

3. That the Union timely filed objections to the conduct of the election on February 3, 1986; and that the two objections filed by the Union read as follows:

(1) The employees were not afforded an opportunity to vote secretly and in private because an election booth was not erected. Employees were required to mark their ballots in the open, in view of the observers and other employees who were waiting to vote, and,

(2) the County was allowed two (2) observers during the morning voting period (the Union had one observer);

and that the Union contends, contrary to the County, that those factors served to intimidate, interfere with and coerce employees in the exercise of their rights and thereby affected the outcome of the election, such that the results of the election should be set aside and that a new election be directed.

4. That pursuant to notice, the balloting was conducted on the County's Bloomfield Manor premises in the Occupational Therapy Room during two voting periods, 6:30-8:00 a.m. and 2:00-3:30 p.m.; that during both voting periods on January 30, 1986, one Union and one County observer sat side-by-side at a table facing the door to the room through which the voters entered while the Commission's election agent sat at one end of the table, to the left of those observers; that in addition, during the voting period from 6:30 a.m. to 8:00 a.m., the chairman of the County Board Personnel Committee, Jerome Laufenberg, was present in the room in which the election was conducted; that prior to the start of the balloting the Union's observer had asked the Commission's agent about Laufenberg's identity and presence because the County had another observer already present; that the Commission's agent responded by stating that Laufenberg would not be permitted to sit at the voting table with the observers but would be permitted to remain in the room seated facing the observers in a chair against the wall 3-5 feet away from the table where the two observers and the Commission's agent were seated; that the Union did not request to have a second observer present, the Commission's agent did not advise the Union's observer that the Union could request to have a second observer present, and no further discussion was had concerning Laufenberg's presence; that Laufenberg was not present during the second voting period from 2:00 p.m. to 3:30 p.m., during which voting period only one observer each for the County and the Union were present with the Commission's agent; that, in the instant circumstances, the abovenoted presence of Laufenberg in the voting room in addition to the official observers for the Union and the County, did not compromise the secrecy of the ballot or the free choice of the voters.

5. That there was no enclosed booth for the voters to use in marking their ballots; that after stating their names for the observers, the voters were given a ballot and directed to a small round table, approximately two feet behind the observers, to mark their ballots; that although there was a chair at that table, most of the voters stood at the table while marking their ballots; that most of the voters were instructed by the Commission's agent to keep their backs turned toward the observers while marking their ballots, and that the other voters were not given said instruction because they already had their backs turned toward the observers when marking their ballots; that during voting periods, there were occasions when more than one voter arrived at the voting site at the same time; that on such occasions, one voter would go to mark his or her ballot while the other voters remained in front of the observers; and that approximately one-third (1/3) of the voters cast their ballots during the period of 6:30 to 8:00 a.m.; that in the instant circumstances, the absence of a voting booth did not deprive the employees of an opportunity to vote secretly; that the employees were not required to mark their ballots in the open, or in view of any of the other individuals in the voting room; and that neither the absence of a voting booth nor the physical conditions under which the balloting was conducted compromised the secrecy of the ballot or the free choice of the voters.

CONCLUSION OF LAW

That the circumstances in which the balloting was conducted noted in the Findings of Fact, above, did not destroy the laboratory conditions for the election and do not warrant or require setting aside the election results.

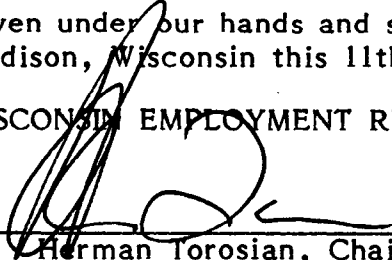
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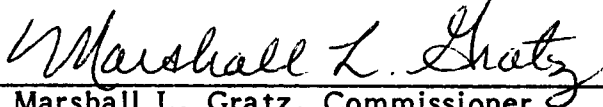
That the objections to the conduct of the election filed by the Union herein are hereby denied and dismissed.

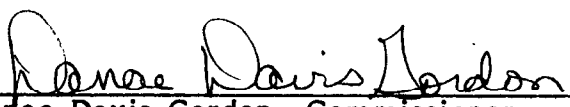
Given under our hands and seal at the City of
Madison, Wisconsin this 11th day of April, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

IOWA COUNTY (BLOOMFIELD MANOR)

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER
DISMISSING OBJECTIONS TO THE CONDUCT OF THE ELECTION

POSITION OF THE UNION:

The Union contends that the Commission's "Election Procedure Manual" prescribes a voting booth as a required piece of equipment for an election. The purpose of the booth is to furnish employes with a place where they can vote in absolute secrecy. A voting booth was not provided for this election. Rather, employes voted in an open area, just a few feet from the observers and other employes waiting to vote. In the absence of the booth, adequate alternative arrangements to ensure a voting environment of absolute privacy were not made. Certainly Laufenberg should not have been permitted to sit facing the table where the voters marked their ballots. Whether Laufenberg, the observers or other employes actually saw how a voter marked a ballot is irrelevant. The important consideration is that the voters could not be sure that their vote was made in complete privacy. It is reasonable to believe such an environment could have caused an employe to change his or her choice on the ballot, thereby destroying the laboratory conditions necessary for the election.

The presence of Laufenberg during the voting must be considered to have been intimidating to the employes because of his position with the County Board. Further, the Commission's election manual limits each party to one observer, unless the parties agree otherwise. Therefore, Laufenberg should not have been present during the voting as a second County representative.

The Commission should void the election and conduct a new election.

POSITION OF THE COUNTY:

The Commission is vested with broad authority to conduct representation elections. The controlling statutory and administrative code provisions require only that employes be given an opportunity to express their choice by secret ballot. There is no express requirement that a voting booth be provided. At the hearing there was no testimony that anyone saw how a voter marked a ballot. Based on the record, it must be concluded that no one could see more than the voters back while the voter was marking a ballot.

Section ERB 11.08(2), Wis. Adm. Code does not restrict a party to one observer, but rather, permits a party to be represented by observers. The Union chose to have only one observer. The Commission's agent acted properly and reasonably in permitting Laufenberg to observe the voting, but not sit at the table with the other two observers. The record does not establish that the presence of two County representatives at the voting site impaired the employe's freedom of choice.

The Commission has consistently refused to set aside an election absent proof of overt coercive conduct which renders it improbable that voters will be able to make a free choice. There is no allegation of misconduct by the County in this proceeding. Rather, the Union is objecting to the manner in which the Commission's agent conducted the election. The record fails to establish that the voting arrangements prevented the employes from freely expressing their choice

election observer, compromised the secrecy of the ballot or the free choice of the voters.

The employes went behind the observers while marking their ballots and either were instructed to keep, or did keep, their backs turned toward the observers, thereby affording them an adequate means of shielding their ballots from the view of anyone in the room and hence an adequate assurance of the secrecy of their vote. A voting booth is clearly a preferable arrangement because of the extra measure of shielding and reassurance that it provides to voters, but the unavailability of a booth did not compromise the secrecy of the balloting in the instant circumstances.

Laufenberg was not permitted to sit at the table with the official observers, and he did not participate in the process of marking the names of the voters on the eligibility list. Rather, Laufenberg sat unobtrusively facing the observers in a chair several feet from the table and against the wall of the room. There is no claim or evidence that Laufenberg's conduct--apart from his presence--was harmful to the laboratory conditions of the vote. We are satisfied that Laufenberg was not able to observe the actual choice of the employes while they were marking their ballots and that it would not have been reasonable for a voter to fear that either Laufenberg or the voters in line or the observers or the Commission's agent could have observed the actual choice of an employe who was marking a ballot.

In the circumstances, therefore, we are satisfied that the aspects of the balloting situation objected to by the Union have not been shown to have destroyed the laboratory conditions for a free, fair and secret ballot election. Accordingly, we have denied the Union's request that we set aside the election, and we have dismissed the objections.

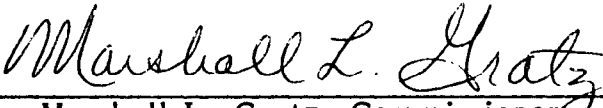
We will be issuing a Certification of the results of the election in a separate document.

Dated at Madison, Wisconsin this 11th day of April, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner