

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BLOOMER JOINT SCHOOL DISTRICT NO. 1

Appearances:

Wiley, Rasmus, Colbert and Frasch, S.C., Attorneys at Law, by
Mr. B. James Colbert, Esq., on behalf of Bloomer Professional
Educators' Association

Pursuant to a Direction of Election previously issued by it in the above entitled matter, the Wisconsin Employment Relations Commission, on March 30, 1977, conducted an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of Bloomer Joint School District No. 1, herein the District, specifically in an appropriate collective bargaining unit consisting of

"All certified teaching personnel employed by the Bloomer School District, excluding administrators and coordinators, principals and supervisors, persons employed on a per diem basis or substitute teachers . . ."

to determine whether said employees desired to be represented by Northwest United Educators, herein NUE, or by Bloomer Professional Educators' Association, herein BPEA, or by neither; that following the counting of the ballots, the parties and the Commission's agent supervising the election executed a tally sheet, reflecting the results as follows:

1.	Total claimed eligible to vote	87
2.	Total ballots cast	86
3.	Total ballots challenged	10
4.	Total ballots void	0
5.	Total ballots blank	0
6.	Total valid ballots counted	76
7.	Ballots cast for Northwest United Educators	27
8.	Ballots cast for Bloomer Professional Educators Association	48
9.	Ballots cast for no representation	1

that the challenged ballots could not possibly affect the results of the election; that the NUE having filed timely objections to the conduct of the election; that pursuant to an Order issued by it, the Commission on May 19, 1977, by Hearing Examiner Amedeo Greco, conducted a hearing at Bloomer, Wisconsin, during which the parties were afforded the opportunity to present evidence and argument with respect to the matters in issue, and following the close of the hearing, all parties having filed post-hearing briefs; and the Commission having considered the record, the arguments and briefs of counsel, and being satisfied that the objections to the conduct of the election are without merit and that the results of the election should be certified:

NOW, THEREFORE, it is

ORDERED

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

Now, therefore, by virtue of, and pursuant to the power vested in the Wisconsin Employment Relations Commission by Section 111.70(4)(c) 3 of the Municipal Employment Relations Act;

IT IS HEREBY CERTIFIED that Bloomer Professional Educators' Association has been selected by a majority of the eligible employees of Bloomer Joint School District No. 1 who voted in said election in the bargaining unit consisting of:

"All certified teaching personnel employed by the Bloomer School District, excluding administrators and coordinators, principals and supervisors, persons employed on a per diem basis or substitute teachers";

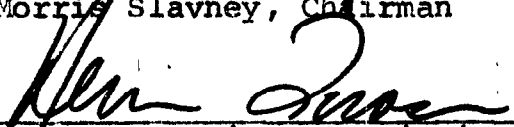
as their representative; and that pursuant to the provisions of the Municipal Employment Relations Act, said union is the exclusive collective bargaining representative of all the employees in said unit for the purposes of collective bargaining with the above named Municipal Employer, or its lawfully authorized representatives, on questions of wages, hours, and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 11th
day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER DISMISSING OBJECTIONS TO CONDUCT
OF ELECTION AND CERTIFICATION OR RESULTS OF ELECTION

The election petition herein was originally filed on November 16, 1976. At that time, the BPEA was the recognized collective bargaining representative of the teachers herein. Further, the BPEA and the District at that time were privy to an existing collective bargaining agreement which was in effect at all times material herein.

Subsequent to the holding of the election, the NUE filed several objections to the conduct of the election, objections, which in its view, warrant the setting aside of the election. The District and the BPEA, on the other hand, contend that the objections are without merit and that they therefore should be dismissed.

But, before that is done, the Commission wishes to reiterate that while it will not condone exaggerations, inaccuracies, partial truths, name calling and falsehoods made during pre-election campaigns, that 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. See for example, Manitowoc County (10899-A) 8/72 and Two Rivers Municipal Hospital, (11513-E) 4/73.

With the foregoing in mind, the objections will not be considered seriatim.

1. The March 30, 1977 BPEA Flyer.

In its objections, the NUE asserts that the BPEA "did engage in campaigning by the use of mailbox flyers on the day of the election, said flyers containing misleading and inaccurate representation." More particularly, the NUE claims that the following statements on the flyers in question were inaccurate:

"The B.P.E.A., your present bargaining representative, has done an excellent job of negotiating for you. We have strived consistently to obtain the greatest increases for the greatest number of teachers. The top of the salary schedule of one school or another may seem impressive, but unless a number of teachers are receiving these salaries, the figures are of little value.

The B.P.E.A. has capably fulfilled their obligation to you, not only at the bargaining table, but in other 'job related matters' as well. We have represented all teachers regardless of whether or not we agree with them. Every teacher has been guaranteed his individual rights. This is evidenced by the following activities in just the past three weeks.

. . . "

In this connection, the NUE argues that the BPEA erroneously led teachers to understand "that other surrounding school districts who have higher top salaries are not paying teachers at the level." The relevant portion of the statement allegedly giving rise to this inference reads as follows:

"The top of the salary schedule of one school or another may seem impressive but unless a number of teachers are receiving these salaries, the figures are of little value."

This statement in itself amounts to a truism. In order to find that this statement interfered with the free choice of the employees voting in the

election, it would be necessary to conclude: (1) that employees were led to believe that certain (unspecified) school districts were not paying teachers at the top of the salary schedule; (2) that this was untrue as to those unspecified districts; and (3) that there is a reasonable probability that the alleged falsehood affected the outcome of the vote. This argument requires the utilization of multiple inferences without adequate evidence and gives too little credit to the voter's ability to separate campaign propaganda from hard facts.

In addition, the NUE claims that the BPEA's flyer erroneously stated that the BPEA has represented all teachers when in fact the BPEA on several occasions failed to properly represent certain individuals. In considering this claim, the Commission finds that the BPEA in fact did attempt to represent all individuals, despite the fact that the BPEA's representatives were not that familiar with the processing of grievances. Thus, it is undisputed that the BPEA on at least one occasion sought legal advice on one of the grievances in issue and the BPEA representatives did meet with the affected grievants and the District's Administration over those grievances. Moreover, the NUE does not challenge the BPEA's claims that it discussed additional grievances involving other named individuals. Additionally, the record establishes that it was the NUE itself which triggered the BPEA's late statements, as the NUE, by flyer dated March 25, 1977, alleged that the BPEA "has repeatedly refused to adequately defend teachers, and has, in fact, given poor advice to people who have come to it for help . . .". In such circumstances, it is obvious that the BPEA was merely defending itself against the NUE's claim that it was not properly representing teachers. Accordingly, and since the BPEA's claims of success were at worst campaign puffery which could easily be evaluated by the employees, and because there was at least some basis for said claims, the Commission finds that the statements in issue did not interfere with the election.

2. The alleged bargaining over the school calendar.

The NUE asserts that the District bargained with the BPEA over the formulation of a school calendar and that said negotiations "constituted a showing of preference on the part of the employer for the BPEA."

In this connection, it is true that the District proposed four possible calendars for the 1977-78 school year and that it sought the advice of teachers as to what calendar should be promulgated. Furthermore, it is undisputed that the District contacted BPEA representatives over this matter. Said actions, however, were expressly authorized under Article XIV of the collective bargaining agreement between the BPEA and the District which provides in Section 1:

"It is recognized that the Board has the responsibility to set the annual school calendar. Prior to the adoption of the calendar, a proposed calendar will be referred to the BPEA for review."

Here, the District did submit the calendar to the BPEA "for review", as it was required to do under the contract. Since the District was obligated to honor the terms of the contract during the pendency of the representation proceeding herein, and because the BPEA's review of the calendar did not constitute collective bargaining negotiations, 1/ it follows that the submission of the calendar for such review did

1/ While the BPEA provided input as to which calendar should be accepted, the District subsequently rejected that request. Furthermore, it does not appear that there was even any face to face discussion of this issue between the BPEA and the District.

not interfere with the conduct of the election. This objection is therefore dismissed.

3. The alleged preferred status of the BPEA

In support of this objection, the NUE argues that the District's superintendent, James Munro, discussed in private with the president of the BPEA, Arlys Mullen, the processing of a grievance filed by teachers Allen Holle and Nancy Kloss and that Munro made several suggestions to Mullen regarding the processing of said grievances.

While the record shows this to be so, it is also true that Mullen initiated the conversation with Munro, and that she did so because she was inexperienced in filing grievances. In such circumstances, where Munro was merely responding to Mullen's questions, and where Mullen was making a good faith attempt to represent Holle and Kloss to the best of her ability, the Commission finds that Mullen's conversations with Munro did not interfere with the conduct of the election. This objection is therefore dismissed.

4. The alleged interrogation and implied threats

In support of this objection, the NUE contends that elementary school principal Roy Ostenson threatened and interrogated teacher Dan Smith. More particularly, the NUE asserts that Ostenson admonished Smith not to circulate a NUE showing of interest petition and that Ostenson told Smith that someone else from outside the building should circulate the petition.

In considering this objection, the Commission wishes to reiterate its long standing policy which precludes litigating prohibited practices in a representation proceeding. Accordingly, the Commission, will not decide in the instant proceeding whether such prohibition herein constituted a prohibited practice. Accordingly, the Commission is left only with the question of deciding whether the prohibition interfered with the conduct of the election. Since the conduct in issue occurred in October 1976, nearly six months before the election herein, and because there is no evidence that such conduct had a lingering effect on the subsequent election, we conclude that the conduct complained of did not tend to interfere with the election. Accordingly, this objection is dismissed.

5. The remaining objection.

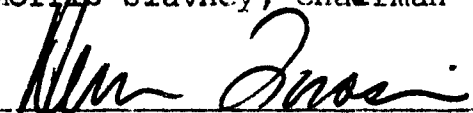
At the hearing, the NUE attempted to show that the District discriminatorily took certain actions against teachers Allen Holle and Nancy Kloss because of their activities on behalf of the NUE. The hearing Examiner excluded such testimony on the ground that the proper format for the resolution of such issues was in a prohibited practices complaint proceeding. Inasmuch as the NUE did not thereafter file such a complaint, and because the NUE did not take exception to the Hearing Examiner's ruling which excluded such testimony, the Commission is dismissing this objection.

Dated at Madison, Wisconsin this 11th day of August, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner