

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Stipulation of  
HOTEL & RESTAURANT EMPLOYEES & BAR-  
TENDERS INTERNATIONAL UNION LOCAL 257  
For a Referendum on the Question  
of an All-Union Agreement Between  
LAKE SHORE MANOR, HEALTH FACILITIES,  
INC.  
Madison, Wisconsin, Employer  
and HOTEL & RESTAURANT EMPLOYEES &  
BARTENDERS INTERNATIONAL UNION  
LOCAL 257, Union.  
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Case III  
No. 14754 R-5190  
Decision No. 10412-A

ORDER DISMISSING OBJECTIONS TO CONDUCT  
OF REFERENDUM AND CERTIFICATION OF REFERENDUM

Following the filing of a Stipulation for Referendum executed by the parties, which stipulation contained a list of employees which the parties had agreed upon as being eligible to participate in the referendum, the Commission pursuant to a Direction issued by it, conducted a referendum on August 20, 1971, pursuant to Section 111.06 of the Wisconsin Employment Peace Act among all employees of Lake Shore Manor, Health Facilities, Inc., Madison, including regular part-time employees, but excluding registered nurses, licensed practical nurses, managerial employees, confidential employees, office clerical employees, professional employees, activity employees, casual employees, guards and supervisors. The purpose of the referendum was to determine whether the required number of eligible employees in the collective bargaining unit described above favored an "all-union agreement" between the Union and the Employer named above. The result of the referendum was as follows:

1. Total number eligible to vote . . . . . 91
2. Total ballots cast. . . . . 44
3. Total ballots void. . . . . 1
4. Total valid ballots counted . . . . . 43
5. Ballots cast in favor of an "All-Union Agreement" . 38
6. Ballots cast against an "All-Union Agreement" . . . 5

Said result was reflected on a "Tally Sheet" which also included the following certification:

"The undersigned hereby certify that we acted as tellers during the above mentioned poll; that the polls were open on the date and during the time specified in

the notice; that a secret poll was conducted and that we checked the names of all voters with the official list of eligible voters; and that after the polls were closed, we counted the total ballots cast; that the poll was conducted in a fair and impartial manner; and that the results as stated above are correct."

Said Tally Sheet was signed by Lucille M. Neis as the observer for the Employer, by Willard E. Van Ness as the observer for the Union who was also the Union's business representative, and by the agent of the Commission who conducted the balloting. On August 25, 1971, the Union timely filed objections to the conduct of the referendum; and thereafter Counsel for the Employer, on September 14, 1971, in writing, urged the Commission to deny the objections; and the Commission having reviewed the objections, the motion in opposition thereto and report of the Commission's agent who had conducted the balloting, and being fully advised in the premises, and being satisfied that the objections be denied;

NOW, THEREFORE, it is

ORDERED


That the objections to the conduct of the referendum be, and the same hereby are dismissed; and

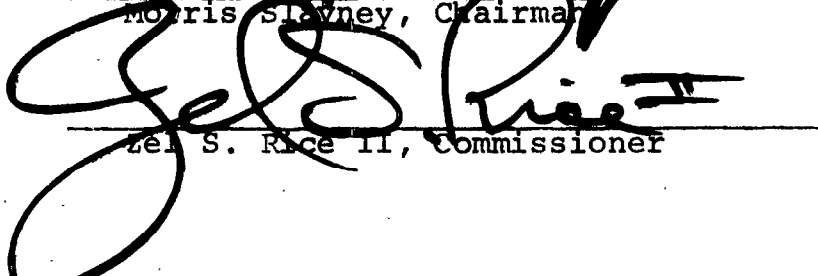
IT IS HEREBY CERTIFIED that the required number of the eligible employees in the collective bargaining unit involved herein failed to vote in favor of authorizing an "All-Union Agreement" between Hotel & Restaurant Employees & Bartenders International Union Local 257 and Lake Shore Manor, Health Facilities, Inc.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawney, Chairman

  
Zel S. Rice II, Commissioner

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3. Mr. Van Ness signed the Tally Sheet used to certify the results of the above mentioned referendum and thereby indicated his approval of the conduct of such election and that 'the results as stated (on such Tally Sheet) are correct.'"

On August 25, 1971, the date upon which the objections were filed, the Commission's agent who conducted the referendum submitted the following report to the Commission with respect to the matters set forth in the objections:

- "1. Eligibility list -- Neither observer had an up-to-date list at the beginning of the morning session. This caused no problems, as only 15 people voted. At the beginning of the afternoon session both observers produced the up-dated lists. They proceeded to rectify the official list. All in all 32 names were deleted (reducing the number from 123 to 91).
2. Employer Observer -- When Mrs. Neis appeared, she introduced herself and informed us that she had been the Director of Nursing, but had resigned a week before to become part-time In-Service Training Director. Mr. Van Ness, the observer for the Union, who is also its business agent, did not object to Mrs. Neis as the observer for the Employer. During the conduct of the balloting both observers conducted themselves in a fair and impartial manner and performed their observer duties in accordance with the traditional behavior of observers at Commission elections and referenda."

#### Discussion:

While Counsel for the Employer contends that the objections were not in compliance with ERB 4.05 of the Commission, he does not set forth in what manner such failure occurred. The objections received by the Commission were timely filed and in the form of a letter, and the letter indicated that a carbon copy had been sent to a representative of the Employer. The Commission is of the opinion that there was substantial compliance with the rule involved.

With respect to Objection No. 1, while the original list of eligible voters might have been inaccurate, it is significant that the list was rectified and that at least 32 of the 34 employees, claimed by the Union to have been terminated, were deleted from the list. The failure to delete the two additional employees would in no way affect the results of the referendum.

We wish to comment on the Employer's argument that the eligibility list was stipulated to as part of the stipulation and apparently Employer's Counsel infers that all the employees on that list should be eligible to vote. This is not necessarily true since the Commission's Direction indicated that employees who quit or were discharged for cause prior to the conduct of the referendum would not be eligible to vote.

With respect to Objection No. 2, we agree with Counsel for the Employer that the execution of the Tally Sheet, which contained the certification with respect to the conduct of the balloting indicated Van Ness' approval with respect to the manner in which the referendum was conducted which included the participation of Neis, as the Employer's observer. The report of the Commission's agent substantiates that both observers conducted themselves properly.

Under the circumstances we see no necessity for conducting a hearing on the objections, and we have today issued the Certification of Referendum.

Dated at Madison, Wisconsin, this 15th day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner