

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
 RETAIL STORE EMPLOYEES LOCAL 444,
 AFL-CIO

For a Referendum on the Question
 of an All-Union Agreement between

C.D. ASHLEY, trustee for FANNIE H.
 GOLDMANN TRUST; ALLEN GOLDMANN and
 SAMUEL E. KOHN, trustees under the
 will of LEO GOLDMANN, co-partners;
 and GEORGE MASIAKOWSKI, SEYMOUR GOLD-
 MAN, SAM PIVAR AND SONS, and
 SAM PERSHING, lessees, d/b/a A.
 GOLDMANN AND SONS
 Milwaukee, Wisconsin, Employer

and RETAIL STORE EMPLOYEES LOCAL 444,
 AFL-CIO, Union.

Case IV
 No. 16224 R-5414
 Decision No. 11549-B

ORDER DENYING OBJECTIONS TO THE CONDUCT
 OF REFERENDUM AND ORDER FOR HEARING ON CHALLENGED BALLOTS

The Wisconsin Employment Relations Commission having on February 16, 1973 and February 17, 1973 conducted a referendum among all employes of C.D. Ashley, trustee for Fannie H. Goldmann Trust; Allen Goldmann and Samuel E. Kohn, trustees under the will of Leo Goldmann, co-partners; and George Masiakowski, Seymour Goldman, Sam Pivar and Sons, and Sam Pershing, lessees, d/b/a A. Goldmann and Sons, herein referred to as the Employer, including leased department employes, lunch counter employes and office clerical employes; excluding professional employes, guards and supervisors as defined in the National Labor Relations Act, to determine whether the required number of such employes desired to authorize an "All-Union Agreement" between Retail Store Employees Local 444, AFL-CIO, herein referred to as the Union, and the Employer, the results of which were as follows:

1. ELIGIBLE TO VOTE	118
2. BALLOTS CAST	112
(Includes all ballots)	
3. BALLOTS CHALLENGED	6
4. BALLOTS VOID	0
5. BALLOTS BLANK	0
6. VALID BALLOTS COUNTED	106
(Total ballots cast minus challenged ballots, void ballots, and blank ballots)	
7. "YES" BALLOTS	57
8. "NO" BALLOTS	49;

and the Employer having timely filed objections to the conduct of the referendum on the basis of Union actions on the Employer's premises within twenty-four hours of the referendum balloting, existence of a mass meeting held by the Union within twenty-four hours of the

referendum, and the wearing of Union pins and/or "Vote Yes" buttons by voters and Union observers at the polls; and the Commission having on February 23, 1973, ordered hearing on said objections; and hearing on said objections having been held March 23, 1973 and continued on May 21, 1973 and July 12, 1973, by Stanley H. Michelstetter II, a member of the Commission's staff; and the Commission having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, and being satisfied that the objections should be dismissed;

NOW, THEREFORE, it is

ORDERED

1. That the objections to the conduct of the referendum conducted in the above entitled matter be, and the same hereby are, denied for the reason that they are without merit.

2. That hearing on the challenged ballots be held Friday, October 19, 1973, at 10:00 a.m., in Room 560, 819 North Sixth Street, Milwaukee, Wisconsin.

IT IS FURTHER ORDERED that C.D. Ashley, trustee for Fannie H. Goldmann Trust; Allen Goldmann and Samuel E. Kohn, trustees under the will of Leo Goldmann, co-partners; and George Masiakowski, Seymour Goldman, Sam Pivar and Sons, and Sam Pershing, lessees, d/b/a A. Goldmann and Sons produce at said hearing its payroll records with respect to the individuals, whose ballots were challenged, indicating their date of hire, the dates on which they have been employed, the number of hours worked by each of them, as well as any other records pertaining to the issue as to whether any of them are regular full-time or part-time employees.

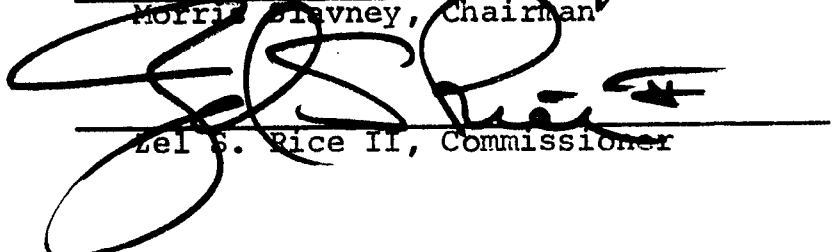
Given under our hands and seal at the
City of Madison, Wisconsin, this 5th
day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Stanley H. Michelstetter II, Commissioner

MEMORANDUM ACCOMPANYING ORDER DENYING OBJECTIONS
TO THE CONDUCT OF REFERENDUM AND ORDER FOR
HEARING ON CHALLENGED BALLOTS

Balloting in the instant matter was conducted on the Employer's premises on the following dates and times, Friday, February 16, 1973 at 11:30 a.m. to 1:30 p.m. and 4:30 p.m. to 5:30 p.m., and Saturday, February 17, 1973 at 1:00 p.m. to 2:00 p.m. Mr. James Stimac, Business Representative for the Union, observed at all times for the Union. The following employes also observed for the Union at the times stated: Dolli Stadler, 11:30 a.m.-12:30 p.m., February 16; Jean Michalski, 4:30 p.m.-5:30 p.m., February 16; and Helen Wolak, 1:00 p.m. to 2:00 p.m., February 17. While on duty some of the Union observers wore union pins identifying the Union only. Dolli Stadler wore a "vote yes" button while observing at the polls. Several employes wore "vote yes" buttons and/or union pins while voting.

On various dates and times commencing 24 hours before and continuing while the polls were open, various Union business representatives went onto the Employer's premises, a retail department store, and distributed literature to and engaged in conversations with various employes which momentarily distracted such employes from their duties.

On Thursday, February 15, 1973, in the mid evening, approximately 10 employes left the Employer's premises after the end of their shift and went to a nearby bar. At least one Union representative was present at such bar at that time. The Employer urges the position that such "meeting" was called by the Union. It is uncontroverted that no one addressed such "meeting", that the participants primarily engaged in social drinking and discussions unrelated to the instant proceedings and that the participants probably discussed the instant proceedings for a small amount of time.

Union Actions Interfering with Employer's Business

The Employer urges the establishment of a rule forbidding campaigning within 24 hours of the balloting. The evidence presented established that Union business representatives engaged in conversations within 24 hours of the opening of the polls arguably in violation of Employer's property rights. The evidence established no improper attributes to the conversations themselves. Section 111.04 of the Wisconsin Employment Peace Act guarantees the right of employes to self-organization. Implicit in that right is the right of employes to engage in discussions prior to an election to determine their choice. We will not interfere with such right, nor will we deny the right of employes to a fair referendum on the basis of the allegation that Union representatives or individual employes violated an Employer's rule, absent a showing that such violations coerced employes or interfered with the referendum balloting itself.

Union Observers and Voters Wearing Buttons

The evidence establishes that Union observers wore Union buttons and/or "vote yes" buttons.

We have repeatedly stated that the presence of a Union observer known to eligible voters has no coercive or intimidating effect. 1/

1/ Triangle Appliance & Furniture (9879-C) 3/71.

If the presence of a Union observer of known sympathies does not affect the results, it is difficult to conclude that an unobtrusive symbol of identification such as a Union pin could affect the results. 2/ The use of "vote yes" buttons is somewhat different, since such buttons urge a position. We vest in the Commission agent the authority to ask observers to remove such pins, if it appears to him that such is necessary to avoid unfair advantage. However, there is no evidence that the Employer objected at the time of the referendum to such pin. Further, the Employer signed the Tally Sheet indicating that the referendum was conducted in a fair and impartial manner. We find, under the circumstances of this case, no evidence sufficient to conclude that such conduct influenced the outcome and, accordingly, dismiss the objection.

Further, on the same basis, we find no merit to the Employer's objection that the wearing of unobtrusive Union pins or "vote yes" pins by voters at the polls in any way affects the results. 3/

Mass Meeting

The meeting held the evening before the referendum consisted of less than 10 % of the employes. Such meeting was not held on the Employer's premises. Such meeting was primarily social even though the instant referendum was discussed; there were no addresses or other presentations made. Our rule forbidding mass captive audience meetings does not apply to such meeting. 4/

Therefore we are denying the objections.

Inasmuch as the challenged ballots affect the results of the referendum we have issued an Order for a hearing to take evidence with respect to the challenged ballots.

Dated at Madison, Wisconsin, this 5th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Blayney, Chairman


Zep S. Rice II, Commissioner

2/ See N.L.R.B. v. Laney & Duke Co. (5 Cir., 1966) 63 LRRM 2552 and cases cited therein.

3/ N.L.R.B. v. Crest Leather Mfg. Corp. (5 Cir., 1969) 71 LRRM 3022.

4/ Doyle Lithographing & Printing Co. (8126-C) 5/68.