

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

UNITED NURSING HOME AND HOSPITAL
EMPLOYEES' FEDERATION, LOCAL 222

Involving Certain Employees of

MANITOWOC COUNTY (PARK LAWN HOME)

Case XIX
No. 15234 ME-743
Decision No. 10899-D

ORDER DISMISSING
OBJECTIONS TO CONDUCT OF ELECTION

Service Employees International Union Local 150, AFL-CIO, having filed objections to the conduct of a run-off election conducted in the above entitled matter on May 19, 1972 by the Wisconsin Employment Relations Commission, which objections, as amended, alleged that prior to said election, United Nursing Home and Hospital Employees Federation, Local 222 made certain misrepresentations which affected the results thereof; and a hearing on such objections having been conducted at Manitowoc, Wisconsin, on July 31, 1972, by George R. Fleischli, Hearing Officer; and the Commission having considered the evidence and arguments of Counsel and being satisfied that the objections are without merit and should be dismissed;

NOW, THEREFORE, it is

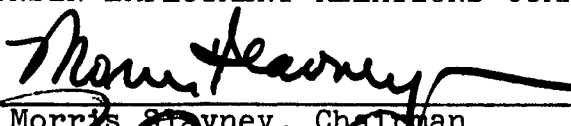
ORDERED

That the objections filed by Service Employees International Union Local 150, AFL-CIO, be, and the same hereby are, dismissed. 1/

Given under our hands and seal at the
City of Madison, Wisconsin, this 11th
day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

1/ The Commission shall forthwith issue a Certification of the results of the election.

No. 10899-D

MEMORANDUM ACCOMPANYING ORDER
DISMISSING OBJECTIONS TO CONDUCT OF ELECTION

In its amended objections to the conduct of the run-off election, Local 150 alleges that Local 222 made certain misrepresentations to the employees prior to the election, thereby upsetting the "laboratory conditions" which should exist in an election proceeding. The alleged misrepresentations that were made by Local 222 were contained in a handbill distributed by agents of Local 222 four days prior to the election and read in relevant part as follows:

. . .

"ARE YOU AWARE THAT LOCAL 150 IS PRESENTLY UNDER INVESTIGATION BY THE UNITED STATES DEPARTMENT OF LABOR?"

. . .

"Stolen Car: No car was ever stolen from this other union a check with the Milwaukee Police Department shows that no theft was ever reported. A further check with Aetna Insurance Company found that a false claim had been filed. Upon our checking with Mr. Bob Walters of Aetna Insurance Company in Milwaukee a letter was sent demanding that this other union immediately return the check they had received."

THE ALLEGED INVESTIGATION BY UNITED STATES DEPARTMENT OF LABOR

Local 150 does not dispute the fact that the United States Department of Labor is currently conducting an investigation into the affairs of Local 150, but contends that this investigation is the direct result of charges filed with the United States Department of Labor by representatives of Local 222, and that the statement contained in the election materials distributed was intended to create the false impression that Local 150 has been found guilty of wrongdoing. Local 150 contends that the imputation of wrongdoing without disclosure of the fact that the investigation was the direct result of charges filed by Local 222 resulted in a material misrepresentation which had an adverse effect on the exercise of a free choice by the employees exposed to the material.

The statement made in the campaign material is, on its face, accurate in that the affairs of Local 150 are presently under investigation by the United States Department of Labor. The Commission is unwilling to assume that the employees who were exposed to the statement wrongfully concluded that Local 150 had already been found guilty of some improper conduct. It should be apparent from reading the statement in question that at the time the statement was made the question of alleged misconduct had not been resolved. As noted below Local 150 had sufficient time, after the statement was made, in which to clarify or explain its position with regard to the investigation.

ALLEGED FALSE CLAIM

Local 150 contends that the statement that a "false claim" had been filed with the insurance company was a material misrepresentation which adversely affected the exercise of a free choice by those employees who were exposed to the statement.

The background of the allegation with regard to the "false claim" arises from the fact that the three officers of Local 222 were formerly employed as business representatives of Local 150. The issues in the election campaign apparently centered on allegations regarding the competency and integrity of officers of the respective labor organizations and a great number of allegations were made by both labor organizations with regard to the conduct of the affairs of the other's organization. Prior to the initial election in this proceeding which was held on April 20, 1972, Local 150 alleged inter alia in a handout entitled "CHECK THE FACTS" as follows:

. . .

"Fact #11 Ken Islo was laid off after five weeks of employment by Local 150. He never returned the fleet car which Local 150 had issued to him. However, since the time of his lay-off, William Smith (who was also laid off) has received several traffic tickets while using Islo's fleet car. The insurance company who carried the insurance on the fleet car for Local 150 has just made payment to the local for this car. The insurance payment check states that the amount of the check is in full payment to Local 150 for a stolen car."

In response to this allegation Local 222 alleged in a handout as follows:

. . .

"FACT 11.--The car referred to by Local 150 was confiscated by Ken Islo until he was paid money owed him by Local 150. Local 150's attorney met with Mr. Islo and gave him a check for what was owed Mr. Islo and the car was turned over to Local 150's attorney. If Local 150 has received a check from their insurance company we can only assume that they misrepresented the facts to the Insurance Carrier."

From the facts adduced at the hearing it appears that Local 150 did file a claim with the Aetna Insurance Company for a car which was assigned to Ken Islo, a former business agent for Local 150, now an officer of Local 222, and that payment on that claim was received after the car had in fact been returned by Mr. Islo. It would appear that when Local 150 filed its claim with the insurance company it was aware that the car was being held by Mr. Islo, and that by the time it received payment on that claim it was aware that the car had been returned. Although the characterization "false claim" may not be entirely accurate, the Commission is satisfied that any misrepresentation contained in said statement would not be sufficient to affect the free choice of the employees participating in the election. A great number of charges and countercharges were made in the campaign literature that preceded both elections. There is no indication that the question of Mr. Islo's car which was first put in issue by Local 150 was of any great significance to the employees.

The campaign literature in which the reference to the "false claim" was made was distributed on Monday, May 15, 1972. Local 150 asserts that it did not become aware of the contents of the handbill until Wednesday, May 17, 1972. 2/

Assuming that Local 150 did not become aware of the contents of the handbill until May 17, 1972 for reasons which are excusable, there was sufficient time and opportunity prior to the election for Local 150 to further explain its version of the facts with regard to the insurance claims if the matter was of concern to the employees. The evidence indicates that there were three meetings held by Local 150 on May 18, 1972, and that representatives of Local 150 contacted some employees by telephone on May 18, 1972.

As indicated in the London Hat Shop case 3/ the Commission does not condone "exaggerations, inaccuracies, partial truths, name calling and falsehoods" made during pre-election campaigns. However, such statements may be excused as propaganda, if they are not so misleading so as to prevent a free choice by the employees participating in the election.

For the above and foregoing reasons, the Commission determines that the objections filed in the above entitled matter are without merit in that, in the case of the first objection, no misrepresentation was made, and in the case of the second objection, any misrepresentation which was made was not of such significance, under the circumstances, so as to affect the exercise of a free choice by the employees involved.

Dated at Madison, Wisconsin, this 11th day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

2/ Local 150 failed to introduce any evidence at the hearing, either in support of its claim that it did not become aware of the contents of the handbill until May 17, 1972, or by way of explanation as to why it took two days for it to become aware of the contents of the handbill. The handbill was distributed at random to all employees entering or leaving the Employer's premises at 4:00 p.m. Because of this failure of proof, Local 222 moved that the objections be dismissed. The Hearing Officer denied Local 222's motion and the Commission concurs in that action. The question of the adequacy of the time to reply is of considerable importance in weighing the merits of the objections, but is not necessarily controlling on the legal sufficiency of the objections as stated.

3/ (7023-B) 6/65; See also City of Green Bay (8099-B) 11/67.