

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES LOCAL 727,
AFSCME, AFL-CIO

For Determination of Bargaining
Representatives for Employees of

JOINT SCHOOL DISTRICT NO. 1
Menomonie, Wisconsin

Case VII
No. 16738 ME-922
Decision No. 11902-B

ORDER SUSTAINING OBJECTIONS TO CONDUCT OF ELECTION
SETTING ASIDE RESULTS OF ELECTION, AND
DIRECTION OF NEW ELECTION

The Wisconsin Employment Relations Board having heretofore and on May 30, 1973, directed that an election be conducted among certain employees of Joint School District No. 1, Menomonie, Wisconsin, to determine whether a majority of such employees desired to be represented by Wisconsin Council of County and Municipal Employees Local 727, AFSCME, AFL-CIO, for the purposes of collective bargaining; and on July 24, 1973, the Commission having conducted such election where the Employer's observer attempted to challenge the right of Chester Morgan to vote in the election, contending that Morgan had reached the age of retirement and was not any longer considered an employee of the Employer, and that, however, the Commission's agent conducted the election having stated to the observers of the parties that, since Morgan had not been officially terminated from employment, he would be permitted to cast his ballot and that Chester Morgan did cast a ballot. The tally of the ballots executed by the Commission's agent after the conduct of the parties was as follows:

1. Claimed eligible to vote.....	16
2. Ballots cast.....	15*
3. Ballots challenged.....	0
4. Ballots void.....	0
5. Ballots blank.....	0
6. Valid ballots counted.....	15*
7. "Yes" ballots.....	8
8. "No" ballots.....	7

That following the conduct of the balloting on July 24, 1973, the Municipal Employer having timely filed objections to the conduct of the election contending that Morgan should not have been considered eligible to vote, and further that employee Robert Spindler, whose name had been inadvertently omitted from the official eligible list, was not permitted the opportunity to vote; and the Commission, having considered the objections, conducted a hearing on August 21, 1973, Commissioner, Zel S. Rice II being present, and the Commission, having considered the evidence of the arguments of the parties and being fully advised in the premises, being satisfied that Chester Morgan was not eligible to

*Includes Morgan's ballot

participate in the election and that therefore Morgan's ballot could have affected the results of the election; and that therefore a new election should be conducted.

NOW, THEREFORE, it is

ORDERED

That election heretofore conducted herein on July 24, 1973, be and the same hereby is, set aside.

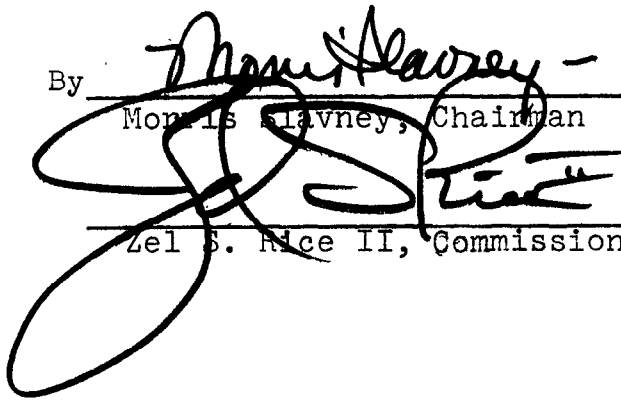
It is further ordered that a new election be conducted within sixty (60) days from the date of this order among all regular full-time and regular part-time custodial and maintenance employees of Joint School District No. 1, Menomonie, Wisconsin, but excluding supervisors, managers and all other employees, who were employed by the Municipal Employer on October, 4, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented for the purposes of collective bargaining by Wisconsin Council of County and Municipal Employees Local 727, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Zel S. Rice II, Commissioner

No. 11902-B

MEMORANDUM ACCOMPANYING ORDER SUSTAINING OBJECTIONS
TO CONDUCT OF ELECTION SETTING ASIDE RESULTS OF
ELECTION, AND DIRECTION OF NEW ELECTION

Following the conduct of the election herein, the Municipal Employer timely filed objections to the conduct of the election contending that Chester Morgan, an individual, who was permitted to vote was not eligible to vote, contending that as the date of the vote Morgan was no longer an employe of the Employer, since he reached his retirement age prior to the balloting. Furthermore, in said objections the Employer alleged that one Robert Spindler, whose name had been inadvertently omitted from the official eligible list, did not have the opportunity to vote.

During the conduct of the election on July 24, 1973, Chester Morgan, whose name was on the official eligible list appeared at the polls to vote. The Employer's observer attempted to challenge the eligibility of Morgan, contending that, although Morgan had been a full-time employe at the time of the hearing, Morgan had reached the mandatory retirement age on June 11, 1973, and therefore, was no longer considered an employe. The Commission's agent, who conducted the election, deemed that since the Municipal Employer had not officially terminated Morgan, that Morgan would be permitted to vote. Thereupon Morgan cast a ballot.

In its objections the Municipal Employer contended that Morgan should not have been permitted to vote because of the fact that he had reached mandatory retirement age prior to the election and further that prior to the election, specifically, on July 20, 1973, Morgan had been advised by the Municipal Employer that he could no longer be employed on a regular basis since he had reached the mandatory retirement age. Morgan was advised by the Employer that Morgan could return in the Fall for a temporary period to train a new employe, and further that Morgan could work as a substitute on occasion.

Following the filing of a petition by the Union, requesting the election among the employes of the school, the Commission conducted a hearing on May 22, 1973, wherein an issue arose as of the eligibility of Robert Spindler to be included or excluded from the Unit involved. In the original direction of election issued on May 30, 1973, the Commission determined that Spindler was a Working Foreman, and therefore was included in the bargaining unit and eligible to vote in the election. For some reason or other, Spindler's name was omitted from the official eligibility list. Spindler did not present himself to vote.

The Commission is satisfied that Chester Morgan should not have been permitted to vote, since on the date of the election he was considered to be a retired employe, subject to only temporary employment. The Commission has held that retired employes, who may work part-time on occasions are not eligible to vote in an election.^{1/}

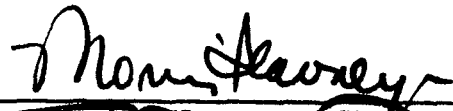
With regard to Spindler, the mere fact that his name was inadvertently omitted from the official eligibility list did not prohibit Spindler from appearing at the polls to vote. The record discloses that on the date of the election Spindler was on vacation and apparently did not seem sufficiently interested in the election to advise the Municipal Employer or the Union of that fact in order to obtain a mail ballot, nor did Spindler show sufficient interest to appear at the polls in person.

The Commission would not sustain the objections to the election if they were based solely on Spindler's failure to vote. However, we are satisfied, that Morgan was not eligible to vote and since Morgan's ballot could have very well effected the results of the election, the Commission has sustained the objections with regard to Morgan, and therefore we are directing that a new election be conducted.

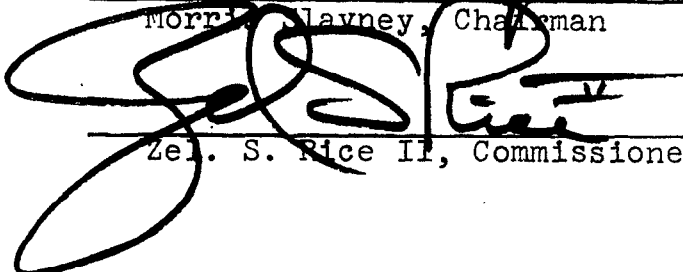
Dated at Madison, Wisconsin, this 4th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slayney, Chairman


Zel S. Rice II, Commissioner