

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I  
No. 13958 R-5066  
Decision No. 9879-C

No. 9879-C

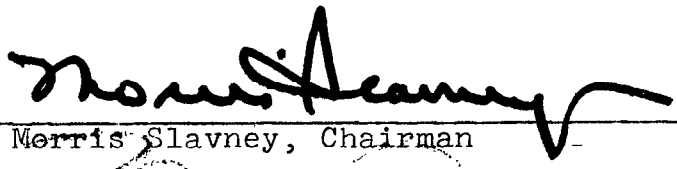
IT IS FURTHER ORDERED that a new referendum by secret ballot be conducted within thirty (30) days from the date hereof among all employees of Triangle Appliance & Furniture Mart, Inc., Kenosha, Wisconsin, including clerical employees but excluding guards and supervisors who were employed by the Employer on August 21, 1970, except such employees as may prior to the referendum quit their employment or be discharged for cause, for the purpose of determining whether or not the required number of such employees favor an "All-Union Agreement" between the Employer and the Union named above.

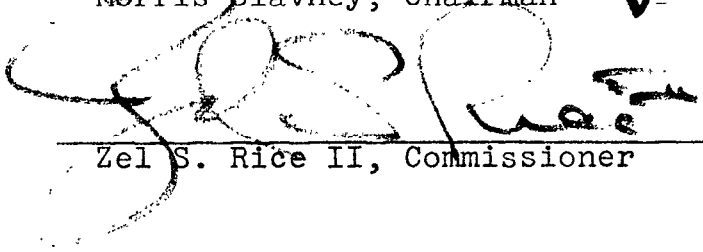
IT IS FURTHER ORDERED that at the conduct of the new referendum each party will be limited to having one observer at the referendum; and in that regard, immediately following the receipt of the Notice of new referendum, each party shall notify the Commission, in writing, as to the identity of said observer.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 2nd  
day of March, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

In the Matter of the Petition of  
GENERAL DRIVERS & HELPERS LOCAL  
UNION NO. 95

Case I  
No. 13958 R-5066  
Decision No. 9879-C

and GENERAL DRIVERS & HELPERS LOCAL  
UNION NO. 95, Union

In the first of its two objections the Union alleges that the Employer's Manager, Ralph Ruffolo acted as the Employer's observer and, thus, de facto, intimidated the employees who participated in the referendum. There is no allegation or evidence that Ruffolo's conduct as an observer was improper but rather it is the Union's contention that Ruffolo's mere presence at the polls in itself constitutes adequate grounds for setting aside the results of the referendum.

In this regard the Commission has consistently held in the past that the presence of a Union officer or representative, or the presence of the Employer himself, acting as observers, in itself has no coercive or persuasive effect on the choice of employees. 2/ We therefore find that Ralph Ruffolo's presence at the polls as an observer is not itself conduct sufficient to set aside the results of the referendum.

In its second allegation the Union alleges that the Employer's Attorney attempted to remove the Union's Business Agent and the Wisconsin Employment Relations Commission's Agent who conducted the referendum from the Employer's premises immediately prior to the balloting and attempted to conduct the balloting himself, and by these and other acts by the Employer's Attorney, the Employer engaged in conduct which made a free and fair election impossible.

On September 22, 1970, the day of the referendum, the following activities took place just prior to the referendum scheduled for 9:00 a.m. At approximately 8:30 a.m. Eugene Pierce, Business Agent, Teamsters Local 43, and Ervin Leach, observer for the Union, arrived at the Employer's store where they met the Wisconsin Employment Relations Commission's Agent who was to conduct the referendum.

-3-

Pierce, Leach and the Agent reviewed the eligibility list and discussed whether any changes were needed to update said list. Pierce had in his possession an eligibility list prepared by the National Labor Relations Board for an election which the NLRB conducted shortly before the referendum scheduled by the Wisconsin Employment Relations Commission. The Commission's Agent had the official list of eligible employees which was prepared by the Commission after having held hearing in said matter on August 12, 1970.

Also shortly before 9:00 a.m. Ralph J. Ruffolo, Vice President of Triangle Appliance & Furniture Mart, Inc., and Charles Lepp, Attorney for the Employer, appeared and reviewed the Agent's official eligibility list. Lepp heatedly protested the list and an argument ensued involving Lepp, Pierce and the Commission's Agent concerning the eligibility of certain employees. Lepp stated to Pierce and the Commission's Agent, in a loud manner before a majority of the employees, that there would be no election based on the official list of the Commission. Lepp insisted that unless all employees were included on the list of eligible employees no referendum would be conducted. In particular, Lepp insisted that the names of employees Jerry Ruffolo, Kathy Ruffolo and John Ruffolo be included on the list of eligible employees and be allowed to vote in the referendum. Also in dispute were employees Jeannie Bround and Burcette Gearhardt. The Union took the position that Jerry, Kathy and John Ruffolo were not eligible to vote in that they were the children of Louis Ruffolo, President of Triangle Appliance & Furniture Mart, Inc. It was Lepp's position that said employees were eligible employees in that the Commission's Direction of Referendum stated that all employees of the Employer were eligible to vote except the supervisory personnel. The parties finally agreed to proceed on the basis that the names of employees Jerry Ruffolo, John Ruffolo, Kathy Ruffolo and Burcette Gearhardt be included and allowed to vote subject to challenge by either party.

Having agreed to proceed with the referendum Lepp then asked Pierce and the Commission's Agent if they would explain to the employees the purpose of the vote. Pierce objected, claiming that notices had been posted notifying the employees of the referendum and fully explaining the purpose of said referendum. Since both Pierce and the Commission's Agent refused to address the employees, Lepp informed said employees that a referendum was about to be conducted and that a "yes" vote would mean that all employees would have to belong to the Union and a "no" vote would mean the employees would not have to join the Union if they did not desire to do so. Leach, Ruffolo and the Commission's Agent then went upstairs where the referendum was conducted. Lepp and Pierce then left the premises. Pierce later returned and witnessed the counting of the ballots.

The Commission has held that an election or referendum will be set aside "if it appears that the eligible employees were precluded from exercising a free choice by methods which were coercive in character and which were so related to the election or referendum as to have a probable effect on the employees' free choice at the polls." <sup>3/</sup> The question which the Commission must determine is whether or not the Employer's position and conduct regarding the eligibility list and the Employer's statement concerning the purpose of the referendum was of such character so as to interfere with the free choice of the employees voting.

---

<sup>3/</sup> Whitefish Bay Cleaners & Tailors, Inc., Decision No. 5335-B, 2/60; Professional Food Service Management, Decision No. 9020-C, 4/70.

The Commission is of the opinion that the Employer's vehement protest, before a majority of the employees just prior to the referendum, of the Commission's eligibility list and the Employer's insistence that the scheduled referendum would not be conducted unless all employees, including the children of Louis Ruffolo, President of Triangle Appliance & Furniture Mart, Inc. were allowed to vote destroyed the atmosphere needed to make a calm and deliberate consideration of the issues upon which said employees were to vote.

In addition, following the heated argument concerning the eligibility list, the Employer's attorney, in informing the employees of the purpose of the referendum, stated that a "yes" vote would mean all employees would have to join the Union. We find this a material misrepresentation in that a "yes" does not automatically establish a union shop but only authorizes the parties to enter into an agreement for some form of union security.


The Commission concludes the Employer, by engaging in the above described conduct, interfered with the free choice of the employees in determining whether or not they desired to authorize an "All-Union Agreement" between the Union and the Employer. For said reason we are setting aside the results of the referendum and directing that a new referendum be conducted.

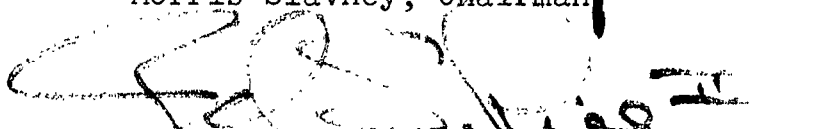
In an attempt to provide a "laboratory condition" during the conduct of the new referendum, the Commission has ordered that only one observer for each party be permitted during the polling and that upon receipt of the Notice of new referendum the parties notify the Commission, in writing, as to the identity of their respective observers.

Dated at Madison, Wisconsin, this 2nd day of March, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner