

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation of

LOCAL 222, UNITED NURSING HOME &
HOSPITAL EMPLOYEES, FEDERATION and
LAKESHORE MANOR, INC.

Case V
No. 16439 R-5441
Decision No. 11562-C

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

LAKESHORE MANOR, INC.
Madison, Wisconsin, Employer

and LOCAL 222, UNITED NURSING HOME &
HOSPITAL EMPLOYEES FEDERATION, Union

Appearances:

Mr. Roger Jacobson, Business Manager, appearing on behalf of the
Union.

Mr. Gerald R. Healy, Director of Labor Relations, appearing on behalf
of the Employer.

ORDER DENYING OBJECTIONS TO CONDUCT OF REFERENDUM

Pursuant to a Direction issued by it, the Wisconsin Employment Relations Commission on February 1, 1973, conducted a referendum among all employees of Lakeshore Manor, Inc., excluding registered nurses, licensed practical nurses, managerial employees, unit managers, confidential employees, guards and supervisors, who were employed by the Employer on January 3, 1973; to determine whether the required number of such employees favored an "all-union agreement" between said Employer and Local 222, United Nursing Home & Hospital Employees Federation; of 116 employees eligible to vote, 77 cast ballots, 53 voting in favor of authorizing an "all-union agreement" while 24 voted against such authorization; and said union having timely filed objections to the conduct of the referendum; and the Commission having on February 19, 1973, issued an Order requiring said labor organization to make its objections more definite and certain; and on February 27, 1973, said labor organization having filed a statement making its objections more definite and certain; and that pursuant to notice, hearing on the objections was conducted on March 22, 1973, at Madison, Wisconsin before Hearing Officer Kay Hutchison; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, and being satisfied that the objections filed by the Union be denied;

NOW, THEREFORE, it is

No. 11562-C

ORDERED

That the objections to the conduct of the referendum directed herein be, and the same hereby are, denied.

Given under our hands and seal at the
City of Madison, Wisconsin this 14th
day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slattery
Morris Slattery, Chairman

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

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING OBJECTIONS TO CONDUCT OF REFERENDUM

As indicated in the preface to the Order Denying Objections to Conduct of Referendum, the labor organization filed the following objections to the conduct of the referendum:

"1. That prior to the opening of the polls for the morning vote the WERC agent conducting the election misinformed the union and company representatives as to the required majority needed to win the election. He stated that all that was required was that the union win by a majority of those who would cast their ballots. Because of this incorrect information the union committee canceled plans to bring employees to vote who did not have a means of transportation.

2. That notices to employees were posted for an insufficient time to inform employees of the election. Numerous employees not having worked during the very short period of posting."

Upon receipt thereof, the Commission, being satisfied that the second objection should be made more definite and certain, issued an Order with regard thereto, and on February 27, 1973, the labor organization filed the following "amended" objection:

"In accord with the order of the Commission dated February 19, 1973, wherein the Commission directed the union to make objections more definite and certain, please be advised as follows:

2. That the Commission mailed notices of election to be posted by the Employer on January 24, 1973. That the union received its copies on Thursday, January 25, 1973 and assumes that the employer did also. When notices were not posted by the employer on Friday, January 26, 1973, John Reweda a member of Local 222 questioned Mr. Dillette the Administrator as to why the notices were not up. He was told that they would be posted the next morning. On Monday, January 29, 1973, notices had still not been posted. At 3:15 PM on Monday Robert Brooks a member of Local 222 again questioned the Administrator as to why the notices had not been posted. After this request notices were finally posted on Tuesday, January 30, 1973. The election was held on Thursday, February 1, 1973, therefore numerous employees did not see any posted notices. Employees who work only weekends and employees who did not work on Tuesday or Wednesday had no opportunity to see the notices."

DISCUSSION:

The Union avers that the Commission agent, present during the conduct of the referendum on February 1, 1973 misinformed the Union representative as to the number of votes required to win the referendum. The Union contends that on the basis of the agent's statement, that a majority of those voting (emphasis added) in favor of the referendum would be sufficient to win, the Union canceled plans to provide transportation for various off-duty employees.

Section 111.06(c)1 of the Wisconsin Statutes provides that an employer may enter into an all-union agreement with representatives of his employees in a collective bargaining unit wherein:

" . . . at least a majority of such employees voting (provided such majority of the employees also constitutes at least a majority of the employees in such collective bargaining unit) (emphasis added) have voted affirmatively . . . "

In accordance with 111.06(c)1, of the 116 employees eligible to vote herein, at least 59 would have had to vote in favor of the referendum for it to have carried. The Union notes that of the 77 employees voting, a majority of 53 voted in favor and 24 voted against.

The following testimony of the Union representative present at the balloting was adduced during the hearing:

- "Q . . . you stated that the Board Agent from the WERC informed you that you needed fifty-one percent of the total actually voting in order to win the Election?
- A Right, the people that were voting. I even cited examples and he said yes.
- Q Didn't your Union Representative inform you of the necessary majority in order to win?
- A Yes, he did.
- Q Had he informed you of this prior to Election day?
- A Right." 1/

We are satisfied that the Union was aware of the "majority" required to win the referendum herein. Therefore, we have concluded that whereas the Union understood the necessary majority, the statement of the WERC agent did not adversely affect the outcome of the referendum.

The second allegation upon which the Union requests that the referendum be set aside concerns the length of posting of the referendum notices by the Employer. Testimony established that the notice was posted by the Employer on January 29. The referendum was conducted on February 1. The Union argues that the posting of the notice by the Administrator was of an insufficient period prior to the election to inform employees of the pending referendum.

Although the Commission has no policy with respect to the number of days in which a notice of a referendum must be posted by an employer, 2/ it is imperative that eligible employees be advised of the forthcoming referendum. Testimony and evidence adduced during the hearing established that of the 116 employees eligible to vote in the referendum, 101 employees worked in the facility during the period of posting of the notice by the Administrator at the time clock from 3:30 p.m. on Monday, January 29 to Thursday, February 1. Of the remaining 15 employees, six were on leave of absence or vacation and nine predominately weekend employees were scheduled off during the period of the posting of the notice of the referendum. Of the latter group, the check-off roster used during the referendum indicates that two unscheduled employees did in fact vote.

However, there is no evidence that the remaining seven unscheduled employees were unaware of the pending referendum as a result of the notice first being posted on the Monday preceding the referendum. A conclusion

1/ Transcript, page 6.

2/ Ernie Hutchinson, d/b/a Larsen Bakery (11980-A) 8/73.

that the Employer's conduct improperly affected the outcome of the referendum is, therefore, unwarranted.

Dated at Madison, Wisconsin this 14th day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

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

Howard S. Bellman
Howard S. Bellman, Commissioner