

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

GREEN BAY MUNICIPAL EMPLOYEES,
LOCAL 1672, AFSCME, AFL-CIO

Involving Certain Employees of

CITY OF GREEN BAY employed in the
Department of Public Works

Case XIX

No. 11495 ME-310

Decision No. 8098-B

Appearances:

Lawton and Cates, Attorneys at Law, by Mr. John C. Carlson, for
the Petitioner.

Mr. Ervin L. Doepke, City Attorney, for the Municipal Employer.

Goldberg, Previant and Uelmen, Attorneys at Law, by Mr. David L.
Uelmen, for Drivers, Warehouse and Dairy Employees Union,
Local 75, Intervenor.

ORDER DISMISSING OBJECTIONS TO CONDUCT OF ELECTION

Green Bay Municipal Employees Union, Local 1672, AFSCME, AFL-CIO, having filed objections to the conduct of an election conducted by the Wisconsin Employment Relations Commission on August 16, 1967, in the above entitled matter, wherein said Labor Organization contended that prior to the election Drivers, Warehouse and Dairy Employees Union, Local 75, another labor organization appearing on the ballot, engaged in conduct affecting the results thereof, and further that an employee eligible to participate in the election was not relieved from his employment in order to vote in said election; and a hearing on said objections having been conducted at Green Bay, Wisconsin, on September 13, 1967, by Robert M. McCormick, Examiner, and the Commission having considered the evidence, arguments and briefs of counsel and being satisfied that said objections should be dismissed;

NOW, THEREFORE, it is

ORDERED

That the objections filed by Green Bay Municipal Employees Union, Local 1672, be, and the same hereby are, dismissed and that Certification of Representatives be issued.

Given under our hands and seal at the
City of Madison, Wisconsin, this **3rd**
day of November, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slawney
Morris Slawney, Chairman

Ed S. Rice II
Ed S. Rice II, Commissioner

No. 8098-B

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Following the receipt of the tally of ballots, AFSCME filed timely objections to the conduct of the election by serving the Commission with an original and three copies thereof, and at the same time forwarded copies by registered mail to both the Municipal Employer and the Teamsters.^{1/} The objections were stated as follows:

"1. The intervenor herein, International Brotherhood of Teamsters, Local Union 75, interfered with the free and rational choice of the employees in the bargaining unit by posting or causing to be posted on a bulletin board in the premises where the election was held and in close proximity to the polling places, and by circulating or causing to be circulated among the employees in the bargaining unit, all within a period of 24 hours immediately prior to said election, and within a period so close to the election that it could not be responded to or answered, a letter on stationery bearing the letterhead of the Greater Green Bay Labor Council (AFL-CIO), a copy of which is attached hereto as Exhibit A, which letter was inaccurate, misleading, and totally false in that it stated a letter previously mailed to the employees in the bargaining unit by the Greater Green Bay Labor Council (AFL-CIO), a copy of which letter is attached hereto as Exhibit B, supporting an affirmative vote for the complainant labor organization was unauthorized by said Greater Green Bay Labor Council (AFL-CIO), and in that it indicated the Greater Green Bay Labor Council affirmatively supported the intervenor.

2. That while it had been agreed by all parties concerned that all employees would be given an opportunity to vote, an employee who was a member of said bargaining unit employed at the incinerator plant was not relieved from his employment or given an opportunity to vote."

At the outset of the hearing AFSCME amended its objections by withdrawing the allegation contained in paragraph 2 thereof. Upon commencement of the hearing Teamsters moved to dismiss the objections, contending that AFSCME, in filing an original and only three copies of such pleadings, did not comply with the Commission's rule, ERB 11.10(1) which requires that an original and five copies of objections be filed with the Commission. The failure of AFSCME to file two additional copies of the objections with the Commission is not considered such a non-compliance with the rule so as to warrant the dismissal of the objections. The Commission rule, ERB 10.01, permits a liberal construction of rules, and since neither the Teamsters nor the Municipal Employer were prejudiced by a compliance to the letter of the rule, we deny the Teamsters' motion in that respect.

^{1/} The AFSCME letter of transmittal to the Commission specifically indicated that an original and three copies of the Objections were being filed. Copies of the transmittal letter were also received with copies of the Objections by the Municipal Employer and the Teamsters.

In the spring of 1967, approximately a month or so prior to the filing of the petition initiating the instant proceeding, AFSCME commenced organizational activity among the employees in the unit and continued such activity to the election. In that regard AFSCME sent out several communications urging the employees in the unit to affiliate with it and to select it as the bargaining representative. Between April 1 and the election, AFSCME sent at least four of such communications to the employees, wherein it emphasized, among other things, that AFSCME was affiliated with the AFL-CIO and wherein, in at least two of the communications, it discredited the efforts of the Teamsters with respect to public employee bargaining laws, and, in at least one communication, was critical of the collective bargaining agreement previously negotiated by the Teamsters on behalf of the employees involved.

On August 8, 1967, Richard Healy, a representative of Region 12, AFL-CIO, whose headquarters were in Milwaukee, who was assisting AFSCME in its campaign, appeared at a meeting of the Greater Green Bay Labor Council, an organization consisting of representatives of various labor organizations affiliated with the AFL-CIO, to seek the support of the Council in a letter to be sent to the employees involved.

Delegate reaction to a letter emanating from the Council endorsing AFSCME over the Teamsters consisted primarily of expressions that such a letter should not contain anything detrimental to the Teamsters. After Healy put the question as to whether the Council desired to support an affiliated union over an unaffiliated union, a motion was made and adopted, as reflected in the minutes of the Council meeting as follows:

"The Council heard a report from Dick Healy in regards to the upcoming vote that is going to be held by the St. County and Munc. emp. with the county (sic) [city] employees. He asked for a letter from the Central Body urging all members to vote for the St. County and Munc. Emp. This request was passed by the Council."

No draft of any letter was presented to the Council for its consideration, nor were any limitations contained in the motion or reference made to the manner in which the letter would be prepared and approved. Following the meeting, Healy conferred with Clayton Smits, a member of Typographical Union 344 and president of the Council. Healy and Smits reached an understanding wherein Healy would draft the letter of endorsement and display it to Smits prior to mailing same to the employees, and in that regard Healy made arrangements to visit Smits at the latter's home on Wednesday evening, August 9, 1967, for that purpose. On Wednesday evening Healy telephoned Smits at home and cancelled the appointment, advising that he had been busy during the

day and was only able to complete part of the letter. Arrangements were then made that Smits would call Healy for a meeting sometime late Thursday morning or afternoon. Healy testified that during Thursday he had checked his hotel desk several times to determine whether he had received any messages, and upon being advised that there were none, he attempted to reach Smits at the latter's residence on two occasions without success. Smits testified that he attempted to reach Healy on approximately six occasions on the date in question but received no answer. In any event, Healy made no attempt to call Smits on Friday, August 11, while Smits testified that he attempted to reach Healy on at least four occasions during the morning of that day. During the evening of August 10, Healy prepared a letter which was mimeographed that evening in the home of James Miller, a representative of AFSCME, on stationery of the Council. Said letter was placed in the mail at approximately 1:00 P.M. on Friday, August 11, 1967, and read as follows:

"

August 10, 1967

To: The Employees of the Green Bay Water Department
Fellow Green Bay Workers,

The Greater Green Bay Labor Council, AFL-CIO, and its affiliated AFL-CIO locals, and their memberships, would like to take this opportunity to answer, a few questions that have been brought to our attention, concerning your election to be held on August 16, 1967, by the Wisconsin Employment Relations Board (W.E.R.B.).

First, a question was raised as to whether or not, Teamster Local 75, was affiliated with the AFL-CIO? The answer to this is NO, the entire International Teamsters Union, including Local 75, was EXPELLED from the AFL-CIO, approximately 10 years ago.

Secondly, a question has been asked, about what would happen to the wages and benefits that you now have, if Local 1672 (AFSCME, AFL-CIO), wins the election on August 16th? To show this we would like to call your attention to a decision that was handed down, by the W.E.R.B., right here in Green Bay, in November of 1963. The W.E.R.B. ruled, and we quote, "the newly selected representative normally will be obligated to enforce and administer the substantive provisions therein inuring to the benefit of the employee." Case No. 6558.

We would like to take this opportunity to urge you to vote for Local 1672, AFSCME, AFL-CIO. It is our sincere feeling that by voting for, and being represented by Local 1672, AFSCME, AFL-CIO, that you will be able to receive far better representation, from an organization that is Chartered by the AFL-CIO, to exclusively represent, public employees.

The Greater Green Bay Labor Council, AFL-CIO, which is made up of working people in all types of industry and jobs, in the Green Bay area, work together for the betterment of Green Bay, Brown

County, the state of Wisconsin, and themselves; urge you to join us in our endeavors, by voting for Local 1672, AFSCME, AFL-CIO, which is a very respected Local Union, belonging to our organization.

Sincerely and fraternally yours,

Claton Smits
President

Arnold Goral
Secretary

The Greater Green Bay Labor Council
and all its affiliated AFL-CIO
Local Unions"

On Monday, August 14, Mel Blohowiak, a representative of the Teamsters, called upon Smits, at the latter's place of employment, and displayed the above letter to Smits. Smits advised Blohowiak that he had not previously seen the letter and indicated that it was never endorsed by the Council or Smits. After a discussion concerning a possible written reply to said letter, Smits on said date drafted a letter in reply. He attempted, without success, to reach fellow members of the Council's Executive Board. He delivered the original draft of his letter, which was typed on Council stationery, over his signature, to Blohowiak. Smits' letter read as follows:

"

August 14, 1967

Dear Sir and Brothers:

The letter mailed last week on Greater Green Bay Labor Council letterheads and bearing my signature was not authorized by either the Greater Green Bay Labor Council or myself.

Local 75, the Greater Green Bay Labor Council and myself have always been on the most friendly terms and have cooperated with each other at all times.

Fraternally yours,

Clayton Smits /s/
Pres., Greater Green Bay
Labor Council"

Blohowiak then prepared several copies of Smits' letter. A number of copies were distributed for display to employees. On August 15, 1967, the day prior to the balloting, Blohowiak posted copies of Smits' letter on several bulletin boards on the Municipal Employer's premises, where communications from various labor organizations were normally posted. No representative of the Municipal Employer had any connection with such posting.

Lloyd LaPlante, an officer of AFSCME, first became aware of Smits' posted letter at approximately 3:00 P.M. on August 15, 1967, and furnished Healy with a copy thereof at approximately 3:30 P.M. on that day. No steps were taken by any representative of AFSCME to prepare a reply. Healy testified that he thought there was insufficient time for that purpose, while LaPlante was of the belief that a "24 hour rule" prevented campaigning within the 24 hours immediately preceding the balloting.

According to Goral and Smits, it is the policy of the Council that its officers examine all Council correspondence indicating officers as signators before mailing. While he acknowledged that the Council authorized a letter of endorsement, Smits objected to the publication of the Healy letter on Council stationery because of the statement with reference to the Teamsters, which statement was contrary to the wishes of the Council. Healy and LaPlante claimed that the first paragraph of Smits' letter was false.

The Examiner permitted the introduction of evidence concerning events that followed and arose from the writing and publication of both letters, namely, oral and documentary evidence concerning action by the Executive Board of the Council and subsequent action by the Council delegates, exonerating Smits from charges filed by the AFSCME, based upon Smits' execution and delivery of the August 14th letter. Evidence also was introduced concerning the appeal of AFSCME to the parent AFL-CIO, seeking to reverse the Council's disposition of said charges.

AFSCME contends that the assertion in Smits' letter that Healy's letter was not authorized "by the Council or by himself" was totally false and misleading.^{2/}

With regard to the question of displaying the letter to Smits, AFSCME argues that no such limitation was raised on the Council floor at its August 8th meeting, that matters such as endorsements in such campaigns are acted upon by the entire Council, not by one man, that the question was raised only after the meeting adjourned, in private conversation between Healy and Smits, and that the latter cannot bind the Council to such an agreement. AFSCME argues that Smits' assertion that Healy's letter was not authorized by himself is misleading since it conveys the impression that his personal authorization is somehow necessary to the authenticity of the document, when in fact, actions of endorsement are by the vote of the Council itself.

^{2/} The record shows that Smits' reasons advanced for that assertion were (1) that the letter had not been shown to him prior to distribution and (2) that it contained a reference to Teamsters and its expulsion from the AFL-CIO.

AFSCME concedes that Healy agreed to show his letter to Smits before distribution, but that Healy's failure to do so was excusable under the circumstances, and it did not thereby forfeit the authority received from the Council. It argues further that Smits' representations in his letter convey the impression that the entire letter, including endorsement of Local 1672 "was not authorized".

Concerning Smits' assertion that "Healy's letter referred to Local 75 and the Teamsters contrary to the wishes of the Council", AFSCME argues that no such limitation was imposed on AFSCME as to the substance of the letter by formal action of the Council, and that, in any event, it is common knowledge that the Teamsters were expelled from AFL-CIO, and it is difficult to see how the inclusion of a fact of such notoriety could impair the relationship between the Council and Teamsters.

AFSCME also argues that Smits had no authority from the Council or its Executive Board to issue his letter and deliver same to the Teamsters prior to the election, and that Smits clearly intended his letter to be used as campaign material favoring the Teamsters.

AFSCME emphasizes that endorsement by the Council was a significant factor and that, viewing the Healy and Smits letters side-by-side, the employees were misled concerning the true position of the Council and thereby the employees were unable to exercise a free electoral choice.

The Teamsters dispute AFSCME's contention that Smits' letter was inaccurate, misleading or false. It argues that Smits composed the August 14 letter, that he delivered same to the Teamster representative, and that he did not place any restriction on the use thereof. It further argues that Healy's letter was never signed by Smits and/or Goral, that it was not seen by said officers prior to circulation, that it was not written until after the Council meeting of August 8, and, therefore, could not have been a letter authorized by the Council.

Teamsters point out that Healy admitted that he was aware of statements by both Smits and by delegates to the Council, that the Council was especially concerned with the contents of a letter endorsing AFSCME and wanted no letter sent containing material detrimental to Teamsters, that he agreed to show the letter to Smits before circulation and made arrangements to meet Smits the following evening at Smits' home, that Healy cancelled the meeting, that Goral knew nothing of the letter, and that Healy, without showing the letter to Smits or Goral, mailed it to all eligible voters.

Teamsters further argue that Healy's letter reveals that it is a complete fabrication since it appears over the names of two officers as though they had written it, and, secondly, it was drafted in a form that suggested that Smits and Goral had been asked questions by eligible voters about the Teamsters and about other matters, when, in fact, they had not, and, in addition, that Healy ignored the instructions of the officers and delegates of the Council by indulging in verbiage about the Teamsters and their expulsion from AFL-CIO.

The Teamsters further argue that upon seeing the Healy letter, Smits, aware of Council instructions in regard thereto and cognizant of the delegates' feelings concerning Healy's request of August 8th, proceeded to send out the letter of August 14th, and that while it is true that Smits had no specific authorization of the Council to send his letter, his act in that regard was not the responsibility of the Teamsters.

The Teamsters contend that the Wisconsin Employment Relations Commission only concerns itself with campaign material which contains items so patently false as to interfere with the employees' free choice, and that it should not "fly-speck" every piece of campaign material to discover whether there has been "shading of the truth" or become involved in the troublesome question over what one party believes is true and the other party does not, and that, therefore, Smits' letter is no ground to set aside the election.

We are not concerned here with the efficacy of Healy's or Smits' actions, either in regard to their dealings with each other, or in connection with their individual responsibility while dealing with, or acting for, the Council. However, the objections raised here, namely, whether Smits' letter was so false, misleading and inaccurate as to interfere with the free and rational choice of the voters--must of necessity require this Commission to examine the origin, conditions imposed (if any), and authorizations underlying each letter. This search would include our examining the position and authority of the draftsman of each letter.

The record discloses that after the Council's action on Healy's request for a letter of endorsement for Local 1672, Healy discussed with Smits the implementation of the Council's action and Healy agreed to meet with Smits on Wednesday evening, August 9, to show Smits the letter before mailing. Healy was cognizant of the reservations expressed by delegates and by Smits as to publishing anything attributable to the Council which would be detrimental to Teamsters. Whether this concern on the part of Smits and Council delegates was a proper one for the

Council which serves member-affiliated locals, is not for our judgment. The evidence is clear that Healy was aware of the Council's expressed reservations with respect to publishing any statement which might injure that relationship. This Commission is in no position to say that the Council was obligated to formally adopt the reservation, as well as Smits' conditions with respect to reviewing the letter before mailing.

The evidence shows that Healy called Smits on Wednesday evening, August 9, 1967, and cancelled his appointment with Smits. At Healy's request, Smits agreed to call after 10:00 A.M. Thursday, August 10, on setting a new appointment. Healy's testimony would indicate that he drew a tacit assumption that Smits had no great interest in seeing Healy's letter because Smits left no messages for Healy that would indicate that Smits initiated any further telephone calls from Thursday morning, August 10, 1967, through Friday noon, August 11. Even if we discredit Smits' testimony in this regard, this was not a situation where one in Healy's position could rely upon a telephonic understanding as to which man would initiate further contact.

Given the background and the evidence on the record, including Healy's admissions that Smits was to examine the letter before mailing, the Commission must conclude that Healy had the burden of seeking out Smits, Goral, or the Executive Board (if it could act between Council meetings) to procure approval of the letter drafted by Healy, but represented as the Council's or its officers' letter. Perhaps AFSCME and Healy would have been unable to find anyone from the Council to approve its publication. To proceed on the basis that the officers would probably approve same, because of the action of the Council on a general proposition of endorsement, exposed the Region 12 representative and AFSCME to just such a terse denial as contained in Smits' letter of August 14.

The Commission will not inquire into whether Smits' letter said too much, or didn't say enough, such as mentioning that a letter of endorsement, favorable to AFSCME, was authorized by the Council.

We have stated in previous decisions, involving elections covered by Section 111.05 and in referendum elections under Section 111.06, that we will not pass judgment on campaign propaganda. Though we do not condone exaggerations, inaccuracies, partial truths and namecalling, such campaign material may be excused as propaganda if it is not so misleading as to prevent a free choice by the employees.^{3/}

^{3/}

London Hat Shop, Dec. No. 7023-B, 6/65; North Avenue Laundry,
Dec. No. 5716-B, 11/61.

Smits was the president of the Council and was privy to act for the Council as to how a communication on Council stationery, over the names of Council officers, should be handled when drafted by member locals seeking Council endorsement. The uncontroverted testimony of Goral and Smits indicates that normally Council communications, showing the officers as signators, are not mailed until examined by the officers signing same.

In his letter of August 14, Smits addressed himself to the narrow question of the authorization of a specific instrument, to-wit: "The letter mailed last week on . . . Council letterheads and bearing my signature was not authorized by either the . . . Council or myself." The fact that others, not so familiar with Healy's request of August 8 and the Council's action thereon, would possibly give a broader construction to Smits' letter is not sufficient evidence that Smits' letter was patently false or so misleading as to interfere with the free choice of the employees.

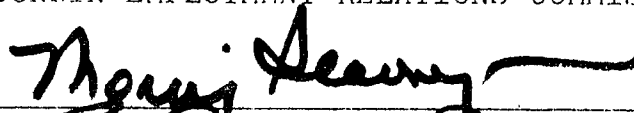
Short of evidence with such thrust, this Commission will not act as referee concerning the propriety of a piece of campaign material of either organization, nor judge whether a Central Council President has been less prudent than a Region 12 Organizer. The latter evaluation would best rest with the internal procedures of the local unions and their local and regional affiliates.

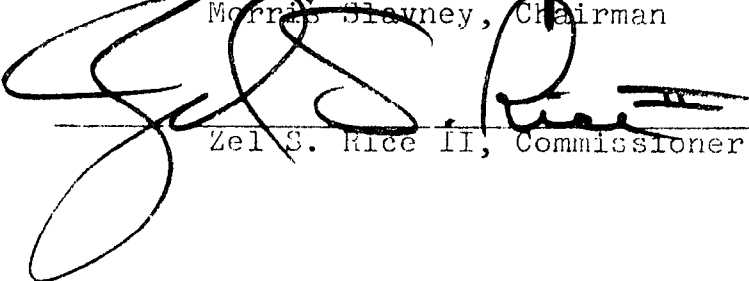
For the foregoing reasons the Objections have been overruled and Certification of Representatives is being issued.

Dated at the City of Madison, Wisconsin, this **3rd** day of November, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner