

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DONALD J. BALLINGER, MARY JO DEAN,
DENNIS HIBNER, KATHLEEN RILEY and
THERESA M. RUETHER,

Complainants,

vs.

UNITED COMMUNITY SERVICES OF
GREATER MILWAUKEE, INC.,

Respondent.

Case VI
No. 16430 Ce-1466
Decision No. 12221

DONALD J. BALLINGER, MARY JO DEAN,
DENNIS HIBNER, KATHLEEN RILEY and
THERESA M. RUETHER,

Complainants,

vs,

MILWAUKEE DISTRICT COUNCIL 48, AFSCME,
AFL-CIO, and HAROLD C. SCHRUBBE,

Respondents.

Case II
No. 16431 Cw-337
Decision No. 12222

Appearances:

Campbell & Brostoff, Attorneys at Law, by Mr. Alan S. Brostoff,
appearing on behalf of the Complainants.

Foley & Lardner, Attorneys at Law, by Mr. David W. Croysdale,
appearing on behalf of Respondent United Community Services
of Greater Milwaukee, Inc.

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S.
Williamson, Jr., appearing on behalf of Respondents Milwaukee
District Council 48, AFSCME, AFL-CIO, and Harold C. Schrubbe.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Separate complaints of unfair labor practices having been filed with the Wisconsin Employment Relations Commission wherein the Complainants alleged that the above named Respondents had committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act; and hearing on said complaints having been heard on February 21, 1973, at Milwaukee, Wisconsin, Chairman Morris Slavney being present; and the Commission, having considered the evidence and arguments of counsel, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Complainants Donald J. Ballinger, Mary Jo Dean, Dennis Hibner, Kathleen Riley and Theresa M. Ruether are individuals residing in Milwaukee, Wisconsin.

2. That United Community Services of Greater Milwaukee, Inc., hereinafter referred to as the Respondent Employer, has its principal offices at 606 East Wisconsin Avenue, Milwaukee, Wisconsin.

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3. That Respondent Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Respondent Union, has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; and that Respondent Harold C. Schrubbe, hereinafter referred to as Respondent Schrubbe, is an individual residing in Wauwatosa, Wisconsin.

4. That at all times material herein, the Complainants, as well as Respondent Schrubbe, were employees of the Respondent Employer; that on July 19, 1972, the Respondent Union filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election among all clerical, technical and social service employees of the Respondent Employer, excluding supervisory and confidential personnel; that thereafter, and on July 28, 1972, the Commission set hearing on such petition for August 10, 1972, at Milwaukee, Wisconsin; that prior to the date of said hearing the Respondent Employer and the Respondent Union entered into and filed a stipulation with the Commission, requesting the Commission to conduct an election among all clerical, technical and social service employees of the Respondent Employer, excluding supervisory, confidential and temporary employees, as well as the consultant; that, prior to any further action by the Commission, Complainant Ballinger, on behalf of the social service employees, hereinafter referred to as professional employees, filed a petition with the Commission requesting the Commission to conduct an election among all professional employees in the employ of the Respondent Employer, excluding those in managerial positions, to determine whether said professional employees desired to be represented for the purposes of collective bargaining by Complainant Ballinger; that thereafter the Commission ordered a hearing on the stipulation filed by the Respondent Employer and Respondent Union, as well as the petition filed by Ballinger, to be held on September 26, 1973; that the Commission thereafter postponed said hearing upon being informed that the parties intended to file a stipulation with regard to the matter; and that thereafter the Respondent Employer and the Respondent Union entered into a stipulation requesting the Commission to conduct elections among the employees of the Respondent Employer in two separate voting groups, namely, the non-professional and the professional employees, to determine whether the eligible employees in said voting groups desired to establish separate units, and what representation was desired by the employees either in one or two units, whichever were established.

5. That on October 16, 1972 the Commission issued its Direction of Elections in the matter, and that pursuant to such Direction, the Commission, on October 27, 1972, conducted said elections, the results of which were as follows:

Non-professional Voting Group:

1. Total number eligible to vote	31
2. Total ballots cast	28
3. Total valid ballots counted	28
4. Ballots cast in favor of a separate unit.	4
5. Ballots cast against a separate unit	24

Professional Voting Group:

1. Total number eligible to vote	22
2. Total ballots cast	19
3. Total valid ballots counted	19
4. Ballots cast in favor of a separate unit.	10
5. Ballots cast against a separate unit.	9

6. That, since a majority of the eligible employees voting in both non-professional and professional voting groups failed to vote in favor

of separate bargaining units, therefore the appropriate unit consisted of both professional and non-professional employees; and that the representation ballots cast by employees in both voting groups was combined with the result as follows:

1. Total number eligible to vote	53
2. Total ballots cast.	47
3. Total valid ballots counted	47
4. Ballots cast in favor of the above named Union	36
5. Ballots cast against the above named Union.	11

7. That thereafter, and on November 19, 1972, the Commission issued its Certification of Results of Elections, wherein it certified that one bargaining unit was established consisting of non-professional and professional employees of the Respondent Employer, and further that the employees in said unit selected the Respondent Union as their collective bargaining representative.

8. That the Respondent Employer is a social service agency and that Werner J. Schaefer, who is the President of the Milwaukee County Labor Council, AFL-CIO, is the Chairman of the Board of the Respondent Employer; and further the Respondent Employer employs three individuals in its "Labor Department", whose duties include liaison with various labor organizations in and about the Milwaukee area, to seek assistance from said labor organizations in the social service programs performed by the Respondent Employer.

9. That, in addition to his employment with the Respondent Employer, Ballinger heads a firm which provides consulting services, and in that regard, said firm was hired to provide such services for a model cities program in Milwaukee, Wisconsin; that at all times material herein Respondent Employer was aware of Ballinger's private enterprise and had no objection to such activity by Ballinger; that on October 25, 1972, Robert Anthony, an agent of the Respondent Employer, discussed with Ballinger the possibility that the Respondent Union had in its possession a copy of the contract between Ballinger's firm and the model cities project, and Anthony indicated a concern that Respondent Union's position might be to require Ballinger to reduce his "outside activities"; and that at no time during the course of said discussion did Anthony threaten Ballinger with reprisals, or make any promises of benefits to Ballinger with respect to his involvement in his own firm.

10. That on October 24, 1972, during the pendency of the elections proceeding and at a hearing of the Milwaukee United Fund Campaign, Respondent Schrubbe voiced a protest to a Board member of the Respondent Employer against Ballinger's sitting at the same luncheon table with Respondent Schrubbe and said Board members, and in that regard Respondent Schrubbe identified Ballinger as a "scab" to those sitting at said luncheon table; that as a result Ballinger did not seat himself at said table; that on or about October 15 or 16, 1972, Mrs. Arwilda Ballinger, the wife of Ballinger, received phone calls from unidentified persons inquiring as to whether Ballinger was President of the firm known as "Social Services of Milwaukee", and whether or not said firm was a non-profit organization; and that however, the parties who called Mrs. Ballinger made no reference to the coming elections among the employees of the Respondent Employer, or any references to Respondent Union or to any of its members, or any of the activities of Respondent Union or its members.

11. That on or about October 25, 1972, Respondent Schrubbe, during the pendency of the election proceeding engaged in a conversation with one Val Kaiser, a president of a local union of AFSCME, who was told by

Respondent Schrubbe to contact one, Ron Rian, who was not an employe of Respondent Employer, but who was a member of the same local of AFSCME and in that regard Respondent Schrubbe requested Kaiser to advise Rian to instruct Rian's wife, who is an employe of the Respondent Employer, to persuade her not to oppose Respondent Union's organizational efforts among employes of the Respondent Employer; and thereafter Rian related said conversation to his wife.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That, at all times material herein, none of the activities engaged in between Respondent, United Community Services of Greater Milwaukee, Inc., its officers and agents, constituted any unfair labor practices within the meaning of any provision of Section 111.06(1) of the Wisconsin Employment Peace Act.

2. That at all times material herein, none of the activities of Respondent, Milwaukee District Council 48, AFSCME, AFL-CIO, its officers or agents, and/or Respondent, Harold C. Schrubbe, constituted any unfair labor practices within the meaning of any provision of Section 111.06(2) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission issues the following


ORDER

That the complaints filed in the instant matter be, and the same hereby are, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 24th
day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The individual Complainants, all employees of United Community Services of Greater Milwaukee, Inc., hereinafter referred to as the Employer, filed complaints of unfair labor practices alleging that the Employer and Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Harold C. Schrubbe, hereinafter referred to as Schrubbe, an employee of the Employer, committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act.

In the complaint against the Employer, the Complainants alleged (1) that on or about October 19, 1972, Robert Anthony, an agent of the Employer, threatened an employee (Ballinger) with loss of income because of his opinions on the Union; (2) that on or about January 4, 1973, the Employer, through its agent (Strapp) "reaffirmed its standing orders dating back to at least July 19, 1972, by telling an employee that said employee could only use printing companies which are union-organized or which supply a union label on all printed material; and (3) that on or about October 19, 1972 and continuing to the date on which the complaint was filed, the Employer employed as its Chairman of the Board, the President of the Milwaukee Labor Council, AFL-CIO, as well as three individuals in its labor department who are accountable to the "Milwaukee Labor Council".

In their complaint against the Union and Schrubbe, the Complainants alleged that (1) on or about October 15 or 16, 1972, the Union "spied upon an employee and harrassed the wife of an employee by telephoning her at home repeatedly"; (2) that on or about October 24, Schrubbe caused an employee "because of his opinions on the union campaign, to be separated from a business function"; and (3) that on or about October 25, 1972, the Union and Schrubbe "had an employee of the Milwaukee County Welfare Department, (and) a member of Milwaukee District Council 48, AFSCME, AFL-CIO, told that he should persuade his wife to support the union organizing effort" at the Employer.

The Complaint Against the Employer

1. The conversation between Robert Anthony, an agent of the Employer, as related in para. 9 of the Findings of Fact, did not contain any threats of reprisals because of Ballinger's apparent opposition to the Union as displayed in seeking a separate unit vote for the professional employees. In the opinion of the Commission, based on the testimony of both Ballinger and Anthony, Anthony merely stated that the Union might question the propriety of Ballinger operating his own social service agency, while still being an employee of the Employer.

2. While the Employer did insist that its printed material be printed on stationery and paper containing the union label, we are not satisfied that such a policy by the Employer constitutes any unfair labor practice. The Employer, for sound business reasons, may very well deem it to be advantageous to his program, to have its material printed on stationery and documents containing a union label. There was no evidence of threats or reprisals, or promises of benefits or any evidence of discrimination because of the Employer's policy in this regard. It is significant to note that said policies existed long before concerted activity among the employees of the Employer.

3. The fact that the Employer has as its Chairman of the Board the President of the Milwaukee County Labor Council, and also employs three individuals in its "Labor Department", who are accountable to the Milwaukee Labor Council, in itself does not constitute unlawful acts of interference. The record is entirely devoid of any evidence to establish that the Chairman of the Board, or the three employees, engaged in any act which would interfere with, restrain, coerce, or discriminate against any of the employees of the Employer, and further, there was no evidence to indicate that the Chairman of the Board, nor said three employees in any way dominated or lent assistance to the Union involved in the election.

The Complaint Against the Union and Schrubbe

1. The evidence discloses that on October 15 or 16, 1972, Mrs. Ballinger, who was the wife of Donald J. Ballinger, one of the Complainants, and who was most active in seeking a separate unit of professionals, received two phone calls from an individual or individuals she could not identify. Her testimony with regard to the conversations had during these calls, did not pertain to any concerted activity or any facts surrounding the elections.

2. There was no evidence adduced in the record to establish that Respondent Schrubbe caused an employee, namely Ballinger, to be separated from his business function. Apparently this allegation refers to the luncheon meeting at the Performing Arts Center held on October 24, where Schrubbe identified Ballinger as a "scab", and as a result Ballinger was not invited to sit at a luncheon table with other individuals, including Schrubbe. We do not consider such a statement by Schrubbe, to constitute any unlawful interference, restraint, coercion, or discrimination, or any other type of unfair labor practice.

3. The record did establish that Schrubbe had a conversation with Kaiser, who was president of a local of the Union, and requested Kaiser to speak to a fellow union member whose wife was employed by the Employer and whose wife apparently was opposed to union representation. Schrubbe requested Kaiser to contact Rian and to relay Schrubbe's message in an attempt to have Rian persuade his wife to refrain from opposing the Union. Kaiser testified that he did relay such information to Rian. Rian testified that he did speak to his wife about the matter. Schrubbe's conversation with Kaiser as to what Kaiser should relay to Rian and who was to later persuade his wife to cease opposing the Union, contained no threats nor promises. Furthermore, Schrubbe was an employee and he was not in a position to take any action on behalf of the Employer.

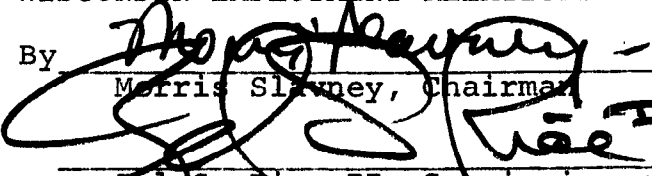
The record fails to adduce any evidence to support any conclusion that any unfair labor practice had been committed by any of the Respondents.

It should be noted that Ballinger has also filed objections to the conduct of the elections. The Commission has denied such objections. Furthermore, the events surrounding the alleged unfair labor practices, as established in the record, are insufficient to effect the results of the elections conducted by the Commission. The Commission has today denied the objections.

Dated at Madison, Wisconsin this 24th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Del S. Rice II, Commissioner