

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE

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Case CXLII
No. 17978 ME-1064
Decision No. 13099-D

Mr. Nicholas M. Sigel, Assistant City Attorney, and Mr. James J. Mortier, City Labor Negotiator, appearing on behalf of the Municipal Employer.

Pursuant to a Direction previously issued by it, the Wisconsin Employment Relations Commission, on November 6 and 7, 1974, conducted an election among all employees employed in the Service Division of the Bureau of Municipal Equipment, Department of Public Works, City of Milwaukee, Wisconsin, excluding all supervisory, confidential, craft and all other employees, for the purpose of determining whether a majority of such employees voting desired to be represented by Truck Drivers Local Union No. 242, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or by District Council No. 48, AFSCME, AFL-CIO, or by no organization; and on November 11, 1974 Truck Drivers Local Union No. 242, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America timely filed objections to the conduct of said election; and pursuant to an Order For Hearing issued thereon, the Commission conducted a hearing on said objections on January 13, 1975 at Milwaukee, Wisconsin, the full Commission being present; and the Commission having considered the objections, the record, and the arguments and briefs of Counsel, and being satisfied that the objections are without merit and should be denied and dismissed;

NOW, THEREFORE, it is

That the objections to the conduct of the election filed herein be, and the same, hereby are denied and dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 27th
day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Howard S. Bellman Commissioner

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER DISMISSING
OBJECTIONS TO CONDUCT OF ELECTION

The tally sheet executed following the closing of the polls of the election conducted herein indicated that of 429 employees claimed eligible to vote, 349 cast ballots, 20 of which were challenged, one of which was void; and that of the 328 ballots counted, 193 employees cast ballots in favor of being represented by District Council No. 48, AFSCME, AFL-CIO, and 134 ballots were cast in favor of being represented by the Teamsters. One employee cast a ballot for "no representation".

The Teamsters timely filed objections to the conduct of the election, which objections stated, in material part, as follows:

"1. After the filing of the petition, Objector MORRIS requested absentee ballots for those employees eligible to vote who were sick and on vacation, such employees numbering approximately 60 in all and that such request was rejected without sufficient grounds by Commissioner ZEL RICE.

. . .

3. That District Council 48, AFSCME, AFL-CIO campaigned improperly by passing out campaign literature on the dates of the election, namely, November 6th and November 7th within the confines of the polling areas."

During the course of the hearing on the objections, Teamsters withdrew an objection alleging that 20 employees were permitted to vote who were not members of the unit.

With respect to Objection No. 1 the record discloses that during the course of the hearing on the petition for the election, Teamsters requested that the election be conducted by mail ballot. Former Commissioner Rice, who conducted the hearing, denied such a request indicating that the balloting would be conducted manually. Thereupon Teamsters requested that mail ballots be sent to employees who were on vacation or who were ill. Such a request was also denied.

The determination as to whether an election will be conducted manually or by mail ballot is within the discretionary authority of the Commission. It should be noted that the Commission had previously conducted an election among employees of the unit involved and that such election was conducted manually at the same sites at which the instant election was conducted. It is of interest to note that in an affidavit attached to the objections, James Schneider, an officer of Teamsters, submitted a list indicating that of 58 of the 80 employees who did not appear at the polls to vote, only ten employees were on vacation on the dates of the balloting. There was no evidence adduced that any of the employees who were listed in the affidavit as being on vacation were out of the city and unable to appear at the polls. In addition, no evidence was adduced that any employee who did not appear at the polls to vote was ill on the dates of the balloting. Under all of these circumstances, we conclude that there has been no abuse of the Commission's discretion in refusing to permit mail ballots for employees on vacation or who were ill on the dates on which the voting was conducted.

With respect to the objection contending that agents of AFSCME were passing out campaign literature within the confines of the polling areas, the record discloses that no literature was passed out in either of the rooms in which the balloting was conducted at either polling site.

Agents of AFSCME, during the period in which the balloting was conducted did hand out literature at the gates of the premises and also in the garages where the polling sites were located urging a vote for AFSCME. The extent of such activities in the garages was apparently slight. It is apparent from the record that the activity of the agents of AFSCME in distributing its campaign literature and in having conversations with potential voters outside of the immediate polling area did not in any way physically impede the conduct of the balloting.

In addition, the president of Teamsters testified that he observed an agent of AFSCME having a conversation with two or three voters in one of the polling areas. However, no evidence was adduced with respect to the nature of said conversations.

Further, the president of Teamsters testified that when he had entered the polling booth to cast his ballot he found a piece of campaign literature, produced by AFSCME, lying on the voting shelf. There was no evidence introduced to indicate who had placed such material in the voting booth, nor how long it had been there.

Counsel for the Teamsters, during the hearing, admitted that its first objection with respect to absentee ballots, was numerically deficient by itself to overturn the results of the election, and said Counsel further asserted that only in combination with the second objection with respect to campaigning by agents of AFSCME, is a case made for sustaining the objections. We are satisfied that the activity of the agents of AFSCME with potential voters did not constitute activity which interfered with the physical conduct of the election, nor constituted undue persuasion so as to interfere with the free choice of the employees voting.

We are therefore denying the objections and are today issuing a Certification of the results of the election.

Dated at Madison, Wisconsin, this 27th day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Teresian
Herman Teresian, Commissioner