

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
RACINE EDUCATION ASSOCIATION
Involving Certain Employes of
RACINE UNIFIED SCHOOL DISTRICT

Case 168
No. 55820
ME-3640

Decision No. 29450-A

Appearances:

Weber & Cafferty, S.C., by **Attorney Robert K. Weber**, 2932 Northwestern Avenue, Racine, Wisconsin 53404, appearing on behalf of the Racine Education Association.

Melli, Walker, Pease & Ruhly, S.C., by **Attorney Douglas Witte**, 119 Martin Luther King Jr. Blvd., Suite 600, P.O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the Racine Unified School District.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Pursuant to a Direction of Election issued September 24, 1998, the Wisconsin Employment Relations Commission conducted an election on December 3, 1998 to determine whether certain employes of the Racine Unified School District wished to be represented for the purposes of collective bargaining by the Racine Education Association. The employes voting did not select the Association as their collective bargaining representative.

On December 9, 1998, the Association timely filed objections to the election asserting that letters from the District to eligible voters made it improbable that the voters could freely cast their ballots.

The parties subsequently executed a Stipulation of facts and filed briefs, the last of which was received March 12, 1999.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Racine Unified School District, herein the District, is a municipal employer having its principal offices at 2220 Northwestern Avenue, Racine, Wisconsin 53404.

2. The Racine Education Association, herein the Association, is a labor organization having its principal offices at 1201 West Boulevard, Racine, Wisconsin 53405.

3. On September 24, 1998, the Wisconsin Employment Relations Commission directed an election among substitute teachers of the District to determine whether they wished to be represented for the purposes of collective bargaining by the Association.

On November 10, 1998, copies of a Notice of Election were mailed by the Commission to the District for posting in the District's premises so eligible employees would be advised as to the details of the election to be conducted on December 3, 1998.

4. On or about November 18, 1998, substitute teachers employed by the District received the following letter from District Employee Relations Specialist Keri A. Paulson:

Dear Substitute Teacher:

A secret ballot election will be held on Thursday, December 3, 1998 to determine whether substitute teachers want REA and, therefore, Jim Ennis to represent them as substitute teachers. Those substitutes who are eligible to vote should have already received or will receive an election notice in the mail from the Wisconsin Employment Relations Commission.

The polls will be open on December 3, 1998 from 3:00 p.m. to 6:00 p.m. at the Wm. Horlick High School Cafeteria, 2119 Rapids Drive, Racine, Wisconsin.

I think it is very important that each of you vote. The election outcome is decided by a majority of those who actually vote—not just those eligible. If only 50 people vote, 26 is a majority. If you don't vote, you are letting someone else decide your future. If a majority votes for the REA, you will be in the group whether you voted or not.

According to the WERC, only those substitutes who worked ten days or more in the 1996-97 school year (July 1, 1997-June 30, 1998) or who have worked the equivalent of five or more days during the 1998-99 school year (July 1, 1998-June 30, 1999) are eligible to vote. The fact that you are receiving this letter means that we believe you are eligible to vote.

More than 13 years ago, in July of 1984, the REA petitioned the WERC for an election to represent substitute teachers. At that time, the school district argued that all substitutes should be allowed to vote because we feel strongly that even those who can work only a few days a year are important to the program and should have a chance to work and, therefore, to vote.

During the hearing, the REA took the position that only those who worked 30 days or more should vote. The REA said its position was based on its assessment that the Union would have a better chance to win the election if there were fewer eligible voters.

The WERC took a compromise position and decided that ten days should be the cut off amount for voter eligibility. I think this argument about who is eligible clearly illustrates some of the problems when a labor agreement is involved.

This year, the REA again tried to limit the number of substitutes eligible to vote and again the WERC refused to let that happen by taking a similar compromise position.

There is a tendency for union contracts to have provisions that end up pitting one employee against another and such provisions don't really benefit employees as a group. If the REA ends up representing substitutes, the question arises in my mind, will they try and limit jobs or benefits to those who work 30 days, 60 days, or more? Apparently, the substitute teachers in 1984 agreed because the vote was against REA representation.

Second, it is obvious that the REA needs dues money to help it finance political and litigation activities which Jim Ennis has personified over the years. It is well known that the REA has fought and litigated for years to get this school

district to require everybody to pay the REA full “fair share” money—an amount very nearly equal to full teacher dues payable to REA, WEA, and NEA. “Fair share” is what non-REA members are required to pay. Currently, the teachers pay \$565.00 in dues per year to the REA. “Fair share” is \$497.80. The educational assistants pay \$201.70 in dues per year. In addition to dues, teachers last year were assessed an additional amount of money which the REA said went for public relation expenses.

I realize it is impossible for us to speak to all of you personally. However, between now and the December 3, 1998 election, we will communicate with you further regarding this important issue. **Most important is that you vote on December 3, 1998 at Wm. Horlick High School.**

If you have any questions, feel free to call me or Frank Johnson. If we don't have the answer, we'll try and get it for you.

5. On or about November 23, 1998, substitute teachers employed by the District received the following letter from Association Executive Director Jim Ennis:

Dear Racine Unified Substitute Teacher:

Please be aware that the Racine Education Association is seeking to represent substitute teachers who work for the Racine school system.

Enclosed is a “notice” of the Substitute Representation Election, which will be conducted by the WERC on Thursday December 3, 1998.

We all are aware that there is a shortage of Substitute Teachers in RUSD. The Racine Education Association believes (based upon the experiences in other *Urban School Districts*) that pay, benefits, full time teaching opportunities, and protection from unfair treatment will go a long way to solving the problem and treat substitutes in a respectful manner.

You will hear from the Chairperson of the Board of Education's Negotiations Chairperson Bill Schalk, or his designee, about how bad Unions are for you. You will be “told” that you will be better off without a Union. You will be given misinformation about the REA and misinformation about dues etc.

By reviewing the attached REA Proposed Future Substitutes Contract you will see what benefits you will receive when you come under a contract. Note: All items in the contract are items that were negotiated and are in contracts in Madison, Kenosha, Green Bay and Milwaukee.

Fact: Every hourly worker and teacher/assistant in this School District works under a Union Contract. The only workers who do not work under a Contract are the Administrators and their confidential secretaries. This amounts to approximately 2,500 out of 2,650 RUSD employees who are Union represented.

You need only to look at Madison, Green Bay, Kenosha and Milwaukee Assistant's contracts to know that *Fair Pay and Benefits* came only with a Union Contract.

If you want better pay, benefits and protection, we urge you to vote on December 3, 1998, to be represented by the Racine Education Association or if you believe the Board, vote against your own benefits.

Should you have any questions or need more information please call the REA Office 632-6181 (ask for Jim, Diane or Sue) you also are welcome to drop in and visit the office located at 1201 West Boulevard.

Attached to the letter was a document entitled "REA PROPOSED FUTURE SUBSTITUTES CONTRACT—DECEMBER 3, 1998"—the first line of which read "All language proposed is contained in the five urban contracts already in place." Also attached was the following page:

SUBSTITUTE TEACHER DUES

Keri Paulson says:

"It is well known that the REA has fought and litigated for years to get this school district to require everyone to pay the REA full "fair share" money—an amount very nearly equal to full teachers dues payable to REA, WEA, and NEA." Fair share is what non-REA members are required to pay. Currently, the teachers pay \$565.00 in dues per year to the REA. "Fair share" is \$497.80.

The education assistants pay \$201.70 in dues per year. In addition to dues, teachers last year were assessed an additional amount of money which the REA said went for public relations expenses.”

The fact is if you join the Racine Education Association you will pay \$10.50 per month or \$1.00 per day, whichever is the least amount for the month. Dues maximum is \$82.00 per year.

Following is the amount of dues substitute teaches pay in the other urban school districts:

Milwaukee - **\$195.40** per year

Madison - **\$10.50** per month if you work within that month, whether it's 1 day or 20 days.

Kenosha - \$ 9.69 per month if you work within that month, whether it's 1 day or 20 days

Green Bay - **\$1.00** per day for each day you work.

6. On or about November 23, 1998, substitute teachers employed by the District received the following letter from Association President Dennis Wisner:

Our contract settlement last spring increased compensation for doing sub duties and established equitable rotations for doing so. The District still is unable to draw sufficient substitutes to meet District's needs.

On December 3rd, the Racine Unified's substitutes will vote whether to form a union affiliated with the REA. The Executive Committee authorized this action as an attempt to resolve our ongoing substitute shortage in our District.

Substitutes have received a letter from Frank Johnson's assistant, Keri Paulson, urging them to reject this effort. Between now and December 3, I am asking you to make every effort to talk with subs in your building, address the positions put forward by Paulson and urge them to vote to organize.

To help with these discussions, the chart below contains positions (or should I say innuendoes) put forward with appropriate replies and the correct facts surrounding the position.

Paulson's Letter

- There is a tendency for union contracts to have provisions that end up pitting one employee against another and such provisions don't really benefit employees as a group.
- . . . it is obvious that the REA needs dues money to help it finance political and litigation activities.
- It is well known that the REA has fought and litigated for years to get this school district to require everybody to pay the REA full "fair share" money.
- REA again tried to limit the number of substitutes eligible to vote
- The WERC took a compromise position and decided that ten days should be the cut off amount for voter eligibility. I think this argument about who is eligible clearly illustrates some of the problems when a labor agreement is involved.
- I realize it is impossible for us to speak to all of you personally.

Response

- Contracts are determined by a majority vote of members. Paulson advocates the current process, where sub benefits are determined by a majority vote of the school board. Which procedure better represents the interests of the substitute teachers?
- REA legal fees are paid by WEAC, not by local dues. REA political activities are not paid by REA dues but rather by PAC dues, which are totally voluntary.
- Is this an issue? Fair share is found in virtually every teacher contract in the State. The underlying concept is that if unions are required by law to provide legal services to all (not just members) then all should be required to pay for such services. And Racine has fair share not from REA litigation, but rather from a voluntarily negotiated agreement signed by the board in 1977.
- REA consistently has sought to set an eligibility standard that would make it difficult for Racine Unified School District to 'pad' the list of eligible voters with name (sic) hired just to vote.
- A "compromise position" indicates exactly why representation is important. Without representation, there is no ability for subs to voice positions contrary to the districts, (sic) nor is there any ability to seek third party compromises through the WERC. Collective representation and third party dispute resolution are only problems for the management.
- It is only impossible to speak personally with subs if you make no effort to do so. Any and all subs who wish to speak personally to REA may do so on Dec 1st from 3-5 p.m. at a special meeting called to answer any questions subs may have and listen to any concerns they may wish to advance.

Keri Paulson closes with:

If you have any questions, feel free to call me or Frank Johnson. If we don't have the answer, we'll try and get it for you (414) 631-7059.

Encourage them to call Keri or Frank and ask questions such as the following:

Will Keri represent them if they feel they have been treated unfairly by the District?

Will Frank defend them if they are accused of misconduct?

Who will protect them against reprisal by building or district administrators?

How does the District feel about larger salaries for subs that have worked several years for Unified?

How should subs be evaluated?

What retirement benefits is the District willing to guarantee for subs?

Why won't Unified count sub time toward teaching experience when subs get full-time jobs?

Will Unified pay at least a minimal payment for subs called in by mistake?

Why doesn't Unified give special consideration to subs applying for full-time teaching jobs?

What does Unified do about sick days for subs?

Will the District provide liability insurance for subs?

What about medical benefits for subs?

What will substitute teachers get paid next year?

How will this rate be determined?

Why won't Unified protect subs against losses due to assaults?

These issues are all covered by the bargaining offer drafted by REA if the subs vote for union representation.

These issues are currently covered by contract in Districts with union representation for subs.

These issues are not addressed by signed agreements in Racine because without union representation for substitute teachers, the Racine Unified School District will not reduce vague promises to signed commitments.

Please talk with subs in your building about these issues and encourage them to vote on December 3rd.

7. On or about November 23, 1998, substitute teachers employed by the District received the following letter from District Director of Employee Relations Frank Johnson:

Dear Substitute Teacher:

I would like to give you my perspective of what it means to be involved with REA and, therefore, Jim Ennis.

Jim has been in charge of the REA for over twenty-four (24) years. In all that time, there has been very few complete labor agreements settled with the REA without there being litigation, strikes, or some other unpopular job action. The REA's support of the recent refusal of some teachers to meet with parents at their school's "yearly open house" is one such example.

This was followed by widespread sickouts that resulted in the school district having to shut down for two days last February. At one point, the protracted job actions reached such hostility that Jim Ennis publicly attacked Johnson Wax, one of this community's most important employers. It is difficult to understand why he would do this.

In 1974, the longest teacher strike in Wisconsin history took place in Racine. After the strike, the REA still would not sign off on what had been agreed. Instead, REA sued the District and the District sued REA. The REA lost.

While bargaining the 1979-80 contract, the REA again wouldn't or couldn't settle but instead resorted to arbitration to determine the contract. Again, REA lost and it took nearly a year after the 1977-79 contract expired to do it.

In August of 1985, the Board and the REA approved a labor agreement covering the 1982-85 school years. **It became effective three days after it expired.** A three year 1985-88 contract was signed just one year before it expired. Again, the 1990-92 contract was not signed until January of 1992. The previous complete teacher contract expired in August of 1993 and a successor agreement was not ratified **until four years later.** Four years is a long time to go without a pay raise.

Teachers are not alone. Mr. Ennis also represents educational assistants. Their last contract expired in 1997. After only two short bargaining sessions, the educational assistants agreed to nothing except to suggest that we bring in a mediator as a prelude to arbitration. This is a process that may not result in a contract until the contract is already over.

Although the District has always had great difficulty in reaching contract settlements with all bargaining units represented by the REA, the District has up-to-date contracts or ongoing labor negotiations with the five other labor unions representing the remaining District's employee groups. These other groups are not represented by Mr. Ennis.

Throughout the last twenty (20) years or so, Jim Ennis has started hundreds of grievance arbitrations and dozens of law suits. REA's win-loss record for those that go to a hearing is deplorable because he often starts litigation without a sound legal basis and without investigating the facts.

All of that litigation costs money—money that could be used constructively toward education. Instead, REA members pay dues or fair share and Racine taxpayers pay to defend pointless litigation.

Over the same period of time, there has been a complete change in school board membership resulting in many different Boards, many with members who initially were sympathetic to the REA. Much of the District's administration, including several new superintendents and the Board negotiator, have also changed.

Still, Racine suffers from the inability to obtain a voluntary labor agreement with the REA in a timely manner. I think this suggests that the problem may be within Mr. Ennis' control since he obviously is the only constant factor in the equation.

Jim Ennis thrives on controversy, not harmony. He has consistently been criticized in the press for his antics and **it has been said that his methods are**

obsolete and should go the way of the dinosaur. The inner circle of teachers who keep Ennis in power pay him in excess of \$100,000.00 a year as such was recently exposed by the *Journal Times*. In addition, the REA provides Ennis costly benefits that exceed those of the average school employee by a staggering amount. Is it any wonder that more and more dues are needed to pay for this ever growing expense!

The REA, as an organization is itself split with hard-liners who support Ennis being currently in control. Ennis' proclivity towards litigation has now reached the level that one group of teachers sued another group of teachers. One teacher who sued the REA was awarded his attorney fees by the Court and the REA has to pay!

REA can and does make hard to believe promises to people about what it can do for them. It is lawful for REA to promise to get you anything during bargaining because the law recognizes that REA cannot deliver on any promise it makes. On the other hand, the law prohibits the employer from making promises because the law recognizes that employers can deliver on their promises.

There are some things the REA cannot even bargain about, much less guarantee. For example, the law does not require an employer to bargain about giving substitutes first chance – or any chance – at regular teaching positions. A school district may give such opportunities, but cannot be made to bargain about it with a union.

What the REA can bargain about – and has tried to – is a clause which prohibits the school district from using substitutes, or anyone else, from performing certain jobs, such as coaching, if regular teachers are available. **REA's interest is primarily directed toward regular teachers.** The REA can and will put them first and will put you second even if you are required to pay the same fair share dues as the regular teachers. Enclosed is an REA bargaining proposal submitted in July of 1992. Although the District refused to agree to it, the proposal is an example of how the REA wanted to handle substitutes.

We know what to expect from REA. This school district has dealt with Jim Ennis for years. The school district will be able to live with more of Jim Ennis, but can you?

Attached to the letter was a copy of a single page Association proposal dated July 17, 1992 which stated:

In any building where the number of substitute teachers does not meet the number of substitutes needed in that building, the first priority in the assignment of substitutes will be to assure that all ex ed classes are covered by substitutes.

8. On or about November 30, 1998, substitute teachers employed by the District received the following letters from Johnson and Paulson, respectively:

Dear Substitute Teacher,

In an earlier letter from the District, you were told that the Wisconsin Employment Relations Commission would send you a notice of the election to be held **Thursday, December 3, 1998 at William Horlick High School Cafeteria from 3:00 p.m. to 6:00 p.m.** Rather than do that, the WERC has decided to give notice of the election by posting such on bulletin boards in all schools. This has been done. Since you may not have had the opportunity to see the notice and since we believe that this election is important to you, we are taking this opportunity to reaffirm that the **election will be held as scheduled.**

This election will determine whether or not you will be part of the REA bargaining group. **Not voting will not keep you out of the union.** A majority of you must vote no.

You're (sic) vote is important because these elections are often decided by one or two votes.

Sincerely,
Frank L. Johnson
Director of Employee Relations

November 30, 1998

RE: Several Final Thoughts Prior to this Thursday's Election

Dear Substitute Teacher:

Many of you recently expressed concern about your wages and working conditions and job security. Those are legitimate concerns. Those substitutes who think REA is a proper vehicle for addressing those concerns are

undoubtedly sincere. However, I don't think REA is a proper vehicle for several reasons.

REA has an inherent conflict of interest. If a choice must be made between allocating money to maintain regular teacher staffing levels or to maintain work opportunity for substitutes, REA would have to support the regular teacher staff. These are the sorts of hard policy choices which increasingly have to be made these days.

Some unionized substitute contracts may have pay or benefits that in some areas are above yours at present and some may be below yours. Whether you are ahead or behind in any area changes from year to year, naturally. But those unionized substitutes sometimes give up one thing to get another. For example, in some union contracts, you must be available every day and accept every assignment, or be paid a lower rate.

Recently, the REA has proposed a contract provision that would create a group of full time teachers to act as substitutes. If approved, this group would take away from substitutes some of the more desirable job assignments.

Already it appears this union has started to try to give preferred status to fewer people—those who can work all the time. We don't think that's fair. We know that many of you are not always available or may not be regularly available next year or the year after.

I believe this school district can and will treat substitutes fairly and continue to provide work opportunities without union involvement.

Getting a union is not like trying on a new pair of shoes—you can't just take them off if they don't fit. Organizational constitutions and by-laws can be created or modified which makes the ability to change unions or leadership extremely difficult. Choices should be made carefully because you may have to live with whatever choice you make for a long, long time.

You can avoid what may be a one-way street by making sure you vote on **December 3, 1998. No one will know how you voted.** Secret ballots will be counted by representatives of the Wisconsin Employment Relations Commission. It is important that you vote because the outcome is decided only by those who vote. You can be sure that those who are maneuvering to become part of the union will turn out to vote. Make sure your vote is counted as well. Not voting will not keep you out of the union. You must vote "no" to do that.

Remember to vote, 3:00 p.m. to 6:00 p.m., Thursday, December 3, 1998 in the Wm. Horlick High School Cafeteria, 2119 Rapids Drive, Racine, Wisconsin.

Sincerely,

Keri A. Paulson
Employee Relations Supervisor

Attached to the letter from Paulson was a single sheet with the following text of an updated Association bargaining proposal. The proposal was offered by the Association in 1992.

PRIORITY POOL

Teachers who are displaced during the term of this Agreement because of budget cuts or reorganization decisions of the Board will be guaranteed continued, full-time employment pursuant to the following terms and conditions:

1. A priority pool of substitute teachers will be created by the District. The pool will be comprised only of bargaining unit members who, because of their lack of seniority and/or qualifications, are displaced from regular teaching positions. The pool will not exceed fifty (50) employees.

2. Bargaining unit personnel who are assigned to the pool will retain their full salary and benefits including step increases and any prospective salary or other benefits bargained by the District and the Association.

3. Bargaining unit personnel who are assigned to the pool will be assigned on a full-time daily basis to substitute for absent teachers or to provide release time for, or assistance to, regular full-time or part-time teachers.

4. Bargaining unit personnel who are assigned to the pool will be recalled to any future vacancy for which they are certified, and which exists after the transfer under secs. 15.3 – 15.10 of the collective bargaining agreement have been exhausted. Bargaining unit personnel who are assigned to the pool cannot be recalled to a lesser-paying position than the one they held at the time of their assignment to the pool. No new teachers will be hired by the District until the pool is exhausted.

9. The Wisconsin Employment Relations Commission conducted the election on December 3, 1998. Of the 187 eligible voters, 109 cast ballots. Of the 109 ballots, 33 were cast for the Association and 72 were cast for no representation. Four ballots were challenged.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The documents received by voters from the Racine Unified School District did not render it improbable that voters could exercise free choice in the December 3, 1998 election.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

1. The objections filed by the Racine Education Association are hereby overruled.

2. By virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by Sec. 111.70(4)(d)3, Stats., it is hereby certified that the required number of eligible voting employees of the Racine Unified School District did not select the Racine Education Association as their collective bargaining representative.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of April, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Racine Unified School District

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER**

The Objections

The objections filed by the Association state in pertinent part:

7. During the pendency of the representation election, the Racine Unified School District circulated letters to eligible voters (copies of which are appended hereto and incorporated herein as Exhibits B, C and D) which implied: (1) that negotiations between the District and the Association would be futile, and would result in lower rates of pay for those substitute teachers who only wish to take certain school assignments or work on certain days; (2) that the REA had an inherent conflict of interest in representing regular and substitute teachers; (3) that there is a pending contract proposal which would take away the most suitable jobs for substitutes; (4) that the Association dues of substitute teachers would approximately (sic) those of regular teachers or educational assistants; (5) that delays in previous contract settlements were solely the fault of the Association and its Executive Director; (6) that the Association has not effectively represented its members in grievance arbitration matters; and (7) that if the eligible voters voted in favor of the Association that salary increases would be a long time in coming.

POSITIONS OF THE PARTIES

The Association

The Association argues that the District's communications to voters contained statements so misleading as to prevent a free choice by the electorate.

It contends the letters in question portray a vote for the Association as futile or even contrary to the interests of the employees. It further asserts that the letters contain an implicit threat that the Association would favor regular teachers over substitute teachers on staffing issues; that the Association would bargain for substitutes who were willing to work full time at the expense of those who were not; and that, due to the faults of the Association's Executive Director, a contract would take a long time to bargain.

The Association further argues the District's statements regarding (1) the Association's litigation history are "unsupported, speculative and untrue" and (2) District statements regarding the level of dues and the use of dues monies are "misleading and/or outright false."

The Association alleges that the implication to be drawn from the District's communications is that the potential benefit of voting for the Association is more than offset by the negatives -- particularly because of the allegedly "unscrupulous and selfish nature" of the Association's Executive Director.

The Association contends the District's statements and misrepresentations go well beyond acceptable propaganda and instead contaminated the laboratory conditions necessary for free choice by the employees. The Association argues the District's conduct warrants the conduct of a new election.

The District

The District submits that its campaign propaganda does not warrant conducting a new election because none of it contained a promise of benefit, a threat, or was so misleading as to prevent a free choice by the voters. The District asserts that it merely informed voters of the facts and law regarding bargaining and expressed opinions about the Association and its Executive Director. The District contends that its conduct was consistent with the nature of a legitimate election campaign.

The District argues that its propaganda was not misleading and was entirely truthful. Moreover, the District asserts that the Association had every opportunity to rebut the District's propaganda and, in some instances, attempted to do so.

The District alleges that the level of voter turnout reflects voter apathy rather than fear and that the voters' rejection of the Association does not mean that objectionable conduct took place.

The District asks that the election results be certified.

DISCUSSION

One of the rights accorded municipal employees by Sec. 111.70(2), Stats., is the right to be represented for the purposes of collective bargaining by a "labor organization of their own choosing." Thus, when employees seek to exercise that choice through an election conducted by the Commission pursuant to Sec. 111.70(4)(d)2.a., Stats., they are entitled to an election climate which is free of conduct or conditions which improperly influence them and which is fair to all parties on the ballot. WERC v. EVANSVILLE, 69 Wis.2d 140 (1975); WASHINGTON COUNTY, DEC. NO. 7694-C (WERC, 9/67); ST. CROIX COUNTY, DEC. NO. 8932-E (WERC, 9/87). Where the secrecy of the voting process itself is maintained, there is a strong presumption that the ballots actually cast reflect the true wishes of the employees participating. FOX VALLEY VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT, DEC. NO. 25357-A (WERC, 11/88). Therefore, where, as here, objections are filed which allege that conduct or

conditions existed which prevented the employees from freely expressing their preference as to union representation and that the election results should be set aside, the question before us is whether the conduct or conditions in question render it improbable that the voters were able to freely cast their ballots. FOND DU LAC COUNTY, DEC. NO. 16096-B (WERC, 9/78); TOWN OF WESTON, DEC. NO. 16449-B (WERC, 2/79); ST. CROIX COUNTY, SUPRA.

Where the objections relate to the content of campaign propaganda, we have long held that although we “do not condone exaggerations, inaccuracies, partial truths, name calling and falsehoods,” such campaign propaganda does not warrant the conduct of another election unless it is “so misleading as to prevent a free choice by the employees.” NORTH AVENUE LAUNDRY, DEC. NO. 5716-B (WERC, 11/61). See also FOND DU LAC COUNTY, SUPRA; WEST SIDE COMMUNITY CENTER, INC., DEC. NO. 19211-B (WERC, 3/84).

When we measure the propaganda in this case against the above-stated standard, we conclude that a new election is not warranted.

In reaching this conclusion, we acknowledge that the District’s propaganda contains certain “exaggerations” (i.e. the 1992 proposal attached to the November 30 Paulson letter is not “recent”) and that the opinions expressed about the Association’s Executive Director could be viewed as name calling. However, on balance, particularly in the context of the Association’s responses to the District’s propaganda, we are not persuaded that voters would be so misled that they could not freely choose whether or not to be represented by the Association.

Therefore, we have rejected the Association’s request for a new election and have certified the election results.

Dated at Madison, Wisconsin this 19th day of April, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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