

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of :
: AMERICAN FEDERATION OF STATE, COUNTY : Case VIII
AND MUNICIPAL EMPLOYEES, COUNCIL 24 : No. 15582 SE-43
AND ITS AFFILIATED LOCALS and STATE : Decision No. 11322-F
ASSOCIATION OF CAREER EMPLOYEES :
: Involving Professional-Social : Case XIV
Services Employees in the Employ of : No. 15838 SE-49
: Decision No. 11323-F
STATE OF WISCONSIN :
: -----

ORDER DENYING OBJECTIONS TO CONDUCT OF ELECTION
AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Direction previously issued by it, the Wisconsin Employment Relations Commission conducted a run-off election, by mail ballot, among all classified employees in the employ of the State of Wisconsin engaged in the profession of Social Services, excluding limited term employees, confidential employees, supervisory employees, managerial employees, and all other employees, for the purpose of determining whether a majority of the employees voting in said collective bargaining unit desired to be represented by American Federation of State, County and Municipal Employees, Council 24 and its Affiliated Locals, or by State Association of Career Employees for the purposes of collective bargaining with the State of Wisconsin on questions of wages, hours and conditions of employment; and that ballots cast by the employees in said unit were counted in the Commission's Office on September 19, 1973, and the result of the election was as follows:

1. Total number eligible to vote	1686
2. Total ballots cast	1075
3. Total ballots challenged	1
4. Total ballots void	34
5. Total ballots blank	3
6. Total valid ballots counted	1037
7. Ballots cast for AFSCME, Council 24 and its Affiliated Locals	526
8. Ballots cast for State Association of Career Employees	511;

and State Association of Career Employees having timely filed objections to the conduct of the election, and American Federation of State, County and Municipal Employees, Council 24 and its Affiliated Locals having filed a response to said objections; and the Commission, having considered said objections, as well as the response thereto, and being satisfied that the objections should be denied, and that the results of the run-off election be certified;

NOW, THEREFORE, it is

No. 11322-F and
11323-F

ORDERED

That the objections to the conduct of the run-off election be, and the same hereby are, denied; and further,

NOW, THEREFORE, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by Section 111.83 of the Wisconsin Statutes;

IT IS HEREBY CERTIFIED that American Federation of State, County and Municipal Employees, Council 24 and its Affiliated Locals has been selected by a majority of the eligible employees who voted at said election in the collective bargaining unit consisting of all classified employees in the employ of the State of Wisconsin engaged in the profession of Social Services, excluding limited term employees, confidential employees, supervisory employees, managerial employees, and all other employees, as their representative; and that pursuant to the provisions of Section 111.83 of the State Employment Labor Relations Act, American Federation of State, County and Municipal Employees, Council 24 and its Affiliated Locals is the exclusive collective bargaining representative of all employees in said unit for the purposes of collective bargaining with the State of Wisconsin, or its lawfully authorized representatives, as provided in the State Employment Labor Relations Act.

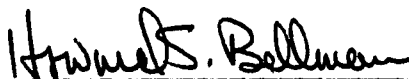
Given under our hands and seal at the
City of Madison, Wisconsin, this *14th*
day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING OBJECTIONS TO CONDUCT OF ELECTION
AND CERTIFICATION OF RESULTS OF ELECTION

On September 19, 1973, the Commission tallied the mail ballots cast by employees in the instant run-off election. Copies of the tally sheet were, on said date, furnished to representatives of the State Employer and the two labor organizations involved. Within the five-day period from the receipt of a copy of a tally sheet, such period being computed in accordance with rule ERB 10.08, the Commission received the following letter from the Director of the State Association of Career Employees, hereinafter referred to as SACE:

"Howard J. Koop, on behalf of and for State Association of Career Employees, files the following objections to the election conducted on Wednesday, September 19, 1973, among employees of the State of Wisconsin, Social Services, for a bargaining representative.

During the period of time wherein employees were allowed to vote by mail, employees of AFSCME, Council 24, WSEU, were allowed to view the envelopes containing ballots which envelopes set forth thereon the name and address of the voter and were thus allowed to note which employees had voted and which employees had not voted thereby acquiring the ability to solicit the support of employees who had not yet voted.

Such conduct destroyed the atmosphere of sterility required for proper self-determination and resulted in the election being conducted in an unfair manner.

Therefore, your petitioner requests that the election be set aside and that another election be conducted to determine the involved employees' choice."

There was no indication in said letter that copies thereof were sent to either the State Employer or to American Federation of State, County and Municipal Employees, Council 24 and its Affiliated Locals, hereinafter referred to as WSEU, and on October 3, 1973, the Commission forwarded copies thereof to the State Employer and to WSEU, and at the same time advised SACE that the Commission was granting the State Employer and WSEU until October 15, 1973, to file their positions in the matter. On October 5, 1973, the State Employer, in writing, advised the Commission that it took no position in the matter. On October 15, 1973, the Commission received the position of WSEU, filed by its Counsel, which stated, in material part, as follows:

"Our position is as follows:

I. No 'objection(s) to election' have been filed since:

- A. THE LETTERS OF SACE ARE DEFICIENT PROCEDURALLY.
- B. THE LETTERS OF SACE ARE DEFICIENT SUBSTANTIVELY.

AFSCME'S CONDUCT IS NOT OBJECTIONABLE FROM A
LEGAL, OR ANY OTHER, POINT OF VIEW.

We assume as factual all of the allegations contained in paragraph number two (2) of Mr. Koop's letter to you of September 25, 1973, namely that:

'During the period of time wherein employees were allowed to vote by mail, employees of AFSCME, Council 24, WSEU, were allowed to view the envelopes containing ballots which envelopes set forth thereon the name and address of the voter and were thus allowed to note which employees had voted and which employees had not voted thereby acquiring the ability to solicit the support of employees who had not yet voted.'

In the event the Commission is not ready to assume said quoted language as a fact, further hearing will be necessary.

II. Argument: No 'objections to election' have been filed.

A. THE LETTERS OF SACE ARE DEFICIENT PROCEDURALLY.

Wis. Adm. Code section ERB 21.10, in full force and effect at all times material hereto provides as follows:

'ERB 21.10 Objections to election. (1) FILING; FORM; COPIES. Within 5 days after the tally of ballots has been furnished, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and 5 copies of such objections shall be signed and filed with the commission, the original being sworn to.

'(2) SERVICE ON OTHER PARTIES. The party filing such objections shall serve a copy upon each of the other parties.'

1. The 'objection(s)' are not verified.

The foregoing premise needs little or no illustration or discussion. The letter of SACE dated September 25, 1973 is not sworn to; nor is its letter of October 2, 1973.

2. Copies of the alleged 'objection(s)' were not sent to each of the other parties.

The parties involved herein are the (1) State of Wisconsin and its Department of Administration, (2) AFSCME and (3) SACE.

AFSCME received none of the letters sent to the Commission by SACE. It is our belief that the Department of Administration was likewise omitted. Only through the courtesy of the Commission was AFSCME provided with the pertinent correspondence of SACE.

B. THE LETTERS OF SACE ARE DEFICIENT SUBSTANTIVELY.

It is apparent that the only point of criticism raised by SACE was the presence of certain representatives of AFSCME's staff in the offices of the Commission during the time when ballots were being returned by the eligibles after they had voted. We admit that AFSCME staff members were present as alleged.

Rather than condemning AFSCME for this practice, they should be commended.

Any 'labor organization' desiring to win a representative election would be and is well advised to take account of the returns as they become available. More specifically this is precisely what is done during 'on-site' balloting; telephone pools are formed and in some cases car pools are formed to bring eligibles to the polls. This is perfectly acceptable election conduct; it is not unlawful.

Further, it is my specific recollection that on or about July 24th during an informal session held in the hearing room of the Commission this precise subject was thoroughly discussed. At that time representatives of the Department of Administration, and the Commission's staff, were advised by AFSCME's representatives that they would be present during the time the ballots were returned. The representatives of SACE, although invited to attend, did not do so. At no time did anyone or anybody object to this procedure.

The offices of the Commission must be kept open during certain hours of the day. (See Section 16.30(4)(a) and (4)(f), Wis. Stats. (1971).) To refuse to allow AFSCME representatives access to the Commission's office during this crucial time would probably, in our opinion, be unlawful. In any event, AFSCME representatives enjoyed no benefit or advantage not available to SACE. SACE representatives were not barred from the offices of the Commission. They apparently chose not to appear; a choice made voluntarily by them.

Apparently because SACE did not choose to take advantage of this opportunity, they now wish to indict and condemn AFSCME.

In conclusion, we note that the basis of the alleged objection of SACE is, by its terms, directed to some unfair advantage gained by AFSCME and to the destruction of a 'sterile' atmosphere within which the election was conducted. There is a total failure to allege 'interference' with the 'free choice' of the remaining eligibles to vote as they so desired. We have only the bald, unsupported and unverified conclusions that somehow AFSCME's conduct was unlawful. How or in what way AFSCME's conduct was unfair is left to speculation and imagination. Assuming elections must be 'sterile', which we believe to be an erroneous assumption, how or in what manner AFSCME's conduct was unlawful is again left to imagination and speculation. Imagination and speculation fall far short of a signed, sworn statement.

The purported 'objection(s)' of SACE must be dismissed and the election results certified forthwith."

The Form of the Objections:

There is no doubt that the objections did not conform to rule ERB 21.10 of the Wisconsin Administrative Code in that the objections were contained in a single letter which was signed but which was not "sworn to." In addition, SACE neglected to serve copies thereof upon the interested parties involved, namely, the State Employer and WSEU. The Commission submitted copies of the letter to said parties.

Rule ERB 20.01 provides that procedural rules shall be liberally construed to effectuate the purposes and provisions of the State Employment Labor Relations Act, and further that the Commission may waive any requirements of said rules unless a party shows prejudice thereby. Since both the State Employer and WSEU received copies of the objection letter, and since they were afforded an opportunity to reply, the Commission will not dismiss the objections on the basis that they were not in the form nor filed in strict compliance with the Commission's rules regarding same.

The Merits of the Objections:

There is no dispute that during the period prior to the opening of the ballots that representatives of WSEU visited the Commission's offices and were permitted to view the envelopes containing the names of the employees in the unit who were casting ballots in the election. The Commission had previously determined, in the presence of representatives of all parties involved, without objection, to permit representatives of the parties to engage in such activity in the presence of agents of the Commission. However, only representatives of WSEU took the opportunity to do so. No representative of the State Employer nor of SACE was denied that opportunity.

We agree with the statement made by WSEU to the effect that the offices of the Commission must be kept open during certain hours of the day. However, this does not necessarily grant a right to any organization or the State Employer to examine mail ballot envelopes as they are received in the Commission's offices. The Commission provided a specific procedure to the parties prior to the conduct of the mail balloting. It is obvious to the Commission that WSEU utilized said procedure in order to encourage employees who apparently had not cast their mail ballots to do so. There is no contention, nor even an inference, in the objections filed by SACE that any representative of WSEU interfered, restrained or coerced any employee in the unit to cast, or not to cast, a mail ballot.

We are, therefore, satisfied that the objections are without merit and therefore have been denied, and we are issuing our Certification of the results of the run-off election.

Dated at Madison, Wisconsin, this 14th day of November, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner