

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN :  
& HELPERS UNION LOCAL 446 :

Involving Certain Employes of :

TOWN OF WESTON (WATER UTILITY) :  
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Case V  
No. 23194 ME-1558  
Decision No. 16499-B

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, appearing on behalf of the Union.

Kelley & Weber, S.C., Attorneys at Law, by Mr. Richard J. Weber, appearing on behalf of the Town.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Pursuant to a Direction of Election previously issued in the above-entitled matter, the Wisconsin Employment Relations Commission conducted an election by mail ballot on September 6, 1978, among certain employes of the Town of Weston to determine whether said employes desired to be represented by Chauffeurs, Teamsters, Warehousemen & Helpers Union Local 446, for the purpose of collective bargaining. The Union thereafter filed timely objections to the conduct of the election. A hearing on said matter was held at Wausau, Wisconsin, before Examiner Thomas L. Yaeger, a member of the Commission's staff. The Town and Union thereafter, on November 20, 1978, filed briefs. The Commission being fully advised in the premises and having considered the objections, the record, and the arguments and briefs of the parties, hereby issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Chauffeurs, Teamsters, Warehousemen & Helpers Union Local 446, herein Union, is a labor organization and has its offices at Wausau, Wisconsin.

2. That Town of Weston, herein Town, is a municipal employer and maintains its offices in Schofield, Wisconsin; and that at all times material hereto William Rahn was employed by the Town as Director of Public Utilities and functioned as its agent.

3. That on or about June 8, 1978, Meuret, Water Utility Superintendent, 1/ executed an authorization card and tendered his initiation fees to the Union; that on June 26, 1978, the Union filed a petition for election with the Commission on behalf of the theretofore unorganized employes of the Town Water Utility; that said petition was served by mail upon the Town on July 7, 1978 and received on July 10, 1978; that on August 7, 1978, the parties stipulated to

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1/ The parties stipulated to inclusion of this position in the bargaining unit.

a mail ballot election and list of eligible voters, and that the parties further stipulated to the following description of the bargaining unit:

All Water Utility employees employed by the Town of Weston, excluding supervisors, clerical employees and guards as defined by the Act.

4. That the mail ballots were counted on September 6, 1978, and the election results were as follows:

1. Total number of employees eligible to vote . . . . . 2
2. Total number ballots cast . . . . . 2
3. Ballots challenged . . . . . 0
4. Votes for representation by Union . . . . . 1
5. Votes against representation . . . . . 1

5. That it has been the customary practice of the Town Board to act upon the wages, hours and working conditions of unrepresented Water Utility employees at its first meeting following the elapse of one year since said employees' last salary increase; that pursuant to said custom, the Town Board met on July 3, 1978, and approved written contracts to be offered to Meuret and his then assistant, Roble; that the contract for Meuret provided that it would be effective July 1, 1978, and would provide for an increase in wages, changes in overtime pay, and new dental insurance; that these changes had previously been discussed between Meuret and the Town Board on or about June 7, 1978, and the Town told Meuret then that the matter of dental insurance that the Town had negotiated with certain other unionized employees and office employees would be forthcoming after July 1, 1978, when his new contract came up; and that during the same meeting the issues of standby pay ("call time") and overtime-comp. time, were also discussed with the Town Board stating it would consider the comp. time-overtime question but not standby pay.

6. That on or about July 5, 1978, Rahn offered a written contract to Roble who refused it; that on or about July 6th Rahn offered Meuret the aforesaid contract; that Meuret refused the contract stating to Rahn that he and Roble had joined the Union and that any negotiation should be done through their representative, the Local Union business agent; that about one week later, July 13, 1978, Rahn again asked Meuret to sign the aforesaid contract and stated that the Town Board was willing or ready to "bury the hatchet" if he "would sign a contract and . . . let bygones be bygones" or "forget about anything in the past and start all over again.", and Meuret again refused reiterating his earlier statement about joining the Union; that Meuret's statement to Rahn on the 6th was the first knowledge the Town had of Meuret's Union activities.

Based upon the foregoing Findings of Fact, the Commission issues the following

CONCLUSION OF LAW

That the Town of Weston, by asking Meuret to sign a written employment contract on July 13, 1978, while at the same time stating that the Town Board was willing or ready to "bury the hatchet" if he "would sign a contract and . . . let bygones be bygones" or "forget about anything in the past and start all over again.", did interfere with employees' free choice in the representation election conducted on September 6, 1978.

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

ORDER

IT IS ORDERED that the election heretofore conducted among the employes of the Town of Weston Water Utility on September 6, 1978, be, and the same is set aside.

IT IS FURTHER ORDERED that a new election by secret ballot be conducted, upon request to the Commission by the Union, and at such time as the Commission is satisfied that a free untrammelled election can be conducted, among all Water Utility employes employed by the Town of Weston, excluding supervisory, clerical employes and guards, who are employed by the Municipal Employer on an eligibility date to be subsequently set by the Commission, except such employes as may prior to the election quit their employment or be discharged for cause, to determine whether a majority of such employes desire to be represented by Chauffeurs, Teamsters, Warehousemen and Helpers Union Local 446 for the purpose of collective bargaining on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this *7th* day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Morris Slavney*

Morris Slavney, Chairman

*Herman Torosian*

Herman Torosian, Commissioner

*Marshall L. Gratz*

Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF  
FACT, CONCLUSION OF LAW AND ORDER

The Union has alleged in its brief that the Town committed prohibited practices 2/ in violation of Sections 111.70(3)(a)1 and 5 of MERA 3/ by bargaining individually with employes and promising them increased benefits during the period after it had petitioned for an election and prior to said election.

Pursuant to Sections 111.70(4)(d)3 and (6), the Commission has refused to certify election results where it has established in a post-election objections proceeding that the employes were unable to freely express their choice through a secret ballot as a result of either employer or union misconduct. 4/

In order to constitute conduct sufficient to warrant setting aside election results, the offending conduct must be sufficient to render it improbable that a voter will be able to freely cast a ballot either for or against a union. 5/ The time period during which such conduct is proscribed commences with filing of the petition, which in this case was June 26, 1978. 6/

The conduct complained of herein occurred on July 6 and 13, 1978, a few days after the instant petition was filed and several weeks prior to the conduct of the election. The Union would have us conclude that the Town, by proffering individual contracts which improved wages and fringe benefits to Roble and Meuret, sufficiently interfered with their freedom of choice as to nullify the election results.

In reviewing the conduct being controverted by the Union, we note that it was customary for the Town to renegotiate Meuret's wage and fringe benefit package at or about the expiration of one year since his last increase. That would mean said negotiation on a new package would normally be scheduled to commence in late June or early July 1978. In fact, Meuret met with the Town Board on June 7, 1978, to discuss when he could expect to receive the dental insurance benefit the Town had earlier in the year agreed to provide other Town employes. At that time he was advised by the Board that dental insurance would be forthcoming with his new contract in early July. He and the Board also discussed overtime-comp. time and standby ("call") pay at the meeting, but no decision was reached on these items although the Board did advise him it would not consider standby pay.

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2/ While in its brief the Union alleges commission of prohibited practices the Commission nonetheless deems this proceeding to be that of objections to the election inasmuch as that is the description the Union affixed to its pleadings.

3/ Municipal Employment Relations Act.

4/ See e.g., Shady Lawn Nursing Home, 7516-B (8/66); L & M Corporation d/b/a Cardinal Hotel, 9374-B (3/70); Picasso Plaza, Ltd., 8608-E (4/69); and Fond du Lac County, 16096-B (9/78).

5/ Washington County, 7694-C (9/67); Fond du Lac County, 16096-B (9/78).

6/ Washington County, 7694-C (9/67).

Subsequent to their meeting on June 7, 1978, the Board met on July 3, 1978, and approved contracts to be offered Meuret and Roble that provided for increased wage, dental insurance, pay for overtime and standby pay. Rahn first offered Roble his contract on July 5, 1978, and Meuret his the following day. In both cases the contracts were rejected. Meuret advised Rahn that he and Roble had joined the Union and wanted the Town to negotiate with the Union, not them.

While the Town's first offer of new contracts to Meuret and Roble was subsequent to the instant petition having been filed, the Town had no knowledge of the election petition and there is no evidence it otherwise had knowledge of said employes' predilection for Union representation. The same cannot be said, however, with respect to Rahn's second conversation with Meuret on July 13, 1978, when Rahn told him that the Town Board was willing or ready to "bury the hatchet." Meuret had previously told Rahn that he and Roble had joined the Union and they wanted the Town to bargain with the Union about their wages, hours and conditions of employment and the Town had also been served with a copy of the election petition. Thus, viewed in this context, it is very likely that Meuret would infer from such a statement if he were to sign the contract as requested he would be agreeing to forego union representation whereas if he did not sign the contract, such refusal would forebode adverse consequences should the Union prevail in the election. Consequently, the objective evidence establishes it is improbable that thereafter Meuret could freely cast his ballot for or against the Union. 7/

For the foregoing reasons we are today sustaining the objections to the conduct of election, and ordering the election be set aside and directing that a new election be conducted upon request of the Union.

Dated at Madison, Wisconsin this 7th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

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7/ The testimony of Meuret, regarding his desire to retain his Union membership in spite of this conversation at pp. 23 and 28-29 of the Transcript, which was objected to by counsel for the Union at p. 28 of the Transcript, is irrelevant. The question here is not what Meuret subjectively felt but rather whether the statement of the Town's agent, viewed objectively, had the probable effect of interfering with his free choice. Baraboo Jt. School District (14885-B) 3/10/77; Fond du Lac County (16096-B) 9/26/78.