

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MILWAUKEE DISTRICT COUNCIL 48,  
AFSCME, AFL-CIO

Involving Certain Employees of

WEST ALLIS MEMORIAL HOSPITAL  
West Allis, Wisconsin

Case I

No. 14193 E-2675

Decision No. 10061-C

Appearances:

Mr. Emil Muelver, Staff Representative, Milwaukee District  
Council 48, AFSCME, AFL-CIO, for the Union.

Foley & Lardner, Attorneys at Law, by Mr. Herbert P. Weidemann,  
for the Employer.

ORDER OVERRULING OBJECTIONS TO CONDUCT OF ELECTION

Milwaukee District Council 48, AFSCME, AFL-CIO, having filed  
Objections to the conduct of an election conducted by the Wisconsin  
Employment Relations Commission on January 11 and January 12, 1971,  
in the above-entitled matter, wherein said labor organization contended  
that prior to the election, West Allis Memorial Hospital engaged in  
conduct affecting the results thereof; and hearings on said Objections  
having been conducted at Milwaukee, Wisconsin, on February 18, 1971 and  
March 11, 1971 before Robert B. Moberly, Examiner; and the Commission  
having considered the evidence and briefs of counsel and being satisfied  
that the Objections are without merit;

NOW, THEREFORE, it is

ORDERED

That the Objections filed by Milwaukee District Council 48, AFSCME,  
AFL-CIO, be, and the same hereby are, denied.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 30th  
day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Lee S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of

MILWAUKEE DISTRICT COUNCIL 48,  
AFSCME, AFL-CIO

Involving Certain Employees of

WEST ALLIS MEMORIAL HOSPITAL  
West Allis, Wisconsin  
-----

Case I

No. 14193 E-2675

Decision No. 10061-C

MEMORANDUM ACCOMPANYING ORDER OVERRULING  
OBJECTIONS TO CONDUCT OF ELECTION

Pursuant to a Direction issued by it, the Wisconsin Employment Relations Commission conducted an election on January 11 and 12, 1971, among certain employees of West Allis Memorial Hospital, West Allis, Wisconsin, in eleven separate voting groups, to determine (1) whether a majority of the employees eligible in each voting group desired to constitute themselves as separate collective bargaining units; and (2) whether a majority of such employees voting in each of said voting groups desired to be represented by Milwaukee District Council 48, AFSCME, AFL-CIO. Bargaining-unit votes and representation votes were conducted in the following eleven departments of the Employer.

Anesthesia and Inhalation  
Therapy

Dietary

Medical Records

Purchasing

Laboratory

Nursing Service

Radiology

Building Services

EEG-EKG

Housekeeping

Physical Therapy

Only the Housekeeping Department employees chose, by a majority vote, both to be represented as a separate unit and to be represented by the Union.

On January 21, 1971, the Petitioner filed six Objections to the conduct of the Employer during the period prior to the election. A seventh Objection was filed by letter on February 11, 1971. The seven Objections are as follows:

- "1. Employer, upon learning that Gloria Konkell was a member of the union's Organizing Committee called Mrs. Konkell to the supervisor's office and threatened to reduce her to a 'part-time' employee. This was done in the presence of three (3) supervisors and involved intimidation.

2. Employer transferred Bernard Holmquist from the day shift to the third shift and called him a 'complainer' after discovering that Mr. Holmquist was active in the union organization effort and was a member of the union's Organizing Committee. Management also threatened Mr. Holmquist with discharge if he persisted in his 'attitude.'
3. Employer paid an employee in the bargaining unit a full day's wage to campaign against the union for her entire shift on the day prior to the representation election.
4. Employer deducted union dues from the pay checks of all employees in the bargaining unit on the last pay day prior to the election and reimbursed employees with another check. All of this without signed authorization cards for dues check-off from the employees.
5. Interrogated union chairman and secretary away from employee's work station about union affiliation and activities.
6. Employer published false and inaccurate wage scale of a unionized competitor to confuse employees into opposing the union in the election."
- "7. The employer threatened employees in various departmental gatherings prior to the election that they would lose their 'anniversary increment' if the Union won the election."

Hearing on the Objections was held on February 18, 1971 and on March 11, 1971. The parties were permitted to file briefs in the matter, the last of which was received on June 10, 1971.

At the hearing the Petitioner withdrew its Objection No. 3 and stated that it desired the Commission to conduct a new election only in the Dietary and Building Services Departments. In the voting a majority of the Dietary Department employees favored a separate bargaining unit but voted against representation by the union. In the Building Services Department a majority of the employees voted both against a separate bargaining unit and against the union as the bargaining representative.

#### Objection No. 1

On November 17 and 18, 1970, Mrs. Battaile, the head of the House-keeping Department, discussed the possibility with Mrs. Konkell of changing her from full-time to part-time employment. Mrs. Battaile testified, without contradiction, that at the time part-time employment was discussed she did not know whether or not Mrs. Konkell was a member of the Union's Organizing Committee, that she did not know how Mrs. Konkell felt with respect to the Union's Organizing Committee, and that the subject of the Union was not discussed. Mrs. Konkell, the only witness in support of this objection, testified that she affiliated with the Union in April, but after signing she "didn't think any more about it." Mrs. Konkell admitted she became upset as a result of her conversations with Mrs. Battaile, that she called the Union representative complaining concerning the possibility of part-time employment, and that it was only after that call that she

became a member of the Union's Organizing Committee. Thus it is evident from the record that Mrs. Konkell was not "threatened" with part-time employment because she joined the Union's Organizing Committee. Rather, she joined the Organizing Committee because and after consideration was being given to changing her status to part-time.

Further evidence of this fact is that the election of the Organizing Committee occurred in the first week in December, well after the conversations involved. Since Mrs. Konkell did not become a member of the Organizing Committee until December, the discussions relating to Mrs. Konkell's part-time employment could not have been in retaliation for Mrs. Konkell becoming a member of the Union's organizing activity. Rather, it appears that the consideration of part-time employment was related to her work record.

Finally, because of Mrs. Konkell's strenuous objection to the part-time assignment, she was continued on full-time with the understanding that the matter would be reviewed at the end of December. Nothing further was done at the end of December. By that time Mrs. Konkell had become a member of the Organizing Committee and Mrs. Battaille was well aware of her Union activity. One might possibly conclude that her Union activity resulted in a favorable disposition of the matter from Mrs. Konkell's standpoint, but by no means could it be concluded that she was threatened or intimidated after her Union activity became known.

#### Objection No. 2

Mr. Holmquist was initially hired in January, 1969. He worked until May, 1969, when he quit his employment. Mr. Holmquist was hired again, as a new employee, in October, 1969. On March 18, 1970, he attended a Union meeting. In May, 1970 he again quit his employment. There was testimony that his performance during his second period of employment was not good, and that he was argumentative, did not do assigned tasks and swore. The Employer decided not to rehire him again.

In July, 1970 Mr. Holmquist came to Mrs. Battaille's office and requested employment. He was told there were no jobs available. Several days later he returned and at that time he was asked if he would take a third-shift job, which he refused. Mrs. Battaille had also suggested the third-shift to Mr. Holmquist during his second period of employment, and testified that she felt he could handle the third shift because the assignments are routine, quiet, and there are few interruptions.

A few days after Holmquist refused the third-shift position he telephoned to say he would take the third-shift job, but by that time the position had been filled.

In September, 1970 Mr. Holmquist called Mrs. Battaille by telephone from Colorado to again ask for employment. Mr. Battaille said she would check. Mrs. Battaille testified that she then spoke with her supervisors and both she and they felt sorry for Mr. Holmquist because he was handicapped and they decided to give him another chance in the hope that he would do better. Thus Mr. Holmquist was rehired again, on the first shift, starting September 28, 1970.

Less than two months later, Mr. Holmquist's immediate supervisors wrote a memorandum suggesting that Mr. Holmquist was still having difficulties. The memorandum, dated November 16, 1970, stated:

Mr. Holmquist came back to work September 28th in the Housekeeping Department at his request. He was informed he would be on probation and would have to do what he was asked to do without always arguing, he was also asked not to have a tooth pick in his mouth.

The first couple of weeks back to work he did fine but then started complaining continually again. We have changed some of our work assignments which he does not seem able to cope with.

He will not look at the assignment board which all of the other employees do, will not keep tooth pick out of his mouth, complains about the pick up assignments changes made, does not like the way we take marks off the corridors, is not willing to do extra work that comes up the day he is wearing the pager, says he will not be able to complete his work, which can be done. Mr. Holmquist spends much of his time during the day complaining and many times raises his voice so everyone in the area can hear him."

Mr. Battaille testified that "he was getting to the point where we could not handle him. The supervisor was almost afraid of him at times." On November 22, 1970, Holmquist was transferred from the first shift to the third shift. Mrs. Battaille testified that she had used transfer to the third shift to solve similar problems in the past, with success, and that because she felt compassion for Mr. Holmquist she decided to transfer Holmquist to the quiet routine of the third shift, rather than discharge him, thinking that this would solve the problem. Mr. Holmquist was still in a probationary period at this time.

The Commission notes that neither Mr. Holmquist nor anyone else testified that he was threatened with discharge if he "persisted in his 'attitude'", and accordingly the accusation contained in the final sentence of Objection No. 2 is without any support in the record.

Holmquist claimed that Mrs. Battaille was aware of his attendance at a Union meeting on March 18, 1970, during his second period of employment, and that she questioned him about it at that time. Mrs. Battaille denied that she had any conversation with Holmquist about the meeting. Both Mrs. Battaille and Holmquist's immediate supervisor testified that up to, and including the time of Mr. Holmquist's transfer, they did not know how he felt, either pro or con, with respect to the Union.

Based upon the demeanor of the witnesses and the over-all circumstances, we credit the testimony of Mrs. Battaille, rather than Holmquist's, with regard to the alleged questioning concerning Holmquist's attendance at a Union meeting. Moreover, even if the opposite were true, the incident is too remote from the transfer in November or the subsequent allegations in question here. Mr. Holmquist quit his job in May, 1970, and if discrimination against the employee on the basis of his Union activity were to occur, one suspects it would have occurred the following September when he reapplied for a job for the third time. If Mrs. Battaille was in fact aware of the activity and intended to discriminate against Holmquist because of it, it is not likely that she would have rehired him again at that point. Also, again the transfer occurred in November, before Holmquist became a member of the Union's Organizing Committee in December. The Union has failed to carry its burden of proving that Holmquist was transferred because of his Union activity.

#### Objection No. 4

The undisputed facts of the occurrence giving rise to this objection are as follows: The normal payroll practice of the Employer is to pay each employee by check enclosed in an envelope. On December 31, 1970, a regular payday, the normal check distribution procedure was followed, except that the envelope for each employee in each of the voting groups contained two checks instead of one and a letter. In each case one check was for \$4.00, and the other was equal to the difference between the amount which would have been provided if there had been but one check and \$4.00. The Hospital Administrator testified that the \$4.00 was intended to represent the amount of union dues, and there is no claim that the Employer misrepresented the amount of union dues.

The Union argues that "such tampering with the paychecks clearly represents an effort to frighten employees away from the Union and also created the false impression that they were the beneficiaries of the employer as he returned the 'union dues' with another check."

The Employer argues that this was a legitimate effort to dramatize the cost of unionism to the employees as a part of the pre-election campaign. The Employer also points out that demonstrations of this type repeatedly have been held to be permissible by the National Labor Relations Board with respect to representation elections conducted under the National Labor Relations Act, citing Caressa, Inc., 158 NLRB 1745 (1966); The Mosler Safe Company, 129 NLRB 747 (1960); Geyer Manufacturing Co., 120 NLRB 208 (1958). The Employer also states while it has found no case in which the Commission has considered this point in a representation election, the Commission has cited and indicated agreement with the NLRB decisions in a referendum dispute in Acme Die Casting Corp., Decision No. 8704-B (1969).

We have previously concluded that the issuance of separate checks in the manner done here is "normally within the permissible limits of campaign propaganda" in referendum proceedings, Acme Die Casting Corp., supra. We conclude that the practice in representation proceedings also is a legitimate propaganda device and does not call for the direction of another election. This is particularly so where, as here, the Union had eleven days to respond with whatever counterarguments it may have wished to make.

#### Objection No. 5

Lowell Frederick, the Chairman referred to in the Objection, testified that there were two incidents involved; (1) when he was asked by Mr. Labott, the Hospital Administrator, if he knew what the Union dues would be, and (2) when he was asked by Labott "If you are for me, then why are you putting your name on the letters?" Frederick initiated these conversations with Labott, Frederick also was very vague and had a very poor memory concerning a third conversation between himself and Labott.

Labott testified that there were three conversations. The first conversation, the one for which Frederick was forgetful and vague, occurred on December 2, 1970, the day before the hearing on the Union's election petition. About 5:15 P.M. Frederick came to Labott's office and asked if he had to attend the hearing. Labott told him he was not ordering him to attend; that the request had been made by the Union representative; that he was released from duty but that the decision to attend was up to Frederick. The response, according to Labott, was as follows:

"Mr. Frederick expressed some concern and confusion in that-- whatever the date of the preceding Union meeting--he had been asked whether or not he would attend the hearing and told me he had indicated he did not wish to attend the meeting and therefore why is--he asked me if he had to go. When I re-

leased him from his assignment. He asked me why I thought he had been asked to attend the meeting; and I said, 'Perhaps to be sure that I was telling the truth,' to which Mr. Frederick physically came over and shook my hand and commented, 'Mr. Labott, the employees are 100% behind you in this instance.'

The second conversation occurred two days later and was described by Labott as follows:

"It was the day following the hearing. In the morning Mr. Frederick came to the side door of my office and was there for just a very brief period of time. He merely stated his concern to me I didn't think he was against the Hospital and wanted to be sure he had an open mind about the issue and listen to both sides and left."

The third conversation took place in the main lobby of the Hospital some time later. Frederick stopped Labott and, according to Labott:

"He began by stating his continual concern that I not be upset with him; that he really liked the Hospital; but again he stated his position that he wanted to hear the Union's position that he wanted to hear the Union's side of the story and wanted to hear the Hospital's side. I asked him if he really hadn't made up his mind on the issue, why did he lend his name to the letters that the Union sent. I further asked him if he knew what the dues would be in the Union, because many people were asking that question."

Labott's testimony was uncontradicted as to these conversations with Frederick. We note that in all of the conversations it was Frederick who sought to bring up the subject of Union activity with Labott, and always with the assurance that although he was Chairman of the Union's Organizing Committee, he really was sympathetic to the Employer, or at least neutral. There was no plan or design of anti-union motive on the part of Labott in these discussions; rather, they were spontaneous reactions to Frederick's overtures. Under these circumstances we cannot find that there was any interferences or restraint of employees in the election on the basis of these comments. Moreover, the statements and comments of Labott are harmless and unobjectionable in any event and would not constitute a basis for overturning the election results.

Irene Goral, the Union Secretary, provided the Union with certain mailing labels owned by the Employer. Upon discovering this, the Administrator called Mrs. Goral into his office, along with certain other persons, and advised her that use of the Employer's property and delivery of that property to any person for other than authorized hospital purposes is theft of hospital property.

We see no interference as a result of the Employer's restriction of the use of its property in this manner, nor in the manner in which this policy was communicated to Mrs. Goral. Mrs. Goral was neither disciplined nor otherwise adversely affected, but was simply informed of the Employer's position, and we see no basis for overturning the election results as a result of this incident.

#### Objection No. 6

Certain comparisons were made by both the Union and the Employer during the pre-election campaign to wages at St. Joseph's Hospital and

the City of West Allis. We note that the stated Objection did not pertain at all to the Employer's comparisons with the City of West Allis. In any event we have reviewed the entire record with respect to the comparisons made, as well as to their timing, and conclude that the comparisons made were substantially accurate, and that in any event the Union had sufficient time to respond to the Employer's comparisons. The Union also made wage comparisons, and we find that the comparisons made in this dispute all fall within legitimate campaign propaganda.

Objection No. 7

In the week preceding the election, Labott addressed the employees in the Housekeeping Department. Two employees of that department testified that the Administrator said that if the Union became the bargaining agent there would no longer be merit increases.

Labott testified that in his talk he was listing for the employees certain policies which had been placed in effect by the Employer without a union, and that one of the items on the list was merit pay. He testified as follows:

"The subject of merit increases came up in a listing of benefits in programs that the Hospital has formed in the past. I was listing for the employees the fact they had received across-the-board wage adjustments in each of the last six years. I then mentioned that they also had earned merit increases based on the quality and quantity of their work. I further told them that there probably would not be merit increases if there were a union, because unions are generally opposed to merit pay."

Upon review of the entire circumstances and the entire record surrounding this event, we conclude that Labott's statement constituted a prediction as to the Union's position in bargaining and what the results of bargaining would be as a result of the position the Union could be expected to take, and not a threat of Employer reprisal if the Union were victorious. The former, of course, is permissible, while the latter is not.

Further Labott's remarks were limited to employees in the Housekeeping Department, the only department in which the Union was victorious. There is no evidence that the Administrator made similar comments to any other employees, nor is there evidence that the Administrator's comment was passed along by any of the Housekeeping employees to anyone in any other voting group prior to the elections.

Upon a full review of all the evidence and arguments and briefs in this case, and based upon the reasons set forth above, we are today issuing an Order overruling the Objections to the conduct of the election and are certifying the results of the elections conducted on January 11 and 12, 1971, with respect to all voting groups.

Dated at Madison, Wisconsin, this *30th* day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Morris Slavner*  
Morris Slavner, Chairman

*W. S. Rice II*  
W. S. Rice II, Commissioner

*Jos. B. Kerkman*  
Jos. B. Kerkman, Commissioner