but that he was approved as an inspector for the 2024–2025 election cycle.

The Commission finds an abuse of discretion due to Mr. Joling and Mr. Wysocki, individuals appointed from party lists, simply not being contacted to serve during elections. While not scheduling these individuals did not result in an improper partisan balance of inspectors, it appears to go against the Respondent’s stated procedure of asking all election inspectors whether or not they can serve during an election and then making a schedule using those available. While the neglect of Mr. Wysocki appears unintentional, and while she may have believed the Mr. Joling would have simply declined again to serve at subsequent elections, the Commission finds that under Wis. Stat. § 7.30(2)(a) the Republican Party was entitled to half plus one of the inspectors working in the Village of Kronenwetter’s polling place, and that to meet this requirement under the Respondent’s staffing procedure, she needed to ascertain which inspectors would have been able to serve during each election. For at least Mr. Joling and Mr. Wysocki, this did not occur. Due to different numbers of inspectors needed at different elections, different working hours, and different availability, it is very likely that not all appointed inspectors from either party would need to be scheduled or be able to serve, but without an attempt to gather this information for all partisan inspectors, the Respondent did not provide herself with all of the information she needed to make selections, and improperly left these two individuals out of the process.

Order Regarding Improper Election Inspector Staffing Procedures:

The Commission orders the Village of Kronenwetter clerk to ensure that all partisan nominated and appointed election inspectors are at least considered for staffing polling places at each election,

and that there be as many partisan inspectors serving as allowed at the location given the total number of slots available and the availability of the inspectors. Unless significantly larger lists of inspectors are nominated by both political parties, the Commission would expect that many unaffiliated inspectors would still be needed to adequately staff polling places at the village's elections.

Allegation of Unappointed Inspectors Serving at Elections:

Next, the Commission considers the exhibits showing individuals who were not appointed by the governing body serving as inspectors during an election. In most instances highlighted by the Complainant, with Mr. Joling and Mr. Wysocki being exceptions, the Commission does not have enough information to determine if the Respondent contacted all party nominated and appointed election inspectors to serve at each election. Even though the Complainant has shown that seven appointed inspectors did not serve at any elections, there is no information showing that they were never contacted to serve. The Complainant states in the reply that the Respondent "bring[s] in her own people" when appointed inspectors do not affirmatively state their availability to serve, but he has not shown that this is an insufficient reason to fill a temporary vacancy under Wis. Stat. § 7.30(2)(b). While service is mandatory at each election, a municipal clerk may grant exceptions from service at any time, and the Respondent has shown that she creates schedules based on inspector availability for each election, which the Commission accepts as granting exceptions for service. *See*, Wis. Stat. § 7.33(2). While it might be possible to dismiss election inspectors for failure to serve under Wis. Stat. § 7.30(6)(c), the Commission would not recommend taking that action.

As long as the Respondent determines, considering first all appointed partisan inspectors and second all appointed unaffiliated inspectors, that she does not have enough election inspectors ready and able to serve at a given election, she may make a temporary appointment to fill that position at that election under Wis. Stat. § 7.30(2)(b). The Complainant has shown a large number of temporary appointments, and has also shown a large number of inspectors who did not serve, or did not serve consistently, but without showing that appointed individuals were ready to serve and simply ignored, the Commission cannot find an abuse of discretion or violation of law regarding these instances. Therefore, Commission does not find probable cause that the Respondent improperly made temporary appointments of individuals to serve as inspectors.

However, the Commission does remind the Village of Kronenwetter clerk to ensure that all appointed partisan inspectors who would be able to serve at a polling place given the number of officials needed, and second all inspectors appointed without regard to party, are ruled out as being unavailable before any temporary appointments may be made.

The Commission notes that the Respondent's claim that each inspector received training and completed an oath was conceded in the Complainant's reply, and the Commission has no reason to find that anyone served at an election without being appointed or trained. It appears to the Commission that the clerk made temporary appointments as needed to staff polling places, and that each person appointed received the required training under Wis. Stat § 7.31(2) prior to serving.

Allegation of Improper Party Balances of Election Inspectors:

Regarding the allegation that the Respondent did not provide the proper balance between Republican and unaffiliated election inspectors, the Commission does not find probable cause of a violation because the Republican Party always appears to have had at least one more election inspector serving at a given time than the Democratic Party. The Commission notes that the Respondent not contacting Mr. Joling and Mr. Wysocki about serving at certain elections may have resulted in fewer appointed individuals serving. However, the order above addresses this issue, and the Commission does not need to issue a second order based on this allegation. While the Complainant argues in the reply that the Respondent should have reached out to the Democratic Party to correct the overall imbalance of partisan inspectors, due to the comparatively low number of Democratic nominees, the Commission finds that while the parties have the right to submit additional names for the purpose of filling vacancies under Wis. Stat. § 7.30(4)(d), a clerk does not have a duty to solicit names from them and may proceed with filling a permanent or temporary vacancy immediately as the need arises, turning to remaining names or supplemental names on lists if any are available.

Allegation of Splitting Election Inspector Shifts without an Ordinance:

The complainant alleges that the Respondent split shifts without a village ordinance authorizing that action. While this argument is developed more fully in EL 24-68 and addressed more thoroughly in that discussion, the Commission finds that the Village of Kronenwetter does have ordinances providing for alternate inspectors, and that the Village Board provided the Respondent with the authority to set the hours of her election inspectors. It also finds that the Village of Kronenwetter uses multiple voting machines and has a combined polling place and is therefore able to appoint additional inspectors.

Allegation of Removing Election Inspector Nominees from Party Lists:

The Complainant alleges that the Respondent improperly removed three names from the Republican Party list before forwarding it to the governing body, under Wis. Stat. § 7.30(4)(b)2.a. The Respondent alleges and provides evidence that she received contacts from each of the three inspectors stating that they declined to serve during the 2024–2025 election cycle. She states that she did not remove any names from the lists as they were submitted, but brought them to the Village Board with the explanation that they declined to serve. She also alleges that the Village Board President received an original copy of the list from the Republican Party.

The Commission finds that the three individuals were presented to the Village Board, and that the board agreed with the Respondent's presentation that they declined to serve, and subsequently declined to appoint them under Wis. Stat. § 7.30(4)(b)2.c. and (c). While the Complainant argues that approval from the Commission was needed regarding the nonappointment of these individuals, none of them were listed as first choice nominees, and thus the Commission was not required to authorize nonappointment under Wis. Stat. § 7.30(4)(e). Considering the specific language within Resolution 2023-16 addressing this issue, the Commission concludes that the Village Board was aware that these names were nominated on the Republican Party list, and determined not to appoint them due to the individual's not being willing to serve. The Commission does not find a violation of law or an abuse of discretion concerning this series of actions.

Allegation of Removing Party Identifications from Lists of Inspector Nominees:

The Complainant alleges that the Respondent did not break down the lists of potential election inspectors by party affiliation when the Village Board appointed election inspectors under Wis. Stat. § 7.30(4)(b) and (c). The Complainant provides evidence that the names of poll workers previously had been broken down by party affiliation, and the Respondent admits that was a prior practice. Regarding the presentation of the inspectors nominated by the Republican and Democratic Parties, the Commission finds an abuse of discretion in the Respondent's process when considering the reasons given in documents provided by the Complainant and not rebutted by the Respondent. There is no reason to withhold the information concerning which party submitted which names, and that information might be critical to a governing body appointing the right balance of election inspectors.

In this instance, there was no harm, because the Village Board appointed every individual whose name was provided by the Republican and Democratic parties with the exception of those it specifically declined to appoint due to refusals to serve, and more Republicans than Democrats were appointed. But the lack of harm does not mean that this was a proper exercise of discretion. Had the facts been different, the Village Board could have unknowingly appointed unaffiliated inspectors *instead of* qualified partisan inspectors rather than merely in addition to all partisan nominees as needed.

Order Regarding Party and Unaffiliated Identifications for Election Inspector Nominees:

Because the lack of clarity regarding which party nominated which individuals, the confusion it apparently caused during the December 11, 2023, Board Meeting, and the lack of apparent safeguards to prevent improper appointments, the Commission orders the Village of Kronenwetter to publicly disclose the nominations of partisan election inspectors to the governing body so that the governing body may proceed with nominating and appointing inspectors as it chooses.

Allegations of Improper Election Inspector Appointments:

The Complainant alleges that the Respondent appointed an election inspector, Cindy Aucutt, who was only approved as an alternate chief inspector by the board rather than a regular election inspector. The Respondent alleges that Ms. Aucutt, a prior chief inspector, had completed training and was appointed by the governing body on December 11, 2023, and that she was sworn in for the February 20, 2024, Spring Primary. While Ms. Aucutt was appointed as an alternate chief inspector, the Commission notes that the designation of chief inspectors is a duty assigned to the municipal clerk rather than the governing body under Wis. Stat. § 7.30(6)(b) and that anyone serving as a chief inspector must first be an inspector. Given the ordinance allowing the clerk to appoint alternate inspectors as needed, and given the intent of the governing body to appoint Ms. Aucutt as an alternate chief inspector, the Commission finds that Ms. Aucutt was appointed as an election inspector by the governing body, and that the clerk was not required to select her as a chief inspector, and was permitted to select her as an alternate to serve at an election as needed.

The Complainant also alleges that the Respondent appointed at least one inspector, Cindy Falkowski, who was not a resident or Kronenwetter when residents were available to serve. The Commission does not have enough information to conclude that residents of Kronenwetter were ready and able to serve when the Respondent needed temporary appointments but neglected them in favor of individuals residing outside of the municipality. The Respondent alleges that Ms. Falkowski, a prior clerk for the Village, is an elector of Marathon County and that she attended training, and that she was subsequently appointed by the governing body as an inspector. While the requirement to choose individuals of the municipality carries over to vacancy appointments due to Wis. Stat. § 7.30(2)(b) stating that the same qualifications apply to appointees to vacant positions, there is no required procedure to solicit individuals from a municipality to serve, and without concrete evidence that there were individuals from the municipality who were in contact with the clerk and ready to serve, the Commission cannot find probable cause that this statutory preference for local inspectors was violated.

While the Commission's orders should bring some uniformity to staffing polling places and appointing inspectors to fill temporary vacancies, the Village could also expand its election ordinances to specify procedures for staffing and filling vacancies, as long as those ordinances do not contradict the governing statutes.

EL 24-68 – David Baker v. Bobbi Birk-LaBarge et al.

Complaint

The complaint by David Baker was noticed to the Respondents on June 18, 2024. In addition to Respondent Birk-LaBarge, the complaint also names Village President Chris Voll, and Trustees Kelly Coyle, Chris Eiden, and Alex Vedvik as respondents.

The Complaint includes the Village President and Trustees as election officials due to their duty under Wis. Stat. § 7.30 to appoint election officials for the municipality. The complaint alleges that Respondent Birk-LaBarge is the Village Clerk and was appointed to the position on July 25, 2022, by President Voll and confirmed by the Village Board.

The Complainant alleges that:

1. The Respondents failed to follow Wis. Stat. § 7.30 in the appointment of election officials for the municipality. He alleges that the Village Board respondents all voted yes to pass Resolution 2023-16, which appointed election inspectors for the 2024-2025 election cycle.
2. The Village of Kronenwetter had 19 election inspectors serve during the February 20, 2024, Spring Primary, but did not have a resolution or ordinance under Wis. Stat. § 7.30(1)(a) allowing the appointment of additional inspectors. He alleges that alternate officials are not identified as such in Resolution 2023-16. He alleges that neither the primary election inspectors nor the alternates were appointed in such a manner that the predominant party is represented by one more official than the other party.
3. The party imbalance was not met during the February 20, 2024, Spring Primary because the Republican Party was entitled under Wis. Stat. § 7.30(2) to one more election inspector than the Democratic Party. He alleges that there were 19 total election inspectors and only 8 affiliated with the Republican Party instead of the required 10, and that excluding greeters

there were 17 inspectors, with seven affiliated with the Republican Party instead of the required nine.

4. Wisconsin Statute § 7.30(2) requires that “Whenever 2 or more inspectors are required to perform a function within a polling place and both parties that are entitled to submit nominees have done so, the chief inspector shall assign, insofar as practicable, an equal number of inspectors from the nominees of each party.” He alleges that “At the February 20, 2024, Spring Primary, 3 Election Inspectors affiliated with the Republican Party and 0 inspectors unaffiliated or affiliated with the Democratic party worked the absentee table. 0 Election Inspectors affiliated with the Republican Party and 2 Election Inspectors unaffiliated or affiliated with the Democratic Party worked Ballot table 1. 1 Election Inspector affiliated with the Republican party and 1 Election Inspectors unaffiliated or affiliated with the Democratic party worked Ballot Table 2. 1 Election Inspector affiliated with the Republican party and 1 Election Inspectors unaffiliated or affiliated with the Democratic party worked Badger Book #1. 0 Election Inspectors affiliated with the Republican party and 2 Election Inspectors unaffiliated or affiliated with the Democratic party worked Badger Book #2. 2 Election Inspectors affiliated with the Republican party and 0 Election Inspectors unaffiliated or affiliated with the Democratic party worked Badger Book #3. 0 Election Inspectors affiliated with the Republican party and 2 Election Inspectors unaffiliated or affiliated with the Democratic party worked Badger Book #4.”
5. That Village President Respondent Voll did not nominate individuals based on party affiliation under Wis. Stat. § 7.30(4)(b)2.c., and that the board did not know the number of necessary election officials from each party and thus failed to appoint the proper number from each party.

The Complainant asks the Commission to require the Respondents to adopt a resolution that specifies the required number of Republican and Democratic election inspectors, and to communicate to the parties that Resolution 2023-16 did not properly appoint inspectors and that the parties would have a chance to submit new names to be appointed during an August 26, 2024 Village Board meeting.

The Complainant submitted a transcript of the December 11, 2023, board meeting during which Resolution 2023-16 was passed. He notes that multiple speakers at one time made transcription difficult. He also submitted Resolution 2023-16 concerning the 2024-2025 election inspectors. Finally, he included election results from the General Elections in 2020 and 2022, which show that the Republican Party would be due one more poll worker in the Kronenwetter polling place for both the 2022-2023 and 2024-2025 election cycles.

Response

Respondent Birk-LaBarge, responding on behalf of all Respondents, states that the Village of Kronenwetter uses a combined polling place and more than one voting machine. She states that in addition to ordinances 41-1, 41-2, and 41-3, there are two resolutions governing elections, 2021-026 and 2023-016.

She states that she used the lists from the Democratic and Republican Parties nominating individuals to serve as election inspectors, and that neither list identified any individual as a first-choice nominee. She alleges that each person whose name appeared on a list was appointed except for those who indicated that they did not wish to serve in that role. Of the 21 individuals nominated

by the Republican Party, three declined to serve, and all of the five individuals nominated by the Democratic Party agreed to serve, leading to 23 total partisan inspectors who were appointed by the Village Board. In addition, the board appointed nine unaffiliated individuals, for a total of 32 election inspectors. She alleges that though Resolution 2023-016 did not list party affiliation, that information was available as a public record.

She alleges that out of the 32 election inspectors, only some are available to serve at a given election, as determined by emailing the inspectors, and that all inspectors who agree to work are scheduled to work.

She alleges that the Democratic Party supplemented their list with Faye Buchberger in February 2024, and that her name was thus not part of Resolution 2023-16, which was adopted on December 11, 2023. The Respondent alleges that there have not been any resignations to create permanent vacancies

She states that she has “appointed additional unaffiliated election inspectors from time to time and within my legal capacity. Since no inspectors have resigned, these are temporary vacancy appointments. She states that these names do not appear in Resolution 2023-016 because the temporary vacancies occurred after the resolution was passed.

She states that all inspectors are trained and qualified to serve.

She states that the Republican Party is the dominant political party at the polling place, and alleges that the 2024 Spring Primary had eight Republicans, three Democrats, and eight unaffiliated inspectors for a total of 19, and that the 2024 Spring Election had twelve Republicans four Democrats, and nine unaffiliated election inspectors for a total of 25.

The Respondent attached the same documents that had been provided as exhibits to complaint EL 24–26, Ken Charneski v. Bobbie Birk-LaBarge.

Response of Attorney Turonie

The response from Attorney Turonie addresses several legal arguments as part of the Response for all Respondents. Attorney Turonie’s letter states that this complaint concerns the same subject matter as EL 24–26, Ken Charneski v. Bobbie Birk-LaBarge.

First, Attorney Turonie’s letter argues that the Village Board members named in the complaint are not election officials and notes that the WEC Election Administration Manual does not identify municipal governing body members as election officials. Attorney Turonie argues that Village Board members do not conduct elections and are not trained to perform election duties. He also argues that OAG-01-24 concludes that the meaning of “election official” in the Wisconsin Constitution is the same as the definition within Chapter 5 of the Wisconsin Statutes, and that the work required “to be performed by election officials is work in directing or leading the administration of an election.”

Attorney Turonie argues that Kronenwetter has more than one voting machine and has a polling place that combines multiple wards and is thus able to have “an unspecified number of ‘additional inspectors’” under Wis. Stat. § 7.30(1)(a). He also argues that under Wis. Stat. § 7.30(4)(c) a

municipality can appoint more names than it receives on party lists. He argues that the list of 23 affiliated and nine unaffiliated election inspectors, supplemented with temporary appointments by the clerk as needed, is allowed by statute and the Kronenwetter Village Ordinances. He alleges that the clerk may appoint individuals to serve in temporarily vacant positions under Wis. Stat. § 7.30(2)(b), and that she has done so. As in EL 24–26, he provides the village ordinances governing elections and argues that the Complainant’s statement that the Village has no ordinances governing the appointment of additional inspectors is incorrect. He notes also that Resolution 2023-016 states that the clerk is directed to schedule working hours for Election Inspectors and Chief Election Inspectors. He argues that Wis. Stat. § 7.30 and Wisconsin’s Home Rule authority allows local government units to account for relevant local facts and provide for “the flexible use of adequate officials” and that the Village has accomplished this in its ordinances and resolutions. He also notes that the clerk cannot control how many names are submitted by the parties or how many officials are able to serve on an election day.

Attorney Turonie argues that the predominant party is entitled to one more official than the other party, and that unaffiliated inspectors “do not figure into that math.” He notes that at each election, the Republican Party had more than just one additional inspector.

Attorney Turonie argues that the chief inspector only needs to assign inspectors of both parties when two or more inspectors are required to perform a specific function “insofar as practicable” rather than an absolute requirement. He argues that where election inspectors were stationed throughout the day fluctuates, and the process cannot be micromanaged.

He also attaches an article on appointing partisan election officials and OAG-01-24 as exhibits.

Reply

The Complainant alleges that because the board member Respondents did not file their own individual responses that they have not contested their status as election officials under Wis. Stat. § 5.06 or their alleged violations under Wis. Stat. § 7.30. He also argues that these respondents should be considered election officials under Wis. Stat. § 5.06 and notes that the Commission has previously adjudicated complaints against governing body members when those members are performing duties related to the conduct of an election. The Complainant also argues that many aspects of the response are not relevant to the allegations of the complaint.

Discussion

While this complaint resembles EL 24–26 and contains similar allegations, the Commission does not find probable cause of any of the specific violations alleged in this complaint and therefore dismisses the complaint.

Proper Respondents:

Regarding the argument that only the Village Clerk is a proper respondent, the Commission finds that the board members are also proper respondent election officials under Wis. Stat. § 5.06 because they are required by law to carry out a limited range of election administration tasks within Chapters 5 to 10 and 12 of the Wisconsin Statutes. While they may not be election officials generally, and do not perform tasks in the conduct of elections, they are election officials in the

context of appointing election inspectors and several other limited tasks, such as choosing polling places. In this case, the allegations against them relate to their duties under Wis. Stat. § 7.30, and they are properly brought in as parties to the complaint. Despite being proper parties, not all of the allegations are applicable to their duties, and in any case the Commission does not find probable cause that they violated any of the election administration processes required of them.

Complaint Allegations:

The Respondents rebutted the allegations that they improperly approved Resolution 2023-16 containing additional election inspectors, failed to identify which officials were the alternate election inspectors, and failed to maintain the proper party imbalance. The Commission agrees that Wis. Stat. § 7.30 provides considerable flexibility to a municipality regarding the appointment and staffing of election inspectors, provided that certain conditions are met. In this case, they appear to be met.

Allegations of Improper Additional Election Inspector Appointments:

First, regarding the appointment of additional inspectors, the Respondents have provided evidence, which was not disputed, that the Village of Kronenwetter uses more than one polling place and has combined multiple wards within a polling place. Either of these conditions alone would allow the governing body to provide for the appointment of additional inspectors, and there is no requirement that this be done by ordinance. *See*, Wis. Stat. § 7.30(1)(a). It appears that the governing body has acted under this provision, along with many other local governments across the state, to appoint more than the default number of seven election inspectors per polling place.

Second, the Village of Kronenwetter's Ordinance § 41-3 provides that "[t]he village clerk may appoint alternate election inspectors, as needed, to work at elections held in the village." Regardless of an ordinance, a governing body also may permit the municipal clerk to establish different working hours for different officials assigned to the same polling place. Wis. Stat. § 7.30(1)(a). Resolution 2023-16 expressly authorizes the clerk to schedule the working hours for election inspectors. While it does not appear that the governing body has provided by ordinance for fully separate sets of election inspectors to work at different times on election day, it seems that the clerk individually determines the hours of each official based on the needs of the polling place and the availability of the election inspectors.

Finally, excluding greeters – though the governing body does not appear to have specified any inspectors as greeters under Wis. Stat. § 7.30(1)(b) – and individuals appointed without regard to party affiliation, it appears that more inspectors were properly appointed from the Republican Party than the Democratic Party given the results of the 2022 General Election in the municipality. Further, at each election referenced by the Complainant, the Republican Party had at least one additional election inspector serving at the polling place at any given time. The Complainant reads Wis. Stat. § 7.30(1)(a) and (2)(a) to require that the total number of officials appointed and the number serving at each polling place contain exactly one more person from the predominant party.

The Commission has never interpreted these statutes to require an exact number, but rather to require that the predominant party for each polling is entitled to at least one more election inspector than the other party. Applying a strict interpretation would lead to absurd results, including in the

Village of Kronenwetter. Under such an interpretation, the Village would only have been able to appoint the five Democratic nominees, six out of the total 21 Republican nominees, and could only staff the same numbers at the polling place, leaving the rest to be filled in by unaffiliated inspectors. Instead of this interpretation, the Commission understands Wis. Stat. § 7.30(1)(a) and (2)(a) to divide an odd number of election inspectors serving at each polling place into a larger group and a smaller group. Given sufficient party lists and appointments, the clerk would fill each group so that the predominant party would have one additional inspector per polling place. However, absent sufficient party lists and appointments, which is a common occurrence, a clerk must staff as many of the proper partisan inspectors as possible into each group, filling the remainder of the needed positions with unaffiliated inspectors and ensuring that the predominant party is always represented by at least one additional inspector. It appears that the board member Respondents appointed and the clerk Respondent staffed election inspectors in compliance with this interpretation.

Allegation of Improper Assignment of Election Inspector Tasks:

The argument that individual election tasks were not properly assigned to election inspectors representing both parties contains several flaws. First, Wis. Stat. § 7.30(2)(a) places the assignment of tasks on the chief inspector, rather than on the clerk, and no chief inspector is a named Respondent.

Second, the statute refers to situations specifically requiring two or more election inspectors to perform them, and most of the examples provided by the Respondent of uneven distribution of partisan inspectors do not require any specific number of inspectors to perform. For example, though many clerks will staff more than one person, Badger Books only require one election inspector to operate under Wis. Stat. § 6.79(1m). While absentee ballot processing is discussed in the plural in terms of election inspectors under Wis. Stat. § 6.88(3), only the statement concerning rejected ballots is required to be signed by inspectors from both parties, when available, and the Complainant does not allege that this failed to occur, merely that the assigned inspectors for processing absentees were all Republican nominees.

Regarding the ballot tables, this likely is an area to assign to one inspector from each party due to the requirement for two officials to initial the ballot, however, Wis. Stat. § 7.30(2)(a) states that such assignments shall be made “insofar as practicable” rather than imposing an absolute requirement. In any case, the Complainant has not shown that it would have been practicable to assign one of each official to each task that he has specified.

Allegation of Improper Election Inspector Appointments:

The Complainant also alleges that under Wis. Stat. § 7.30(4)(b)2.c. and (c), the Respondents failed to appoint individuals based on party affiliation and did not know the number of necessary election officials from each party. While this allegation does have some merit, the Commission does not find that there was a violation of this subsection as described by the Complainant. While the lack of specificity regarding who was nominated by what party is a problem that should be corrected going forward, it does not appear that this issue led to any individuals who should have been appointed failing to be appointed. Instead, it appears that, though at least some governing body members were not made aware of the party lists, all party nominees were appointed with the

exception of three names from the Republican Party list. However, in this case, the names are specified as being on the Republican Party list, and the governing body made a specific statement that those individuals did not wish to serve as election inspectors.

Given that a governing body may appoint at its discretion the decision not to appoint individuals who have given notice that they do not wish to serve appears reasonable and was not an abuse of discretion. Overall, the governing body could not have failed to appoint the necessary number of officials from each party because it appointed all available individuals from each party.

Because the Commission does not find probable cause that any of the cited statutes were violated as alleged by Complainant Baker, the Commission hereby dismisses the complaint.

EL 24–89 Faye Buchberger v. Bobbie Birk-LaBarge

Complaint

The complaint was filed on September 5, 2024, and the Complainant, Faye Buchberger, alleges that anyone whose name is nominated on a political party list must be given the opportunity to serve as an election inspector before anyone else is selected for the role. She alleges that the Respondent hired seven new people for the 2024 Partisan Primary but that she was excluded even though her name appeared on the Democratic Party’s list of nominations. She states that she had previously worked as an election inspector for several elections during the 2022–2023 election cycle, and that she emailed the Democratic Party, with the Respondent copied, about being a nominated election inspector in October of 2023. However, she was not included on the list the Democratic Party sent to the Respondent in November of 2024. In February 2024, the Democratic Party updated the list and sent it to the Respondent. The Complainant states that despite being added, she was not asked to serve as an inspector for the 2024 Spring Election or Partisan Primary.

The Complainant includes as attachments the schedules for the three elections in 2024 at the time of her filing the complaint. She also notes several previous attachments in EL 24–26 and EL 24–68, including the appointment of the 2024–2025 election inspectors and an email change discussing adding her to the Democratic list.

Response

The Respondent submitted a response on September 25, 2024, and notes that EL 24–26 and EL 24–68 also contain information relevant to this complaint. She alleges that she sent an election worker recruitment email to encourage nominations and participation, and she attached a copy as an exhibit. She also states that she used the party lists that were sent to her, which did not include any first-choice nominees. She alleges that the list sent by the Democratic Party on November 9, 2023, included five individuals but not the Complainant, and that the Village Board thus did not appoint the Complainant as an election inspector during its meeting on December 11, 2023. The Respondent agrees with the Complainant that the Democratic Party later added the Complainant’s name to the Democratic list.

The Respondent alleges that “none of the already Village Board-appointed Democratic party nominees have permanently resigned.” She states that because there is no permanent vacancy

concerning the appointed Democratic party nominees, that she cannot appoint a supplemental person to one of those positions.

Reply

The Complainant alleges in her final reply on October 16, 2024, that she followed the Respondent's instructions for reaching out to the Complainant's political party for inclusion on the party's list of nominees and also copying the Respondent on that communication. She alleges that the Respondent should have been aware that the Complainant's name was missing and should have corrected the issue before the December meeting.

The Complainant argues that Wis. Stat. § 7.30(2)(b), which concerns appointing election inspectors when vacancies occur, does not indicate that a vacancy is dependent upon a nominating party or that it must be permanent, and notes that vacancies shall be filled from the remaining names on the political party lists or from additional names that were submitted by the parties. She also states that the WEC guidance provided by the Respondent states that even vacancies of inspectors who were not appointed from a political party list should be filled from the remaining names or supplemental names on those lists if that will maintain the partisan imbalance. The Complainant argues that she could have been added as an election inspector because there was only one election and one polling location that would have resulted in an even party balance had she been appointed. In all other cases there would have remained at least one more Republican-nominated inspector.

The Complainant also notes that in EL 24-26, it appears the Respondent had added an additional individual whose name was provided by the Republican Party after the initial appointments had concluded. She alleges that eight people were appointed after the initial appointments by the governing body and provides a photo of an advertisement for election inspectors, arguing that the Respondent must have believed that there were vacant positions to be filled. She also includes a spreadsheet that she alleges shows all of the election inspectors and the elections in which they served.

Discussion

In this discussion, the Commission considers the narrow question of whether Complainant Buchberger should have been offered the opportunity to serve as an election inspector, and finds probable cause that the Respondent did not select her name from the Democratic Party list to fill a temporary vacancy under Wis. Stat. § 7.30(2)(b) and instead selected individuals without regard to party.

Allegation of Improper Exclusion from a Party List of Election Inspector Nominees

First, the Commission does not find probable cause of a violation or an abuse of discretion regarding the initial nomination and appointment under Wis. Stat. § 7.30(4). The Respondent appears to have sent an email asking individuals to copy her if they reach out to a political party about being added to a list, stating "[t]hat way, if I get a list that doesn't include you, I'll have proof that you requested to be added before our board needs to do the official appointment in December."

While this email arguably implies that the Respondent would follow up if an expected name did not appear on a party list, it does not fundamentally change the process. The political parties on their own determine who to nominate as election inspectors, and a clerk does not have any power to alter the names that are included. *See*, Wis. Stat. § 7.30(4)(b). Had the Respondent, or, for that matter, the Complainant, reached out to the Democratic party prior to the December 11, 2023, meeting, it is possible that an error might have been corrected, and that she would have been added to the initial list of nominations. That did not occur, but the Respondent is not responsible for selecting names on partisan lists or double checking that each name the party intended to submit is present on the list. The Respondent did not violate a statutory duty by accepting the list as it was received and sending it to the governing body.

Allegation of Neglecting Party Lists for Election Inspector Vacancy Appointments

Second, though the Respondent did not have a statutory role in ensuring that any names appeared on the political party lists, she did have a duty to turn to those lists, including later additions, whenever any vacancy arose.

Under Wis. Stat. § 7.30(4)(d), the political parties “may submit additional names for inclusion in its list of nominations under this section at any time for the purpose of filling vacancies that occur during a term of office.” Both parties agreed that the Democratic Party provided Complainant Buchberger’s name, and that action complied with this statute.

Wisconsin Statute § 7.30(2)(b) provides in relevant part that:

When a vacancy occurs in an office under this section, the vacancy shall be filled by appointment of the municipal clerk. Unless the vacancy occurs in the position of an inspector appointed under sub. (1) (b), the vacancy shall be filled from the remaining names on the lists submitted under sub. (4) or from additional names submitted by the chairperson of the county party committee of the appropriate party under sub. (4) whenever names are submitted under sub. (4) (d). If the vacancy is due to candidacy, sickness or any other temporary cause, the appointment shall be a temporary appointment and effective only for the election at which the temporary vacancy occurs.

The Respondent made two errors under this section, resulting in a violation. The first is the Respondent’s assertion that the number of partisan nominated election inspectors is fixed at the amount initially nominated by the governing body. In any municipality, all inspector positions can be filled from partisan nominated lists, and the only limitations are that the total number, and the total number working at each polling place, must be odd, and the party receiving the most votes for governor or president at the last General Election is entitled to at least one more official. Wis. Stat. § 7.30(1)(a) and (2)(a). In this instance, as long as the Republican party always had one more inspector total, and one more inspector at each polling place, than the Democratic Party, an individual could have been appointed from the Democratic Party list even if there were no vacancies of Democratic party nominated individuals.

The second error is the Respondent’s belief that only a permanent vacancy in a partisan position can be filled by a new individual selected from a political party list. The statute requires that party lists be used to fill all vacancies, and merely states that a temporary vacancy be filled with a

temporary appointment and a permanent vacancy be filled with a permanent appointment. The method of appointment from the appropriate party lists does not change.

It is not entirely clear from the submitted materials whether there were any permanent vacancies created following the initial appointment of inspectors on December 11. However, it is clear that there were temporary vacancies and temporary appointments occurring after the Complainant's name had been added to the supplemental party list, but that the Complainant was not selected due to the misunderstanding of how party lists must be used to fill vacancies. Instead of properly turning first to party lists to fill vacancies, the Respondent appears to have appointed unaffiliated individuals to fill temporary vacancies, in particular during the 2024 Partisan Primary. The names of these unaffiliated poll workers who were not appointed in December 2023 can be seen on the election inspector schedules that were provided with the Complaint, and which were not rebutted in any way by the Respondent.

Order Regarding the Use of Party Lists for Election Inspector Vacancy Appointments

For this reason, the Commission finds probable cause of a violation under Wis. Stat. § 7.30(2)(b) and orders that, whenever there is a temporary or permanent vacancy, the Village of Kronenwetter clerk must first attempt to fill the vacancy using any names – original or supplemental – provided on a political party list as long as such an appointment would not disturb the required partisan balance of inspectors. However, an appointment should never be delayed because of the lack of availability of party nominees, and if the parties have not provided the names of individuals who are available to work during a given election, an unaffiliated individual may be appointed instead.

EL 24–126 Daniel Kindelberger v. Bobbie Birk-LaBarge

Complaint

The Complaint, which was received on November 7, 2024, alleges that on October 28, 2024, the Respondent violated Wis. Stat. § 5.84 by preventing Dan Joling from filming the public test of the voting equipment for the 2024 General Election. The Complainant alleges that the Respondent admitted in an email to preventing Mr. Joling from filming under Wis. Stat. § 7.41(1), and alleges that this statute does not cover the public test under § 5.84. He alleges that the public test does not occur on Election Day and that it was not at a polling place, and therefore that Wis. Stat. § 7.41 does not apply, and that the Respondent's references to the Election Administration Manual concerning election observers are not relevant. The Complainant alleges that under Wis. Stat. § 19.90 an individual is allowed to record a public meeting such as the public test under § 5.84.

The Complainant also alleges that the public test was not properly noticed under § 5.84(1) because the notice was only posted on the village's Facebook page and on the village bulletin board, rather than in the newspaper.

The Complainant includes several emails between the Respondent and Mr. Joling. The emails show the Respondent stating that Wis. Stat. § 7.41(1) prohibits filming the public voting equipment test, as well as referencing the Election Administration Manual. An email from the Respondent from October 28, 2024, states in part that Mr. Joling's "consistent challenge of direction and questioning of the Chief Election Inspectors' direction became a distraction and interfered with our

orderly process of public testing of our voting equipment,” but also notes that after receiving a warning Mr. Joling discontinued his actions and allowed the test to continue. An earlier email shows the Respondent inviting Mr. Joling to observe the public test of the voting equipment.

Response

The Respondent provides background information and alleges that Mr. Joling voted during the in-person absentee voting period of October 23, 2024, and that Mr. Joling had concerns about whether folding the ballot would cause it to be counted improperly. The Respondent states that she offered Mr. Joling the option “to spoil the ballot that he cast on October 23rd and to come in on Election Day, re-vote, and place his unfolded ballot into the tabulator.” She states that she also offered that Mr. Joling could attend the public test of the voting equipment on October 28, 2024.

The Respondent noted that Mr. Joling attended the public test and was recorded as an observer, but that Mr. Joling disagreed about being required to sign the observer log. She alleges that Mr. Joling questioned the need to sign in as an observer and follow observation rules and that his questions “interfered with our testing process.” She alleges that she requested the current Chief of Police for the Village to remain nearby in case Mr. Joling (a previous Chief of Police) needed to be removed from the location, and also that she warned Mr. Joling that he would be removed from the location if his behavior continued.

The Respondent alleges that during the public test, Mr. Joling asked if he could record the test ballots being fed into the tabulator, and states that she contacted the county clerk’s office for guidance and was told that only media could record the public test, and to refer him to Wis. Stat. § 7.41. She alleges that she wrote down the interaction and sent a report of it to the police chief, village president, and county clerk’s office.

The Respondent states that she later spoke to an attorney from the Commission who informed her that filming the public test was not covered by any statute and that it should be treated like a public meeting in which filming is allowed.

The Respondent states that because the public test is not a meeting of the governmental body that Wis. Stat. § 19.90 is likely not relevant, and that notices for the public test were placed on social media and were published in the newspaper by the county clerk in addition to being placed on the bulletin board. She also explains that notices under Wis. Stat. Ch. 985 are not necessarily required to be published in a newspaper and that the Village of Kronenwetter does not have a newspaper. She also states that there is no prohibition against documenting the individuals who observe the public test.

The Respondent alleges that the Complainant was not present during any events concerning the complaint, and that the complaint was based on “second and third hand conversations with others” and that he is not an aggrieved party. She alleges that the documents presented came from Mr. Charneski. She also disputes many of the claims made about her by Mr. Joling in an email exchange she provides as an attachment. Finally, she alleges that the Complainant has engaged in harassing behavior against her and includes several emails that she states show this behavior.

The Respondent includes many of the same emails provided with the complaint. An additional email from the Respondent to Mr. Charneski states that a notice of the public test was published

in the weekly papers for Marathon County on October 20, and that it was published in the Marshfield Herald on Tuesday, October 22. In another email, County Clerk Kim Trueblood states to Mr. Charneski that the notice was published in multiple county papers, including the Wausau Daily Herald. A document containing the notice was also provided as an attachment, which states that the test would occur on Monday, October 28, “from 8:30 a.m. to 5:00 p.m.” at the municipal clerk’s office and to contact the municipal clerk for the scheduled time. Other emails show the physical posting in the Village bulletin board and include a link to the notice on the Village’s website. The Respondent attached the description of the events from Mr. Joling, which she disagreed with, as an attachment. A cease-and-desist letter from the Respondent’s attorney to Mr. Charneski is also attached. Finally, the Respondent attached a post from the Complainant criticizing and swearing at the Respondent.

Reply

The reply was received on December 18, 2024, which was after the filing deadline of December 11, which was 13 business days after the response was transmitted to the Complainant. The late reply includes statements from the Complainant as well as Mr. Charneski and Mr. Joling. The Complainant states that the Complaint was based not on secondhand sources but on public emails that were included in both the Complaint and in the Response. The Complainant also alleges that the notices published by the County Clerk did not state the specific time of the public test. In Mr. Charneski’s statement, he alleges that he did not provide the Complainant with documents and disputes some of the Respondent’s characterizations concerning him. The statement by Mr. Joling also disputes characterizations of him by the Respondent.

Discussion

Proper Complainant:

First, even if the Complainant himself is not an aggrieved party and did not witness any of the events firsthand, he has still complied with the standing threshold required by Wis. Stat. § 5.06(1). He has alleged that he is an elector served by the Respondent election official, included allegations concerning election administration, set forth facts within his knowledge – namely a series of emails between other parties – and has sworn to the truth of the complaint. Therefore, the Commission has no reason to dismiss the complaint due to standing.

Spoiling Absentee Ballots:

Before discussing the merits of the complaint, the Commission notes that the offer from the Respondent to Mr. Joling to spoil the ballot and allow him to vote on Election Day was improper under Wis. Stat. § 6.86(6), which states that unless a ballot is spoiled or damaged, or the certificate envelope is improperly completed or missing, the clerk cannot return a ballot to a voter, and that “[a]n elector who mails or personally delivers an absentee ballot to the municipal clerk at an election is not permitted to vote in person at the same election on election day.”² While it does not appear that Mr. Joling accepted this offer, the Commission stresses that it is improper for a clerk to spoil, or allow a voter to spoil, an undamaged and unspoiled ballot that has been returned to the municipal clerk, and that any such practices should be discontinued.

² See also the injunction in *Kormanik v. Wisconsin Elections Commission*, 22-CV-1395.

Complaint Allegations:

The Complainant makes two main allegations against the respondent. He alleges that she improperly administered the public test of the voting equipment under Wis. Stat. § 5.84 by applying the standards for election observation under Wis. Stat. § 7.41 to this separate process, and by not properly providing notice of the test.

Allegations of Improper Public Test Notice:

Regarding notice, the Commission does not find probable cause that the Respondent failed to properly provide notice of the public test. Under Wis. Stat. § 5.84(1) a clerk must provide:

Public notice of the time and place of the test . . . at least 48 hours prior to the test by publication of a class 1 notice under ch. 985 in one or more newspapers published within the municipality if a newspaper is published therein, otherwise in a newspaper of general circulation therein.

While this statute describes newspaper publication, Chapter 985 provides alternative methods for providing notice. Under Wis. Stat. § 985.05, the governing body of a municipality not required to have an official newspaper may instead provide for other forms of publication or posting. None of the exceptions to alternative methods of publication or posting apply to a Village's notice of the public test. *See*, Wis. Stat. § 985.05(1). One of the alternative methods of legal notice is a physical posting "in at least one public place likely to give notice to persons affected" and a posting "electronically on an Internet site maintained by the municipality." Wis. Stat. § 985.02(2)(a).

Regardless of the adequacy of the general notice provided in newspapers by the county for local public tests, the Complainant alleges that there was a bulletin board posting as well as a Facebook posting, and the Respondent agrees concerning the physical posting and provides evidence of a posting on the municipal website. While the image is very difficult to read, the Complainant does not appear to argue that the physical posting was inadequate and does not rebut the Respondent's evidence of online posting. The Complainant also has not made an argument that the Village is required under Ch. 985 to post in a newspaper or that the governing body has not provided for a substitute to newspaper posting, and the Commission therefore has no basis to conclude that the posting under the Wis. Stat. § 985.05(2)(a) was invalid.

Allegation of Improper Public Test Administration and Commission Order

Regarding the administration of the public test of voting equipment under Wis. Stat. § 5.84(1), the Commission does find probable cause of a violation due to the improper application of Wis. Stat. § 7.41 to this process and orders the Village of Kronenwetter Clerk to correctly administer the public test in future elections.

Under Wis. Stat. § 5.84(1): "[t]he test shall be open to the public." There are no specific restrictions placed on attendance, and the Commission has interpreted the public access to this process to be identical to the access to a general public meeting of municipal governing body or to a municipal canvass meeting under Wis. Stat. § 7.53. The provisions of Wis. Stat. § 7.41 impose stronger regulations on election observers but only apply to specific election sites when election activities are occurring. The public test of the voting equipment under Wis. Stat. § 5.84(1) is simply not one

of these sites or activities, and the regulations imposed on observers cannot be applied to those attending the public test. To apply Wis. Stat. § 7.41 to Wis. Stat. § 5.84(1) was a violation and should not occur in the future.

The Respondent alleges that Mr. Joling disrupted the public test due to questioning the application of Wis. Stat. § 7.41. The Commission cannot fault Mr. Joling for questioning a process that it has found to be improper, and had he simply been allowed to film the proceeding there likely would not have been an issue, but the Commission also does not condone disruptions to election processes. Mr. Joling should have been permitted to film the public test, but, in general, just as a governing body or a canvass may maintain order during a meeting, a municipal clerk may maintain order during a public test. The lack of the application of Wis. Stat. § 7.41 to the public test does not mean that a clerk has no authority to regulate public behavior, it only means that the processes under Wis. Stat. § 7.41 are not a means available to do so.

Commission's Findings

The Commission has reviewed four separate complaints within this decision letter, and has found probable cause of violations or abuses of discretion for three complaints. The Commission will summarize each finding and order below.

EL 24-26 – Ken Charneski v. Bobbi Birk-LaBarge: The Commission found abuses of discretion regarding the Respondent's process for scheduling election inspectors and in presenting the list of appointed names to the governing body. The Commission orders the Village of Kronenwetter clerk to determine how many appointed election inspectors are available to work during each election, and to ensure that there are as many partisan inspectors serving as allowed at the location given the total number of slots available and the availability of the inspectors. The Commission orders the Village of Kronenwetter clerk to disclose the names associated with each political party's list of election inspectors so that the governing body may consider this information when appointing inspectors.

EL 24-68 – David Baker v. Bobbi Birk-LaBarge et al.: The Commission did not find probable cause of a violation and dismissed the complaint.

EL 24-89 – Faye Buchberger v. Bobbie Birk-LaBarge: The Commission found probable cause that Ms. Buchberger was not offered the opportunity to be appointed to fill a vacancy under Wis. Stat. § 7.30(2)(b) due to her name being included on a supplemental list provided by the Democratic Party. The Commission orders that whenever there is a temporary or permanent vacancy, the Village of Kronenwetter clerk must first attempt to fill the vacancy using any names – original or supplemental – provided on a political party list as long as such an appointment would not disturb the required partisan balance of inspectors.

EL 24-126 – Daniel Kindelberger v. Bobbie Birk-LaBarge: The Commission found probable cause of a violation of the public test of the voting equipment under Wis. Stat. § 5.84(1) due to the improper application of regulations applicable only to election observers under Wis. Stat. § 7.41, and orders the Village of Kronenwetter Municipal Clerk to administer future public tests without applying the regulations of Wis. Stat. § 7.41.

Right to Appeal – Circuit Court

This letter constitutes the Commission's resolution of these complaints. 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 any of the parties should have questions about this letter or the Commission's decision, please feel free to contact the Commission at 608-266-8005 or elections@wi.gov.

Sincerely,

WISCONSIN ELECTIONS COMMISSION