

MASSACHUSETTS LABOR CASES

CITE AS 11 MLC 1480

VINFEN CORPORATION AND AFSCME, COUNCIL 93, AFL-CIO, CR-3637 (3/1/85). RULING ON OBJECTIONS TO ELECTION AND DENIAL OF PETITION FOR CERTIFICATION OF REPRESENTATIVE.

- 43.21 violations of laboratory conditions
- 43.3 challenges and objections
- 43.323 misconduct in voting area
- 43.326 observers at election

Commissioners participating:

Paul T. Edgar, Chairman
Maria C. Walsh, Commissioner

Appearances:

Richard L. Alfred, Esq. - Counsel for Vinfen Corporation
Wayne Soini, Esq. - Counsel for AFSCME, Council 93

RULING ON OBJECTIONS TO ELECTION AND DENIAL OF PETITION FOR CERTIFICATION OF REPRESENTATIVE

On October 5, 1984, the Labor Relations Commission (Commission) issued an amended Decision and Direction of Election ordering that an election be held among certain employees of Vinfen Corporation (Vinfen) to determine whether they desired to be represented by the American Federation of State, County and Municipal Employees, Council 93, AFL-CIO (AFSMC) or by no employee organization. Pursuant to an amended Notice of Election issued on November 16, 1984, a secret ballot election was held among a professional unit and a non-professional unit of Vinfen's employees on November 30, 1984. The results of the voting among the professional employees, after resolution and counting of certain challenged ballots, were as follows:

American Federation of State, County and	
Municipal Employees	22
No employee organization	22
Challenged ballots	0
Protested ballots	0
Blank ballots	0
Void ballots	0

The results of the voting among the non-professional employees were as follows:

American Federation of State, County and	
Municipal Employees	39
No employee organization	50
Challenged ballots	1
Protested ballots	1
Blank ballots	0
Void ballots	0



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On December 7, 1984 Vinfin and AFSCME filed objections to conduct affecting the results of the election. Prior to the start of the Commission's investigation of those objections on January 8, 1985, Vinfin filed a motion to withdraw its objections, and AFSCME filed a motion to withdraw its objection that a Commission agent left the voting area for several minutes at one of the voting sites. Those motions are allowed.

An investigation was conducted into AFSCME's remaining objections, which may be summarized as follows.

1. At the "Riverway" site, the polls opened 15 minutes late, the exterior door fronting on the Riverway was locked, voters entering from a 74 Fenwood door had no directions to the voting area, and voters were "milling around" seeking the voting area.¹
2. At the "Glen Road" site, voting took place on a porch for the first ten minutes of the afternoon voting hours because the door to the voting area was locked. During the time voting was taking place on the porch, a non-observer management employee identified an individual attempting to cast a ballot as a "patient."
3. At the "83 Brighton Avenue" site, voters had no direction to the voting area and some were seeking directions from management employees. During the afternoon voting, a voter asked the Commission agent "Where do I get my check?"

The Commission will proceed to a hearing only when the objecting party presents evidence of substantial and material factual issues which, if proven, could warrant setting aside the election. Hudson Bus Lines, 4 MLC 1736, 1739-40 (1978); Lowell School Committee, 10 MLC 1553, 1556 (1984). For the reasons set forth below, we conclude that none of AFSCME's objections, when measured against that standard, warrant a hearing.

1. The Riverway Site Objections

AFSCME's objections to the conduct of the election at the Riverway site allege that an unknown number of voters were disfranchised. AFSCME speculates that voters were unable to find the site or that they attempted to cast a ballot between the time the polls were scheduled to open and the actual time polls opened at the site. The cases of alleged voter disfranchisement that we have considered have involved low voter turnout resulting from factors outside of the control of the employees. Where a party alleges that such factors disfranchised voters, the party must present both evidence of the factors and evidence to substantiate their causal

¹There was no evidence presented during the investigation on the allegation that voters were "milling around" and we therefore deem that objection waived.



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relationships to a low voter turnout. Hudson Bus Lines, 4 MLC at 1741 (allegation that low voter turnout caused by inclement weather); Commonwealth of Massachusetts, 7 MLC 1293, 1305 (1980) (allegation that insufficient posting of notices of election caused low voter turnout).

AFSCME has not specifically alleged that the voter turnout in this election was low,² but alleges generally that more voters would have cast ballots but for the late opening of the polls and the difficulty finding the election site at Riverway. Commission election records show that 134 out of the 170 employees on the total voter eligibility list cast ballots (77.6%).³ AFSCME has not produced any evidence tending to show that any of the remaining 22.4% of the voters failed to cast a ballot because of the delayed opening or lack of signs at the Riverway site. Although we are concerned that the scheduled hours of any election be adhered to, we also note that even assuming the correctness of AFSCME's calculations, there was only a fifteen-minute departure from the scheduled opening at one out of five election sites, in an election with both morning and afternoon voting hours.⁴ Under these circumstances, there has been no substantial departure from scheduled election hours. Cf. B & B Better Baked Foods, Inc., 208 NLRB 493, 85 LRRM 1092, 1093 (1974) (where an election was scheduled for a morning session between 6:30 to 8 a.m. and the National Labor Relations Board's agent did not arrive until 7:40 a.m., the election was overturned). Moreover, there is no evidence that any voter appeared at the Riverway site prior to the time the polls opened or that any voter was disfranchised. The short delayed opening of the polls could not have interfered with the conduct of the election. We conclude, therefore, that this objection does not warrant a hearing.

For similar reasons, AFSCME has offered no evidence to support its allegation that the lack of signs directing voters to the polling place was a factor in the voter turnout. AFSCME and Vinfin had agreed upon the election sites, the Riverway site was a work location for a number of employees, and there is no evidence that any potential voter could not find the site. To infer on these facts,

²AFSCME's objections regarding the voter turnout are also grounded upon conduct occurring at the "Glen Road" site and the "83 Brighton Avenue" site.

³The percentage of the voter turnout in this election is substantially higher than other voter turnout cases we have considered. See, e.g., Hudson Bus Lines, 4 MLC at 1738 (45.3% of the eligible voters cast ballots); Commonwealth of Massachusetts, 7 MLC at 1305, n.5 (approximately 65% of eligible voters cast ballots). At the Riverway site, 37 out of the 55 employees on the voter eligibility list cast ballots and two other employees scheduled to vote at that site cast their ballots at one of the other election sites (total Riverway turnout 72.7%).

⁴The November 30, 1984 election was held between the hours of 7:30 a.m. to 9:30 a.m. and 2 p.m. to 6 p.m.



given the voter turnout at the Riverway site, that some eligible voters must not have been able to find the site because directional aids were lacking, as AFSCME suggests, is unwarranted. Therefore, we do not find that AFSCME has presented the necessary prima facie showing to require a hearing on this issue. No evidence has been presented which would warrant a hearing on this allegation. We decline to set aside an election on the basis of unsubstantiated speculation.

2. The Glen Road Site Objections

A. Conducting the election on a porch.

AFSCME's objections to the conduct of the election at the Glen Road site involve, in essence, the "impropriety" of conducting ten minutes of the afternoon voting on a porch before the doors to the building were opened.⁵ AFSCME concedes that the polls opened on time and that adequate privacy for the two voters who cast their ballots on the porch was provided. AFSCME asks us to infer that some potential voters may have appeared at the site, may have objected to the assumed casualness of the voting procedure and may have left without casting a ballot. AFSCME presented no evidence that any potential voter was adversely influenced by the balloting place which AFSCME concedes provided adequate privacy for the marking of ballots. Thus, we conclude that no hearing is warranted on this objection. In the absence of evidence to support this allegation, we dismiss the objection.

B. Presence of non-observer management employee at election site and her comment about a voter's eligibility.

It is undisputed that sometime during the ten minutes of polling on the Glen Road site porch, Vinfen's personnel manager was present on the porch and remarked to the Commission agent in charge of the site that an individual appearing to cast a ballot was not eligible to vote.⁶ The individual did cast a ballot in the non-professional unit, but because his name did not appear on the eligibility list, his vote was challenged by the Commission (that challenge was not resolved because the challenged ballots were not determinative of the outcome of the election in the non-professional unit). One other voter was present on the porch.

AFSCME alleges that the presence of the management employee and her comment about the eligibility of a voter may have been communicated to other employees by one or both of the voters present on the porch and may therefore have intimidated other prospective voters into refraining from casting a ballot. AFSCME has not supplied any evidence to support its allegation.

⁵The Commission's Notice of Election directs voters to "70 Glen Road, Jamaica Plain." No specific room is mentioned.

⁶AFSCME alleges that the personnel manager said that the individual was a "patient." Vinfen says that the personnel manager said that the individual was "perhaps a client." For the purpose of our consideration of AFSCME's objection, we will assume the AFSCME version to be correct.



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The Commission has refused to set aside the results of an election on the ground that non-observer partisans of either side were present near the polling places at the start and end of the election where there was no evidence of sustained conversations or campaigning with prospective voters. Lexington Taxi, 3 MLC 1696, 1698 (1977); City of Boston, 2 MLC 1275, 1280 (1976). The presence of non-observer partisans at an election site is objectionable only when there is evidence that the conduct of such partisans could have affected the vote of employees. AFSCME has offered no evidence to support a conclusion that the statement of the personnel manager could have affected the vote of an employee. Therefore, the presence of Vinfin's personnel manager for a short time on the porch at Glen Road, and her comment directed to the Commission agent, is not a substantial and material issue which could warrant setting aside the election. Accordingly, this objection is dismissed.

3. The 83 Brighton Avenue Site Objections

A. Voters asking directions of management

The Brighton Avenue site agreed to by the parties was listed in the Commission's election notice as the "1st floor" at that location. Vinfin's main office and the work location of at least some of Vinfin's management, including the office of the president, is located on the second floor at that address. AFSCME alleges that inadequate signs directing voters to the polling place resulted in some voters wandering to the second floor to ask directions. AFSCME presented no evidence that any voter failed to find the polling place, that any voter asking directions on the second floor was given erroneous directions, or that any management employee commented upon the voting or attempted to influence the vote of any voter who sought directions. In the absence of any evidence, we will not infer that an unspecified number of unknown potential voters might have been coerced or intimidated merely because they had to ask directions to the polling place from employees in the management office or that an unspecified number of unknown potential voters chose not to vote rather than seek directions from employees in the management office. As this objection is unsupported by any evidence, we dismiss it.

B. Voter question to Commission agent regarding check

There is no dispute that a voter, appearing to cast a ballot near the end of the election hours at the Brighton Avenue site, cast a ballot and then asked the Commission agent where he could pick up his check. AFSCME concedes that the day of the election was payday and that employees who picked up their checks did so on the second floor at the Brighton Avenue building. AFSCME argues, however, that it is reasonable to infer that the voter's remark to the Commission agent meant that the voter connected some sort of "payoff" to the act of casting a ballot and that this belief warrants overturning the election. The reasonable inference, we find, is that the voter wanted to pick up his paycheck.⁷ Absolutely no evidence

⁷Vinfin alleged that the voter in question normally received his paycheck in the mail and was unsure of the exact location for picking up the check in person. AFSCME did not dispute this allegation.



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was submitted to warrant the conclusion that this voter was requesting a "pay off." In the absence of such evidence, we decline to attribute anything other than the plain meaning to the voter's words. No evidence was offered to suggest that any other voter was influenced by the inquiry of the employee. Accordingly, there is no basis for concluding that this conduct affected the election and we dismiss the objection.

Conclusion

For all of the above reasons, AFSCME's objections are dismissed. AFSCME's evidence in support of its objections, whether they are considered singly or as a whole, does not present substantial issues which could warrant setting aside the election. As the tally shows that no employee organization received a majority of the valid votes cast in either the professional or non-professional unit election conducted among Vinfen's employees on November 30, 1984, no certification shall issue.

COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION

PAUL T. EDGAR, Chairman

MARIA C. WALSH, Commissioner

