

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE & AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA (UAW) and its  
LOCAL 1447

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

MOTOR SPECIALTY, INC.  
Racine, Wisconsin, Employer

and INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE & AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA (UAW)  
and its LOCAL 1447  
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Case III  
No. 16593 R-5461  
Decision No. 11754

Appearances:

Mr. Jack Rice, International Representative, United Auto Workers,  
Region 10, for the Petitioner.  
Peck, Brigden, Petajan, Lindner, Honzik & Peck, Attorneys at Law,  
by Mr. Gary A. Marsack, for the Employer.

DIRECTION OF REFERENDUM

Petition having been filed with the Wisconsin Employment Relations Commission by International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and its Local 1447, requesting that a referendum be conducted among certain employees of Motor Specialty, Inc., Racine, Wisconsin, for the purpose of determining whether the required number of such employees favored an "All-Union Agreement" between the Employer and the Union, pursuant to the provisions of the Wisconsin Employment Peace Act; and hearing on such petition having been conducted at Racine, Wisconsin on March 21, 1973, Marshall L. Gratz, Hearing Officer, appearing on behalf of the Commission; and during the course of said hearing, said Employer having made a Motion for Dismissal of said petition for the reason that reasonable grounds do not exist to support a belief that there has been a demonstrable change in attitude among the employees in question toward an all-union agreement since the last referendum conducted by the Commission on March 22, 1971; and the Commission having considered the evidence, arguments and brief of Counsel and being satisfied that said Motion for Dismissal should be denied, and further being satisfied that a question has arisen concerning an "All-Union Agreement" for certain employees of Motor Specialty, Inc.;

NOW, THEREFORE, it is

DIRECTED

That a referendum by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the collective bargaining unit consisting of all production and maintenance

employees employed by Motor Specialty, Inc., 2801 Lathrop Ave., Racine, Wisconsin, including regular part-time employees, but excluding all office, clerical and professional employees, guards and supervisors as defined in the Act, who were employed by the Employer on April 12, 1973, except such employees as may prior to the referendum quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employees favor an "All-Union Agreement" between said Employer and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and its Local 1447.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 12th  
day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Jos. B. Kerkman  
Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF REFERENDUM

The Employer has, at hearing and thereafter by way of brief, moved for dismissal of the petition contending that reasonable grounds do not exist to support a belief that there has been a demonstrable change in attitude among the employees involved herein toward an all-union agreement, since the conduct of a referendum on March 22, 1971 in which the employees rejected the authorization of an all-union agreement between the parties, the results of which were certified on March 30, 1971. 1/ In its brief, the Employer states its position as follows:

"It is the Employer's position in support of its motion that Sec. 111.06(1)(c)1 of the Wisconsin Statutes obligates the WERC, upon the filing of a referendum petition and where there have been previous referenda, to make a threshold determination as to whether employee attitudes toward union shop authorization have changed since the prior referendum. We submit that until such time as this determination is made by the WERC, under the statutory scheme, further processing of the petition is unwarranted. . . ."

The employer cites a portion of the language of Sec. 111.06(1)(c)1 2/, and argues that a holding favorable to the Employer herein would further the interest of stability in employer-employee relationships and notes that a rule comparable to that proposed by the Employer is found in National Labor Relations Board practice.

The Union contends that the above-stated grounds for dismissal are without merit, and that they have been interposed solely for the purposes of delaying the conduct of the referendum.

DISCUSSION:

Section 111.06(1)(c)1 provides, in pertinent part, as follows:

". . . An employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees in a collective bargaining unit, where at least a majority of such employees voting (provided such majority of the employees also constitute at least a majority of the employees 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. Such authorization of an all-union agreement shall be deemed to continue thereafter, subject to the right of either party to request the commission in writing to conduct a new referendum on the subject. Upon receipt of such request by either party to the agreement, the commission shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employees concerned toward the all-union agreement since the prior referendum and upon so finding the commission shall conduct a new referendum. . . ." (Emphasis added)

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1/ Dec. No. 10178

2/ This section and all other references herein to numerical sections are to the Wisconsin Employment Peace Act unless otherwise specifically noted.

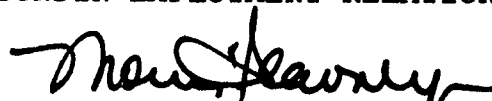
The Employer argues that "such request" refers to the filing of any referendum petition. However, the Commission has consistently held that the statutory language pertaining to a "new referendum" applies where the prior referendum resulted in an authorization by the employees for an all-union agreement, and that said portion of such section does not apply where the first referendum has resulted in no authorization for such an agreement. <sup>3/</sup> The language quoted above firmly supports our prior determinations on this issue in that "such request" seems clearly to refer to the antecedent "request" used in the limited context of a petition to determine whether an all-union agreement should be continued.

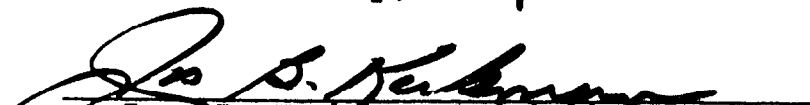
It is clear therefore, that the fact that the Commission has not investigated and found a change in employee attitude regarding an all-union agreement does not divest the Commission of its authority to direct and conduct a referendum pursuant to the instant petition. Moreover, we are not persuaded by the Employer's arguments that we should, as a matter of policy, require a showing of a change in employee attitudes as a condition precedent to directing a new referendum, where no all-union agreement exists. The Employer's motion to dismiss the petition is therefore denied, and the Commission has directed a referendum among the employees in the unit stipulated as being appropriate.

Dated at Madison, Wisconsin, this 12th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Jos. B. Kerkman, Commissioner

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<sup>3/</sup> Modern Clean-up Service, Inc., (5341) 10/59; Red Owl Stores, (7885) 1/67.