

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 :
 TEAMSTERS "GENERAL" LOCAL 200 :
 :
 For a Referendum on the Question :
 of an All-Union Agreement Between :
 :
 ACME SUPPLY CO., INC. :
 Milwaukee, Wisconsin, Employer :
 :
 and TEAMSTERS "GENERAL" LOCAL 200, :
 Union. :

Case I
 No. 15761 R-5350
 Decision No. 11194-B

ORDER DETERMINING CHALLENGED BALLOTS

Pursuant to a Direction of Referendum issued by it, the Wisconsin Employment Relations Commission conducted a referendum on August 24, 1972, among all employes of Acme Supply Co., Inc. at its facility at 5101 West State Street, Milwaukee, Wisconsin, excluding office clerical employes, salesmen, guards and supervisors as defined in the Act, for the purpose of determining whether the required number of employes favor an "All-Union Agreement" between the Employer and Teamsters "General" Local 200.

The results of the referendum were as follows:

- 1. Total claimed eligible to vote 10
- 2. Total ballots cast 10
- 3. Total ballots challenged 5
- 4. Total valid ballots counted 5
- 5. Ballots cast for the above named Union 2
- 6. Ballots cast against the above named Union 3

During the conduct of the balloting the Union challenged the ballot of Patrick Kindberg, while the Employer challenged the ballots of Harvey Goff, James Kammler, Robert Kitchen, Jr. and Gary Uecke; and prior to any further action by the Commission, the above named Union having, on August 28, 1972, timely filed objections to the conduct of the referendum, and thereupon, pursuant to notice, the Commission, by Stanley H. Michelstetter II, Hearing Officer, having conducted hearing in the matter on September 14, 1972, where Counsel for the parties requested that the hearing on the objections to the conduct of the referendum be postponed indefinitely and further requested that the parties be given an opportunity to file a stipulation with respect to the challenged ballots; and thereafter and on December 1, 1972, the Union and the Employer filed with the Commission a stipulation wherein the challenges to the ballots of Patrick Kindberg, Harvey Goff and James Kammler were withdrawn, and further wherein the parties, to avoid the necessity of a hearing with respect to the challenged ballots of Robert Kitchen, Jr. and Gary Uecke, stipulated to the facts with respect to the

employment status of Robert Kitchen, Jr. and Gary Uecke as of the date of the referendum; and the Commission being fully advised in the premises and being satisfied that the challenges to the ballots of Patrick Kindberg, Harvey Goff, James Kammler and Robert Kitchen, Jr. be overruled and that the challenge to the ballot of Gary Uecke should be sustained;

NOW, THEREFORE, it is

ORDERED

1. That the challenges to the ballots of Patrick Kindberg, James Kammler, Harvey Goff and Robert Kitchen, Jr. be overruled and that their ballots be opened at 9:00 a.m. on Friday, January 26, 1973, at the offices of the Wisconsin Employment Relations Commission, Room 560, Milwaukee State Office Building, 819 North Sixth Street, Milwaukee, Wisconsin, and be counted at that time, and that such ballots shall thereupon be included in the final tally of ballots, and that the parties may have representatives present when such ballots are counted.

2. That the challenge to the ballot of Gary Uecke be, and the same hereby is, sustained and that said ballot remain sealed.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Jos. B. Kepkman
Jos. B. Kepkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DETERMINING CHALLENGED BALLOTS

Of the ten employes claimed eligible to vote in the referendum, five employes cast ballots which were not challenged while five additional individuals also cast ballots which were challenged. It is obvious from the tally sheet that the challenged ballots affect the results of the referendum. Following the conduct of the referendum the Union timely filed objections to the conduct thereof. However, the parties agreed to postpone hearing on the objections to the conduct of the referendum pending the determination by the Commission of the challenged ballots, and in the latter regard the parties waived hearing with respect to producing evidence pertaining to the employes whose ballots were challenged, and the parties filed a stipulation with regard thereto. In said stipulation the parties agreed that the challenges to the ballots of Patrick Kindberg, Harvey Goff and James Kammler were to be considered withdrawn and a request was made that the ballots of said three employes be opened and counted and be included in the results of the referendum. The parties stipulated to the following facts with respect to Robert Kitchen, Jr.:

"Mr. Kitchen was employed by Acme Supply Co. on August 9, 1971. During the week of August 21, 1972, he was on a scheduled one-week vacation and was to return to work on Monday, August 28, 1972. During his vacation, Mr. Kitchen had been seeking other employment.

At approximately 7 p.m. on August 24, 1972, Mr. Kitchen telephoned Mr. Charles Andrews, Vice-President and Manager of Acme Supply Co., and informed Mr. Andrews that he would not return to work at Acme because he had been hired by Seitz Manufacturing Company and was to begin working for Seitz on the following Monday, August 28, 1972. He is presently so employed.

Immediately after the above conversation, Mr. Andrews telephoned Seitz Manufacturing Company and received confirmation that Mr. Kitchen had been interviewed for and offered a job on the afternoon of August 24, 1972. Mr. Kitchen left the Seitz job interview at approximately 3 p.m. on August 24, 1972, and proceeded from Seitz to Acme Supply Co. where he voted in the WERC referendum between 3:30 and 4 p.m."

The parties further stipulated the following facts with respect to Gary Uecke:

"Mr. Uecke was employed by Acme Supply Co. on September 22, 1971 and was laid off on August 1, 1972. He received unemployment benefits from the Company's account through the end of August. According to Mr. Andrews, he telephoned Mr. Uecke on the evening of August 3, 1972 to request that he report to work on the following day, August 4. The Union has obtained information from Mr. Uecke's wife to the effect that Mr. Andrews' telephone call was six or seven days after the August 1 layoff. Without resolving the foregoing discrepancy in dates, it is agreed that Mr. Andrews' call was made no earlier than August 3 and no later than August 8.

During the above telephone conversation, Mr. Uecke told Mr. Andrews that he would not be available to report for work on the following day because he was going to Marinette, Wisconsin to interview for a job with a real estate firm. Mr. Uecke recalls stating that he would be available for work upon his return from Marinette, but Mr. Andrews does not recall such a statement being made. During his employment with Acme, Mr. Uecke had both a real estate sales and a real estate broker's license.

Subsequent to the above conversation, Mr. Andrews received information from Morley-Murphy Company, where Mr. Uecke's wife was employed, that Mrs. Uecke had on August 11, 1972 given notice that she would terminate her employment with Morley-Murphy at the end of August. Mr. Andrews also received information from other Acme Supply employees that on August 12, 1972 Mr. Uecke had given his landlord notice of termination of his apartment lease effective at the end of August.

Following Mr. Uecke's successful employment interview between August 4 and August 9, tentative arrangements were made that he would begin work in September with State Wide Real Estate, 1535 Main Street, Marinette. The arrangements were not finalized until shortly before Mr. Uecke commenced employment with State Wide on September 5, 1972 as a real estate broker. He is presently so employed."

The ballot of Robert Kitchen, Jr. was challenged by the Employer on the basis that Kitchen would be laid off. Although Kitchen had been offered new employment prior to the referendum, at the time of the referendum he was still an employe of the Employer, although on vacation. He did not quit his employment until after the balloting, and, therefore, at the time of the balloting Kitchen was eligible to vote. The challenge to Kitchen's ballot is overruled.

The Employer also challenged the ballot of Gary Uecke on the grounds that he was in layoff status. It is clear from the stipulation executed by the parties that prior to the referendum Uecke intended not to continue his employment with the Employer. This determination is buttressed by the fact that Uecke did not report for work as requested by the Employer. Therefore, we are sustaining the challenge to the ballot of Uecke. The ballots of Patrick Kindberg, James Kammler, Harvey Goff and Robert Kitchen, Jr. will be opened and counted at the time and place set forth in the Order. Upon the conclusion thereof, the Commission's agent will issue a revised tally of the results of the referendum.

Dated at Madison, Wisconsin, this 17th day of January, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Stanley
Morris Stanley, Chairman

[Signature]
Tel S. Rice II, Commissioner

[Signature]
Jos. B. Kerkman, Commissioner