

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
LOCAL 222, UNITED NURSING HOME & :
HOSPITAL EMPLOYEES' FEDERATION : Case XII
Involving Certain Employes of : No. 16242 ME-861
TWO RIVERS MUNICIPAL HOSPITAL : Decision No. 11513-E
INCLUDING HAMILTON MEMORIAL HOME :

Appearances:

Mr. Roger Jacobson, Business Manager, and Mr. Kenneth Islo,
Business Representative, appearing on behalf of the Petitioner.
Porter, Purtell, Purcell, Wilmot & Burroughs, S.C., Attorneys at
Law, by Mr. Dennis J. Purtell, appearing on behalf of the
Municipal Employer.
Mr. James Billings, Business Representative, appearing on behalf
of Intervenor Local 150, Service & Hospital Employees' Inter-
national Union, AFL-CIO.
Mr. Michael J. Wilson, District Representative, appearing on behalf
of Intervenor Wisconsin Council of County and Municipal
Employees, AFSCME, AFL-CIO, Local 76.

ORDER DISMISSING OBJECTIONS TO CONDUCT OF ELECTION

Two Rivers Municipal Hospital (Including Hamilton Memorial Home) and Local 150, Service & Hospital Employees' International Union, AFL-CIO having separately filed timely objections to the conduct of an election conducted by the Wisconsin Employment Relations Commission on February 9, 1973, in the above-entitled matter, (1) wherein said Municipal Employer contended that the result of said election should be set aside because of certain conduct committed by Local 222, United Nursing Home & Hospital Employees' Federation prior to and during the election, and (2) that Local 150, Service & Hospital Employees' International Union, AFL-CIO committed certain conduct during the election and certain irregularities in the conduct of the election itself; and wherein said Local 150 contended that the results of said election should be set aside because of certain preelection conduct by Local 222; and the Commission having ordered that both objections be made more definite and certain; and the Municipal Employer and Local 150, by their respective Counsel, having made their respective objections more definite and certain; and, thereafter, hearing on all of said objections having been conducted at Two Rivers, Wisconsin, on March 9, 1973, Marshall L. Gratz, Hearing Officer, appearing on behalf of the Commission; and on March 30, 1973, Local 150 having raised an additional objection by way of brief; and the Commission having considered the objections, the evidence and briefs of Counsel, and being fully satisfied that all of the said objections should be dismissed;

No. 11513-E

NOW, THEREFORE, it is

ORDERED

That the objections filed by Two Rivers Municipal Hospital (Including Hamilton Memorial Home), and the objections filed by Local 150, Service & Hospital Employees International Union, AFL-CIO, to the conduct of the election involved herein, be, and the same hereby are, dismissed.1/

Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

1/ The Commission is today issuing the Certification of Representatives.

TWO RIVERS MUNICIPAL HOSPITAL INCLUDING HAMILTON MEMORIAL HOME, XII,
Decision No. 11513-E

MEMORANDUM ACCOMPANYING
ORDER DISMISSING OBJECTIONS TO CONDUCT OF ELECTION

Pursuant to a Direction issued by it, the Wisconsin Employment Relations Commission conducted an election on February 9, 1973, among certain employees of Two Rivers Municipal Hospital (Including Hamilton Memorial Home), Two Rivers, Wisconsin, hereinafter referred to as the Municipal Employer, to determine whether said employees desired to be represented for the purposes of collective bargaining by Local 222, United Nursing Home & Hospital Employees' Federation, hereinafter referred to as Local 222, or by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Local 76, hereinafter referred to as Local 76, or by Local 150, Service & Hospital Employees' International Union, AFL-CIO, hereinafter referred to as Local 150, or by none of said labor organizations. The results of said election indicated that of the 156 employees eligible to vote, 138 cast ballots, 84 voted in favor of representation by Local 222, 5 in favor of representation by Local 76, 6 in favor of representation by Local 150, while the remaining 43 voted against any representation. Following the receipt of the tally of ballots, Local 150 and the Municipal Employer separately filed timely objections to the conduct of the election. The substance of said objections (as made more definite and certain pursuant to subsequent orders of the Commission) is as follows:

Objections of Local 150:2/

"1. That [in late November, 1972] a representative of Local 222, United Nursing Home and Hospital Employees Federation, Roger Jacobson, did tell the employees [including Dora Meeks, June Marek, Mildred Mott and Alice Sporer] prior to the election that the employees had to vote for Local 222 because they were going to have to pay dues to Local 222 in any event.

2. That on November 29, 1972, Roger Jacobson was permitted to talk to assembled employees on the employer's premises whereas Local 150 was not given this opportunity."

Objections of the Municipal Employer:

"1. That one of the parties to the election, that being Local 150, Hospital and Nursing Home Employees, by its [agent and representative, Jess Martindale], did unlawfully interfere with a fair election by means of distribution [on the parking lot of the hospital to employees entering the hospital during voting times, literature and campaign materials on behalf of Local 150].

2. That the ballot (sic) furnished by the Wisconsin Employment Relations Commission, in that they were printed on a red paper, were difficult to read and decipher in the light of the voting area, and that such fact was made known to the hearing examiner at that time who took no action.

2/ Besides the two timely objections set forth immediately hereinafter, Local 150 raised an additional objection in its brief. That objection is set forth and dealt with in the last subsection of this Memorandum.

3. That an unauthorized observer [Mr. Kenneth Islo, upon information and belief, an employee of Local 222] on behalf of Local 222, United Hospital Nursing (sic) Employees Union, was present in the voting area during voting times.

4. The representatives of Local Union 222 allegedly made false and misleading statements prior to the election with respect to required union membership. [To wit: upon information and belief, the false and misleading statements made prior to the election on behalf of Local 222, were made by Mr. Roger Jacobson, at a meeting held on or after 7:00 P.M. on the night of November 29, 1972, at the Two Rivers Recreation Department and/or Community House, and that such statements were made to a number of employees gathered at that place at that time. This information was communicated to the Employer subsequent to the election by Mrs. Delores Radtke and others. Mr. Jacobson is reported to have stated, in substance, that even if employees did not belong to the Union, they would have to pay Union dues or lose their job, and therefore the employees should vote for the Union.]"

Hearing on all of the Objections was held on March 9, 1973. The parties were permitted to file briefs in the matter; the Municipal Employer, Local 222 and Local 150 did so.

Prior to the hearing, Local 150 withdrew its Objection No. 2. The Municipal Employer, in its brief, withdrew its Objection No. 3.

DISCUSSION:

Objection No. 1 of Local 150

There was considerable evidence adduced at the hearing concerning statements made by Roger Jacobson at a meeting with employees of the Municipal Employer held on November 29, 1972. None of that evidence, however, including the testimony of Dora Meeks, in any way supports the assertion that employees were told that they would be required to pay dues to Local 222, regardless of the outcome of the election. Therefore Local 150's Objection No. 1 is without support in the record and is dismissed.

Objection No. 1 of the Municipal Employer

Uncontradicted evidence establishes that Jess Martindale, an agent of Local 150, distributed a flyer on the Municipal Employer's employee parking lot during the time of the balloting. That flyer read as follows:

"Don't be left out in the cold...

Get

FULL COVERAGE

VOTE LOCAL 150

AFL-CIO POWER

TODAY"

The Municipal Employer has cited no specific authority for the assertion that distribution of campaign materials on a Municipal Employer's premises during voting times is grounds for setting aside an election in general. There was no evidence adduced that the distribution of said "flyers" interfered with the physical conduct of the balloting. Moreover, to set aside Local 222's election victory because of improper conduct by a competing union would be to reward such an offending union for its improper conduct. Such a result would seem inappropriate unless it is probable that such conduct had affected the vote to the Municipal Employer's detriment. In the instant case, however, nothing in the record suggests that Local 150's leaflet distribution was intended to or succeeded in encouraging a generally pro-union vote (rather than a strictly pro-150 vote). A conclusion that such conduct improperly affected the outcome of the election is therefore unwarranted.

For all of the foregoing reasons, the Commission dismisses the Municipal Employer's Objection No. 1.

Objection No. 2 of the Municipal Employer

The record indicates that the Municipal Employer's representatives were present at the voting place shortly in advance of, and throughout the voting period. Those representatives raised no initial objection to the color of the ballot or to the lighting of the polling place. After approximately 10 of the 138 employees casting ballots had voted, the Municipal Employer's representative asserted that employees were unable to adequately read the ballots, which were printed in black on red paper. Immediately thereupon, the WERC election's officer moved the polling place into a better lighted area and the Municipal Employer's observer raised no further objection to the balloting conditions. None of the employees voting complained of inability to read the ballot at any time. The ballots cast were marked in such a manner to reflect the choice of each employee voting. Said objection is without merit and is dismissed.

Objection No. 4 of the Municipal Employer

The record clearly establishes that representatives of Local 222, including Roger Jacobson, called and conducted a meeting of employees of the Municipal Employer on the evening of November 29, 1972; that more than 30, but less than 50 employees attended that meeting which was conducted elsewhere than on the Municipal Employer's premises; and that Jacobson made certain statements to such employees at said meeting concerning dues payment obligations of employees in the event that Local 222 or some other union was certified pursuant to the results of the election. There was conflicting testimony, however, as to whether Jacobson discussed the issue of a fair share agreement as a negotiable item, or whether he simply stated that all employees would automatically be required to pay union dues to a union in the event that that union was selected as the bargaining representative.

It has long been the policy of the Commission that we will ordinarily not pass judgment on campaign propaganda. Though we do not condone exaggerations, inaccuracies, partial truths or name-calling, such campaigning may be excused as propaganda if it is not so misleading as to prevent a free choice by the employees.^{3/}

^{3/} City of Green Bay, Dec. No. 8098-B (11/67); London Hat Shop, Dec. No. 7023-B (6/65); North Avenue Laundry, Dec. No. 5716-B (11/61).

Even if Jacobson failed to qualify his description of the fair share agreement by noting that it could be implemented only if negotiated with the Municipal Employer, we are not convinced that such a misrepresentation prevented the employees from exercising a free choice under all of the circumstances of this case. We note, for example, that the Municipal Employer and the competing unions had ample time in which to fully inform the employees concerning the nature of a fair share agreement, even though it is uncontroverted that the Municipal Employer did not learn of the alleged misrepresentation until after the election. Moreover, as Counsel for the Municipal Employer admitted in his brief, ". . . it can just as easily be [concluded] that such [allegedly] misleading statements resulted in employees voting for the union as voting against the union." Furthermore two additional unions were on the ballot, and frankly, Jacobson's statement, as alleged, could just as well have discouraged the employees to vote for Local 222, as any representation

The Municipal Employer's Objection No. 4 is also dismissed.

Additional Objection Raised by Local 150


In its brief, Local 150 raised, for the first time, the additional objection that Local 222 sent a letter to employees of the Municipal Employer "just before" the date of the election which letter contained an assertion that representatives of Local 150 had committed perjury when they claimed to represent unnamed employees of the Municipal Employer during the initial Commission hearing held pursuant to the instant petition. The letter to which this objection refers was introduced into evidence at the hearing upon Local 222's motion, and it was received in the mail by employees of the Municipal Employer approximately four days before the election. Local 150 argues that (1) it first learned of said letter when Local 222 introduced same at the hearing; (2) that the accusation of perjury contained in said letter is refuted by the fact that Local 150 received 6 votes in the election; and (3) that such ". . . a last minute letter is clearly a tactic which is so misleading as to prevent a free choice by employees participating in the election. . . ."

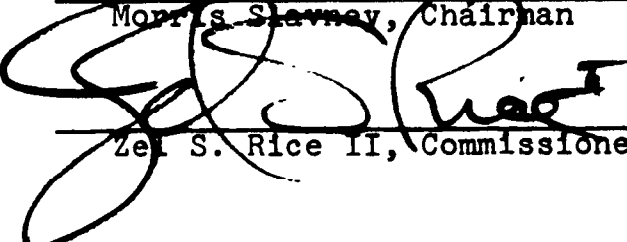
Even if the Commission were to conclude that said objection was timely filed,^{4/} the objection would be dismissed on its merits since the accusation of perjury in the Local 222 letter is likely to have appeared to the employees as self-serving propaganda rather than as a representation of uncontroverted fact. In any event, we do not conclude that said accusation was so misleading as to prevent the exercise of free choice by the employees participating in the election.

Dated at Madison, Wisconsin, this 10th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

^{4/} Pursuant to ERB 11.10.