

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 Water Commission

Case XX
No. 11522 ME-312
Decision No. 8099-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 the election was not conducted in the manner under conditions that insured the voters the secrecy of their ballots; 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

Thomas Slattery
Morris Slattery, Chairman

Zeal S. Rice II
Zeal S. Rice II, Commissioner

No. 8099-B

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
GREEN BAY MUNICIPAL EMPLOYEES,	:	
LOCAL 1672, AFSCME, AFL-CIO	:	Case XX
	:	No. 11522 ME-3.2
Involving Certain Employees of	:	Decision No. 8099-B
	:	
CITY OF GREEN BAY employed in	:	
the Water Commission	:	
- - - - -	:	

MEMORANDUM ACCOMPANYING ORDER DISMISSING
OBJECTIONS TO CONDUCT OF ELECTION

Pursuant to a Direction of Election previously issued by it, the Wisconsin Employment Relations Commission, on August 16, 1967, conducted a representation election among all regular full-time and regular part-time employees, including custodial, employed by the City of Green Bay in its Water Commission. In said election the employees were given the opportunity to select either Green Bay Municipal Employees, Local 1672, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, or Drivers and Warehouse Employees, Local 75, I.B.T., hereinafter referred to as Teamsters, or neither of said organizations, as their collective bargaining representative. The results of said election indicated that of 24 employees eligible, 23 cast ballots, five voted in favor of representation by AFSCME, 16 in favor of representation by Teamsters, while the two remaining voted against any representation.

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 to both the Municipal Employer and the Teamsters.^{1/} The Objections contained two allegations supporting AFSCME's motion to set aside the results of the election. The first allegation was identical to the allegation contained in the

^{1/} The AFSCME's 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 Employer and the Teamsters.

Objections filed in the companion case involving an election held among employees employed in the Department of Public Works of the Municipal Employer. That allegation, as well as the facts disclosed in the record with respect thereto, and the Commission's conclusion and disposition thereof, are contained in the Memorandum Accompanying the Commission's Order dismissing said objection affecting the conduct of the election in the Department of Public Works.^{2/}

The second allegation in the Objections to the Conduct of the Election conducted among Water Commission employees was stated as follows:

"(2) The election was not conducted in a manner or under conditions that insured the voter the secrecy of his ballot, in that said ballots were marked by the voter under conditions wherein his marking of the ballot could be easily seen by the observers in attendance, and the markings were, in fact, so observed."

As in the companion case, at the outset of the hearing, Teamsters claimed that the AFSCME's objections were improper in that AFSCME did not file the number of copies of the objections with the Commission as required by the Commission's Rules. Our disposition of such an argument is reflected in the companion case, wherein we found that there was sufficient compliance with the Rules in that regard. The remaining objection, that which deals with the manner in which the balloting was conducted, remains to be determined by the Commission.

Pursuant to an agreement reached by the parties prior to the conduct of the balloting among Water Commission employees, the Commission conducted the balloting at the three following voting sites at the hours indicated: Pumping Station, Kewaunee, 8:00 a.m. - 8:15 a.m.; Filtering Plant, Sugar Bush, 9:00 a.m. - 9:15 a.m.; Water Department Office, Green Bay, 11:00 a.m. - 12:30 p.m., all balloting to take place on August 16, 1967. On Wednesday morning of August 16, 1967, the Commission's agent, Brian Roberts, opened the polls at the Kewaunee pumping station exactly at 8:00 a.m., at which time a Teamsters' observer, Mel Blohowiak, as well as an unnamed representative of the Municipal Employer, were present. One ballot was cast shortly after the polls were opened. At approximately 8:02 a.m. three individuals representing AFSCME arrived at the

^{2/} Decision No. 8098-B

polling site. The polling place was a 10 by 10 foot square room containing two cabinets and a desk. The observers remained standing and congregated around one of the cabinets. The eligible voters were directed by the Commission's agent to mark their ballots on the other cabinet in a corner, some seven feet distance from the observers. The observers for AFSCME were Walter Klopp and Lloyd LaPlante, and a Mr. Cecchinni. Klopp testified that he observed one employe marking his ballot on the corner cabinet. The Commission's agent did not keep a separate record of the number of votes cast at Kewaunee, but the record discloses that only two or three employes voted at the Kewaunee site, the parties having expected three voters. One of the ballots cast was an absentee ballot. Blohowiak testified that he did not observe any employe marking his ballot, that the eligible voters at the Kewaunee site moved to the corner of the room with their backs toward the observers, utilizing their elbows as a shield against possible observation, and marked their ballots on the flat cabinet surface. The record discloses that Klopp made no objection at the time to the Commission's agent with respect to the manner in which the one voter allegedly openly marked his ballot. Nor did Klopp make any specific objection to the Commission's agent in the course of the voting period at Kewaunee with respect to the voting facilities. Klopp testified that the AFSCME's observers at Kewaunee were preoccupied for most of the voting period with checking the eligibility list. At the designated 8:15 a.m. cutoff for Kewaunee voting, the Commission's agent sealed the ballot box with tape, initialed the surface of the tape and the observers departed for the next polling site at Sugar Bush. Klopp testified that immediately prior to entering the polling place at Sugar Bush he conversed with the Commission's agent and expressed his dissatisfaction with the facilities at Kewaunee and suggested that better protection be afforded to assure a secret vote at the remaining sites.

Voting commenced at Sugar Bush at 9:00 a.m. with the voting being conducted in a separate room, of combination glass and wood partitions, with a blank wall between the voters and the observers placed outside. Klopp testified that the partitions between the room and hallways were largely of glass, exposing the voting area to the view of pedestrian traffic in the hallway. There was no evidence on the record of anyone observing any voter at Sugar Bush as to how he marked his ballot. Klopp testified that his

only concern was the possibility that a voter could be observed from the hallways and that the site did not offer the secrecy it should have. There is no evidence that Klopp made any specific objection to the Commission's agent concerning the adequacy of the Sugar Bush facilities in the course of the voting period there.

Balloting commenced at the Water Department Garage in Green Bay at 11:00 a.m. in the Supervisor's office. The Commission's agent placed the observers at a stand just inside the office door with the prospective voters being directed to mark their ballots at a drawing board upon a stand in the center of the room. The stand was contiguous to a cabinet on the left. A large book of maps stood on end on the right side of the drawing board throughout most of the voting. LaPlante acted as AFSCME's observer, Blohowiak as the Teamsters' observer and a Mr. Utic was the Municipal Employer's observer. However, Klopp and Cecchinni were also present from time to time and congregated near the observers.

Sometime before the last voter appeared to vote, the Supervisor had occasion to examine the map book in the course of his duties and altered the position of the map book so that it rested on its side on top of the drawing board. Klopp testified that just before the end of the voting period, he, thinking the balloting had been completed, re-entered the room. A last voter then came in and was given a ballot by the Commission's agent, the voter being directed to the stand in the center of the room some ten feet from Klopp's position. Klopp testified that he was able to observe the voter's marking of that ballot.

The record discloses that Klopp made no objection to the Commission's agent before the voter deposited his ballot in the ballot box, with respect to the lack of secrecy surrounding the marking of said ballot. Blohowiak testified that the last voter was completely out of surveillance so far as the observers stationed with the list of eligibles. The record indicates that Klopp spoke to the Commission's agent at the Garage site (it is not clear when) in general terms about placing some screen or obstruction behind which the employes could vote.

At the conclusion of the voting at the last voting site the Commission's agent sealed the box and transported the ballots to the Oneida Street Municipal Garage for the counting and final tally. At the end of the final tally, Klopp advised the Commission's agent that AFSCME would not sign the final tally

sheet because Klopp believed there existed a lack of secrecy surrounding the votes.

The Commission's agent and Mel Blohowiak, the Teamsters' observer, affixed their signatures immediately below the "affirmation" on the tally sheet. No employer representative of the Water Commission was present to sign the tally sheet.

AFSCME contends that the evidence shows that Klopp as an observer was able to observe two voters mark their ballots. The provisions governing representation elections, Section 111.70(4)(d) makes applicable the provision of the Wisconsin Employment Peace Act, Section 111.05 which provides:

"(3) Whenever a question arises concerning the representation of employes in a collective bargaining unit, the board shall determine the representatives thereof by taking a secret ballot of employes..."

AFSCME argues that the language of the statute is mandatory and that given evidence of the lack of secrecy it is per se sufficient grounds to set aside the vote, requiring no further proof that such condition had any affect upon the outcome of the vote.

Teamsters argue that the Commission's rules do not require polling booths so as to permit the casting of votes in surroundings identical to political elections, however, they require that an employe be given opportunity to mark his ballot secretly, which requirement was satisfied by proceeding to a corner of a room away from the normal sight of others present. In addition, Teamsters point out that the objections here are based upon the representations of a paid agent of one of the parties to the election and that if he did so observe employes marking their ballots, his observation required a special effort, an effort that others present did not make.

The Municipal Employer argues that the Commission's agent certified on the tally of the vote, that a secret poll had been conducted. The Employer contends that AFSCME did not aver or prove that the manner of voting affected the results of the election, and therefore the objections are not proper under ERB11.10.

The Commission rejects the contention that Section 111.05 requires the Commission to void a representation vote when confronted with some evidence that some ballots were not cast in secret. Innately bound to the question of a secret ballot is the conduct of the

Commission's agent conducting the vote, the observers assisting therein, and the eligible voters, viewed in light of the facilities agreed to by the parties.

The voting sites for the Water Commission vote were arrived at as a result of the understanding reached by all parties in interest at the hearing of June 8, 1967. The record shows that at Sugar Bush and at the Water Department garage Klopp was not functioning as an observer, but rather moved about the area of the premises returning periodically to stand near the observers. Neither Klopp nor any other AFSCME observer raised any objection to the Commission's agent with respect to the two voters Klopp claims to have observed, before each deposited his ballot in the box, nor was any specific objection raised with respect to the physical arrangements at the polls immediately prior to or during the voting period at any of the three sites. At the most, Klopp made some general observation to Roberts that the sites at Sugar Bush and the garage should afford more privacy than Kewaunee and, from his testimony, that Klopp's standard for secrecy was for the Commission to supply a voting booth. While such is desirable, it is not always available. On occasions it is necessary to improvise and locate the prospective voter and the observers in such a way as to best afford a secret ballot under the conditions prevailing. Although we do not approve of the conduct of the Commission's agent in permitting five observers to be present with the poll list, including three observers for AFSCME, we nevertheless choose to comment that the latter's representatives had advance knowledge that only three voters were expected to cast ballots at Kewaunee and yet three AFSCME representatives congregated at the polling place ostensibly to observe the vote of three employees. The Commission's agent would have been justified in insisting that only one observer be present for each party at all three sites and that the remaining individuals leave the premises for the period of the vote.

The presence of observers at Commission conducted elections is not a matter of right but a privilege which the Commission extends to the parties.^{3/} The Commission's agent dispersed the observers

^{3/} Minit Man Car Wash, Inc., et al, Dec. No. 3692, 6/54.

(though permitting too many) at the three sites in a manner which no judge would afford a secret vote. The silence of the observers present during the voting periods justified his making a tacit assumption that balloting was proceeding in secret.

Klopp could have very well called to the attention of the Commission's agent the fact that he had observed employes voting. Under such circumstances the Commission's agent would have destroyed their ballot and instructed the employes to vote outside the sight of any of the observers. Under the circumstances, we find that AFSCME's objections to the conduct of the election with respect to the manner in which it was conducted is without merit, and since we have rejected all of the objections alleged to have effected the results of the election, we have this day issued the Certification of Representatives in the matter.

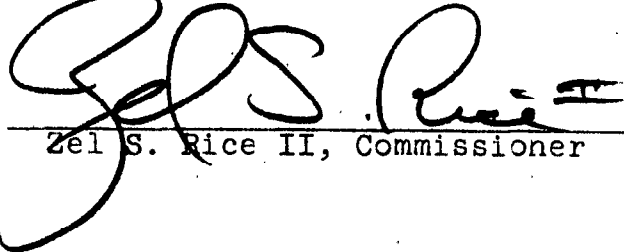
Dated at Madison, Wisconsin, this 3rd day of November, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner