

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
DISTRICT COUNCIL 48, AMERICAN	:	
FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES,	:	Case I
AFL-CIO, and its affiliated	:	No. 28173 E-2997
LOCAL 1954	:	Decision No. 19211-B
	:	
Involving Certain Employes of	:	
	:	
WEST SIDE COMMUNITY CENTER, INC.	:	
	:	

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law; by Mr. Alvin R. Ugent,
 207 East Michigan Street, Milwaukee, Wisconsin 53202, for the
 Milwaukee District Council 48, AFSCME, AFL-CIO.
 Ropella & Van Horne, Attorneys at Law, by Mr. Dennis J. Weden, 411 East
 Mason Street, Milwaukee, Wisconsin 53202, for West Side Community
 Center, Inc.

ORDER AFFIRMING EXAMINER'S PROPOSED FINDINGS OF FACT
AND MODIFYING PROPOSED CONCLUSION OF LAW AND ORDER

Examiner David E. Shaw having issued his Proposed Findings of Fact, Conclusion of Law and Order in the above-entitled matter on April 25, 1983, wherein he recommended that certain objections be sustained and that certain other objections be dismissed regarding the conduct of a representation election conducted by the Wisconsin Employment Relations Commission on October 13, 1981, among professional and non-professional units of employes employed by the West Side Community Center, Inc., herein the Employer; and wherein Examiner Shaw in said decision having recommended that the results of said election be set aside and that a new election be conducted; and the Employer thereafter having filed a timely petition for review of said decision; and the Commission having reviewed the record in this matter, including the petition for review and the written arguments submitted, and being satisfied that the Examiner's Findings should be affirmed in their entirety, and that the Conclusion of Law and Order should be modified as provided for below;

NOW, THEREFORE, it is

ORDERED

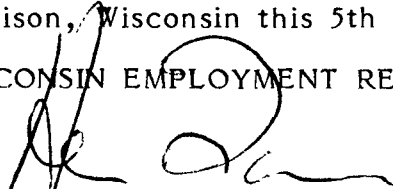
1. That the Examiner's Proposed Findings of Fact, Conclusion of Law and Order are affirmed and adopted as the Commission's Findings of Fact, Conclusion of Law and Order, except as provided for below.
2. That the portion of the Examiner's Proposed Conclusion of Law to the effect that the Employer interfered with the conduct of the election when it indicated that it might give a raise to employe Russell Jackson is hereby set aside.
3. That those portions of the Examiner's Proposed Order providing that the Employer shall cease and desist in engaging in certain objectionable conduct and

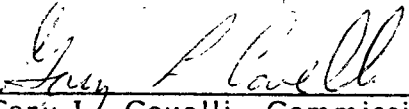
that the Employer shall post a notice to that effect are hereby set aside, as such orders are not appropriate in a representation case. The Proposed Order is further modified by providing that a rerun election shall be conducted only if the Union advises the Commission, in writing, with notice to the Employer, within thirty (30) days of the date of this decision that it requests that such an election be conducted. 1/

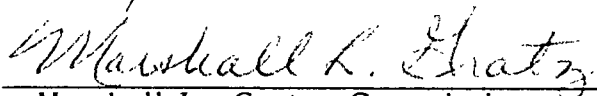
Given under our hands and seal at the City of
Madison, Wisconsin this 5th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

1/ In the absence of any exceptions filed in respect thereto, we hereby adopt without considering or modifying the Examiner's proposed dismissal of the remaining election objections.

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S PROPOSED FINDINGS OF FACT
AND MODIFYING CONCLUSION OF LAW AND ORDER

BACKGROUND:

The Commission conducted an election in professional and non-professional units on October 13, 1981 among certain employees of the Employer. The professional unit voted 1 to 0 for the Union with one challenged ballot (that of employe Richard Vidutis), and the non-professional unit voted 9 to 3 against Union representation, with three challenged ballots. It is undisputed that Vidutis' challenged ballot was improperly co-mingled and counted with the ballots of the non-professional unit. The Union, on October 21, 1981, filed numerous objections to the election on a WERC complaint form which stated at the outset that the Union "objects as follows to conduct affecting the election in the above-entitled matter." On November 20, 1981, the Union filed amended objections and a separate unfair labor practice complaint. Examiner Shaw on April 25, 1983 dismissed some and sustained other objections to the election. In doing so, he found, contrary to the Employer's claim, that the October 21, 1981 objections were timely filed even though they were contained on a complaint form. The Employer thereafter filed exceptions to certain parts of the Examiner's decision.

THE EMPLOYER'S PETITION FOR REVIEW:

The Employer alleges that the Examiner erred in: (1) finding that the election objections had been timely filed; (2) ruling that the challenged ballot of employe Vidutis should not be opened; and (3) finding that the Employer had interfered with the conduct of the representation election by threatening employees that unionization could adversely affect the Employer's funding and by promising employe Russell Jackson a raise during an employe meeting.

DISCUSSION:

After reviewing the matter, we find that, but for the issue involving Jackson, there is no merit to any of the Employer's exceptions. The record fully supports the Examiner's original rulings on these issues, and we agree with the Examiner in each such respect.

As to the Jackson matter, however, we conclude that the Employer's Executive Director, William Meunier, did not improperly promise Jackson a wage increase. In that regard, the record shows that in response to Jackson's question at the employe meeting, Meunier replied that he was not sure whether there would be any money in the budget for employees' raises and that even if there were, another employe would receive a raise before Jackson. In addition, Meunier also expressly told Jackson and the other employees that if money were available in the budget, the employees would receive raises irrespective of whether or not they chose a union. Since Meunier carefully voiced his response in this fashion, we conclude that his statements did not constitute objectionable conduct and we hereby reverse the Examiner's contrary conclusion.

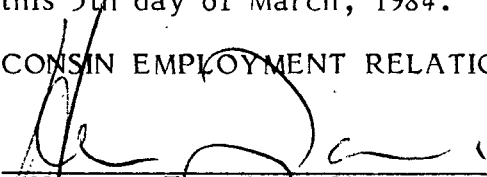
For the reasons noted above, the Commission is also modifying the Examiner's recommended Order so as to delete that part of the recommended Order in the representation case which directed the Employer to post a notice to employees and to cease and desist from engaging in certain conduct. It is also inappropriate in the instant matter to determine whether a remedial bargaining order should be issued to remedy the Employer's conduct as that, too, would be a matter to be addressed in a complaint case. These issues relating to a remedial bargaining order and a remedial cease and desist order are discussed in the companion unfair labor practice case which we have issued today. Moreover, inasmuch as it is uncertain whether the Union wishes to participate in a rerun election at this

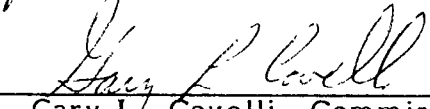
time, our Order provides that such an election shall be conducted only if the Union advises the Commission in writing, with notice to the Employer, within thirty (30) days of the date of this decision that it requests that such election be held.

Dated at Madison, Wisconsin this 5th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner