

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Motion of  
WISCONSIN RIGHT TO WORK ORGANIZATION, INC.  
Requesting a Recount and Re-Certification  
of Ballots and Results Therefrom Involving  
a Referendum Conducted Among Technical  
Employes on the Question of Directing the  
STATE OF WISCONSIN (DEPARTMENT OF  
ADMINISTRATION) and AFSCME, COUNCIL 24,  
AFL-CIO, AND ITS AFFILIATED LOCALS  
To Enter Into a Fair-Share Agreement

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Case XXX  
No. 16391 SR(I)-2  
Decision No. 11611-B

ORDER DENYING MOTION

AFSCME, Council 24, AFL-CIO, and its Affiliated Locals, hereinafter referred to as AFSCME, as the collective bargaining representative of all technical employes employed in the classified service of the State of Wisconsin, excluding limited term employes, sessional employes, and supervisory, managerial and confidential employes, having, on January 8, 1973, filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting the Commission to conduct a referendum among said employes, to determine whether the required number of such employes desire to direct the State Employer and AFSCME to enter into a fair-share agreement, as provided in Section 111.81(13) of the State Employment Labor Relations Act, hereinafter referred to as SELRA; thereafter, and pursuant to formal notice, the Commission, on February 5, 1973, conducted a hearing on said petition wherein AFSCME and the State Employer were the only parties involved in the proceeding, and their agents entered appearances at said hearing; that following said hearing, and on February 14, 1973, the Commission issued a Direction, wherein it directed that a referendum, by mail ballot, be conducted among the employes in the technical unit for the purpose noted above; that thereafter ballots were mailed by the Commission to the employes in said unit, with the notification that only those envelopes, containing ballots, postmarked on or prior to April 30, 1973, would be included in the tally of ballots; that the ballots were tallied on May 14, 1973, in the Commission's offices, with observers of AFSCME and the State Employer, as well as agents of the Commission being present; that as counting of ballots progressed, it was observed, inter alia, that three ballots were blank, and that certain additional marked ballots had messages, of one sort or another, written on each of said ballots; and that upon observing the latter ballots, the observers of the parties, as well as the agents of the Commission, who were present, agreed that seven of said ballots bearing messages should be voided and not included in the results of the referendum, which tallied as follows:

1. Total number claimed eligible to vote.....4,717
2. Total ballots cast.....3,237
3. Total ballots void..... 7
4. Total ballots blank..... 3

5. Total valid ballots counted.....3,227
6. Ballots cast in favor of directing the parties  
to enter into a Fair-Share Agreement .....2,154
7. Ballots cast against directing the parties to  
enter into a Fair-Share Agreement.....1,073

That the Commission on May 24, 1973, issued its Certification of the results of the referendum and forwarded copies thereof to AFSCME and the State Employer; that said Certification reflected that the required number of employes in the technical unit voted in favor of directing the State Employer and AFSCME to enter into a fair-share agreement; that on August 17, 1973, the Wisconsin Right to Work Organization, Inc., hereinafter referred to as WRTWO, an organization claiming to represent certain employes in the technical unit, filed a motion with the Commission, requesting a recount of the ballots, as well as a re-certification of the results of the referendum; that AFSCME, on August 27, 1973, after receipt of a copy of said motion, filed a Notice of Special Appearance, as well as a Motion to Dismiss the motion filed by WRTWO; that thereupon the Commission set hearing on said motions for October 9, 1973; that following a postponement, said hearing was conducted, pursuant to notice, on October 23, 1973, at the Madison offices of the Commission, Chairman Morris Slavney being present; that, at said hearing, Counsel for WRTWO entered a general appearance, Counsel for AFSCME entered a special appearance, and that the State Employer entered no appearance, however, agents of the State Employer were present during the hearing, which was concluded in one day; that also on October 23, 1973, the WRTWO filed, with the Commission, a reply to the motion to dismiss; and the Commission, having reviewed the pleadings, the record, the various motions, and arguments and briefs of Counsel, and being satisfied that the motion filed by the Wisconsin Right to Work Organization, Inc., be denied;


NOW, THEREFORE, it is


ORDERED

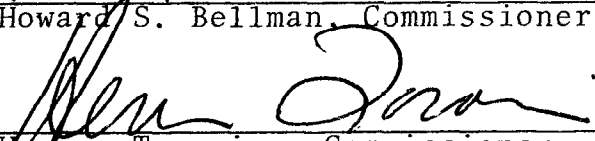
That the motion of the Wisconsin Right to Work Organization, Inc., requesting the Wisconsin Employment Relations Commission to recount the ballots cast in the referendum conducted herein, and to re-certify the results thereof, be, and the same hereby is, denied.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 24th  
day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER DENYING MOTION

In support of its motion previously set forth herein, WRTWO, contended that seven ballots, which observers of the State Employer, and of AFSCME, as well as agents of the Commission, during the counting of the ballots, agreed should be voided, should not have been voided, but should have been counted as "No" ballots, and that, therefore, the Commission should conduct a recount, and issue a new certification of the results of the balloting. AFSCME, in making a special appearance, moved to dismiss the motion of WRTWO, contending that the Commission has no jurisdiction to grant the motion, since it was not timely filed, being filed more than five days after the issuance of the Certification. AFSCME also argues that WRTWO is an "improper party and has no standing to contest the results of the referendum", since it was not a party to the initial proceeding, and since it had no observers at the count. AFSCME also contends that the motion contains no allegations of fraud, collusion or conspiracy, or that any conduct of the observers or Commission's agents were improper. 1/

WRTWO filed a reply to AFSCME's motion, contending that the motion was timely, and that the Commission has authority to recount the ballots, and re-certify the results thereof, and further, among other things, that it has been designated by a number of employes in the unit to represent them.

The Commission deems that the initial issue to be determined is whether WRTWO is a proper party in interest. While its motion was supported by a number of employes in the bargaining unit involved, it was not a party to the referendum proceeding at any time. 2/ Therefore, we conclude that the WRTWO has no standing to file the motion requesting a recount and re-certification of the results of the referendum, which results had been certified on May 24, 1973.

Dated at Madison, Wisconsin, this 24th day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

Herman Torosian  
Herman Torosian, Commissioner

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1/ The State Employer did not indicate any position with respect to the Motion of WRTWO.

2/ The Commission in no way implies that WRTWO had the right to become a party thereto.