STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of UNITED STEELWORKERS OF AMERICA, AFL-CIO For a Referendum on the Question of an All-Union Agreement between SEAMAN COMPANY Menomonee Falls, Wisconsin	Case I No. 15436 R-5278 Decision No. 10929-A

ORDER DENYING OBJECTIONS TO THE CONDUCT OF REFERENDUM

The Wisconsin Employment Relations Commission, heretofore and pursuant to a Direction of Referendum previously issued by it, conducted a referendum on May 18, 1972, in the above entitled matter, where of the 32 employes eligible to vote, 30 cast ballots, wherein 17 employes voted in favor of authorizing an all-union agreement between the parties and the remaining 13 employes voting against said authorization, and on the same date, following the close of the balloting, a copy of the tally sheet was submitted to the observers of both the Employer and the Union involved; and on May 25, 1972, the above named Employer, by its Counsel, having filed objections to the conduct of the election, wherein it alleged that the tally sheet was deficient in that it failed to contain material facts necessary to certify the results of the referendum in that the complement of employes in the unit changed between the eligibility date of March 31, 1972, and the date of the referendum May 18, 1972, and that although newly hired employes were not eligible to vote in the referendum, they "clearly constituted part of the collective bargaining unit existing on the date of the referendum," and, therefore, a majority of the employes in the unit did not vote in favor of the authorization involved; and the Commission having reviewed said objections and being fully advised in the premises and being satisfied that said Objections should be dismissed;

NOW, THEREFORE, it is

ORDERED

That the objections to the conduct of the referendum conducted in the above entitled matter be, and the same hereby are, dismissed for the reasons that (1) said objections were not timely filed within the meaning of rule ERB 4.05, and (2) even had the objections been timely filed, said objections are without merit.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING OBJECTIONS TO THE CONDUCT OF REFERENDUM

The objections filed herein were not filed within five days of the receipt of the copy of the tally of ballots, and, therefore, they were untimely filed. However, the nature of the objections are such that the Commission desires to comment thereon. Specifically, the objections involved were stated as follows:

> "1. The report containing the tally of votes, a copy of which is attached, was deficient in that it failed to contain certain material facts necessary to certify results of the referendum.
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> Under Section 111.06(c)1, an employer is not prohibited from entering into an all-union agreement where a majority of his employees voting (provided the majority also constitutes at least a majority of the employees in the appropriate collective bargaining unit) have affirmatively voted by secret ballot in favor of an all-union agreement in a referendum conducted by the Wisconsin Employment Relations Commission. The report issued on May 18th, 1972, the day of the referendum herein, failed to indicate the number of employees in the collective bargaining unit as of the day of the referendum. The report only included the number of employees eligible to vote, based upon an eligibility cutoff date of March 31st, 1972. During the 6-week period between March 31, 1972 and the day of the referendum, May 18, 1972, certain employees left the employer's employ and other employees were newly hired. Although the newly hired employees were not eligible to vote in the referendum, they clearly constituted part of the collective bargaining unit existing on May 18th, 1972. There were six new employees hired between March 31st and May 18th and this number added to those eligible to vote indicates a bargaining unit figure of 38 as of the day of the referendum. The 17 votes obtained by the Union do not constitute a majority of 38; and, therefore, the Union or petitioner cannot be certified as having won the referendum."

Section 111.06(1)(c)1, in part, provides "an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employes in a collective bargaining unit, where at least a majority of such employes voting (provided such majority of the employes also constitute at least a majority of the employes in such collective bargaining unit) have voted affirmatively, by secret ballot, in favor of such all-union agreement in a referendum conducted by the commission."

The crux of the Employer's contention is that although only those employes employed in the unit on the eligibility date set forth in the Direction were eligible to vote, the total number of employes employed in the unit on the date of the balloting should be utilized in determining whether a majority of the employes in the unit cast ballots in favor of authorizing an all-union agreement. The recently enacted

amendment to the statutory provision involved reduced the authorization requirement from "two-thirds of those employes voting (provided such two-thirds constituted a majority of the employes in the unit)" to an authorization in favor of the all-union agreement by at least a majority of the employes in the unit.

Prior to the amendment in determining whether the statutory numerical requirement was met, the Commission consistently determined the number of employes in the unit to be the number of employes in the unit employed as of the eligibility date, except those employes who quit their employment or who were discharged for cause between the eligibility date and the date of the conduct of the referendum. It at no time included those employes who were hired between the eligibility date and the date of the conduct of the referendum to determine the results of the referendum.

The newly adopted amendment reducing the required number of employes voting in favor of authorization does not require a change of policy in determining the number of employes in the unit. If employes hired after the eligibility date were to be included in determining whether the required number of employes voted in favor of the authorization they should be entitled to participate in the referendum. However, it has been the Commission's policy, and will continue to be the Commission's policy, to permit only those employes who are employed as of the eligibility date to participate in the referendum provided they do not quit or are discharged for cause prior to the balloting, and that employes hired after the eligibility date will not be permitted to vote in the referendum nor will any such attrition be considered in determining the number of employes in the unit. However, on the other hand, if employes quit or are discharged for cause prior to the balloting, as has been the practice, their names will be deleted from the eligibility list and the complement of the unit shall consist of only those employes who remain on the eligibility list as of the date of the balloting.

Dated at Madison, Wisconsin, this 26th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Jos. B. Kerkman, Commissioner