STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
DISTRICT NO. 10, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO	Case II No. 18028 R-5657 Decision No. 12274-A
For a Referendum on the Question of an All-Union Agreement between	
WISCONSIN LIFT TRUCK & LEASING CORPORATION Brookfield, Wisconsin, Employer,	
and DISTRICT NO. 10, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, Union.	

ORDER DENYING PETITIONER'S REQUEST FOR THE CONDUCT OF A SECOND REFERENDUM

Pursuant to a Direction 1/ issued by it, the Wisconsin Employment Relations Commission, herein Commission, conducted a referendum on November 26, 1973, among certain employes of Wisconsin Lift Truck & Leasing Corporation, Brookfield, Wisconsin, to determine whether said employes favored the authorization of an "all-union agreement" between said Employer and District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO; of 24 employes eligible to vote in that referendum, 24 cast ballots, of which 10 voted in favor of authorizing an "all-union agreement"; 13 voted against such authorization, with one ballot being challenged; that thereafter, and on May 20, 1974, the Union filed a petition initiating the instant proceeding with the Commission, wherein the Union requested a referendum be conducted among the same employes; and hearing having been held in the matter on June 20, 1974, at Milwaukee, Wisconsin before Hearing Officer, Amedeo Greco, a member of the Commission's staff; and the parties thereafter having filed briefs; and the Commission, having reviewed the evidence and arguments, and being fully advised in the premises, being satisfied the Petitioner's request for the conduct of a second referendum is untimely, and therefore that the petition should be dismissed;

NOW, THEREFORE, it is

ORDERED

That the petition filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of July, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner

1/ Case I, Decision No. 12274

MEMORANDUM ACCOMPANYING ORDER DENYING PETITIONER'S REQUEST FOR THE CONDUCT OF A SECOND REFERENDUM

Petitioner primarily asserts that the Commission should direct another referendum on the grounds that the Employer committed certain unfair labor practices which interfered with the holding of a free and fair referendum on November 26, 1973. As proof of the Employer's alleged unfair labor practices, the Petitioner relies on: (1) issuance of an unfair labor practice complaint by the National Labor Relations Board, herein NLRB, on March 12, 1974, which asserted that the Employer had committed multiple unfair labor practices, some of which allegedly occurred prior to the November 26, 1973 referendum; (2) a subsequent settlement agreement executed by the Employer in which the Employer agreed to reimburse discharged employe Geoffrey, who was alleged to have been discriminatorily discharged, in the amount of approximately $1,826; and (3) an official NLRB document entitled "Notice to Employees" which the Employer posted at its work place and which provided, inter alia, that the Employer would not violate the National Labor Relations Act, as amended.

The Employer, on the other hand, argues in essence that the Union here in effect is raising objections to the conduct of the referendum held on November 26, 1973 and that such objections are untimely, since the objections have been "filed" much later than the prescribed five-day requirement for filing same set forth in the Commission's rules and regulations. Additionally, the Employer asserts that there is no proof that it has committed any unfair labor practices, that the above-noted NLRB documents do not constitute a judicial determination that the Employer has acted unlawfully, and lastly, that "settlement agreements between an employe and the NLRB should not be the sole basis" upon which the Commission can find that an Employer has in fact committed unfair labor practices.

The Commission's rule embodied in ERB 4.05 of the Wisconsin Administrative Code provides:

> "ERB 4.05 Objection. Any party to the proceeding who desires to file an objection to the conduct of the referendum shall do so within 5 days after receipt of the copy of such report. Such objection shall be in writing, and shall contain a brief statement of the facts upon which the objection is based. The original and 3 copies of such objection shall be signed and filed with the commission, the original being sworn to. The objector shall serve a copy upon each of the other parties. If it appears to the commission that any substantial question was raised thereby, the commission shall decide such question before proceeding to a final determination."

The Commission has adopted this rule in order that parties would know with certainty within a proscribed time period whether the referendum results would be questioned by the other party. If no objections are filed within the five-day period 2/, stability in labor relations dictates that no objections can thereafter be entertained by the Commission.

2/ The Commission then issues the Certification of Results.

Here, by waiting approximately seven months to object to the conduct of the November 26, 1973, referendum, the Union has failed, obviously, to meet the statutory requirement that such objections be filed within the above-noted five-day period. Thus, although the Union did file an unfair labor practice charge with the NLRB on December 18, 1973, involving some of the factual matters herein, the Union failed to file any type of objection to the conduct of the referendum prior to the date that it filed its second petition on May 20, 1974. Moreover, that charge was filed past the proscribed five-day period set forth in ERB 4.05 and, more importantly, the mere filing of an unfair labor practice charge does not relieve a party from its duty to timely file objections to the conduct of a referendum (or election) in the event that it seeks to overturn the results therein. For, unless such timely objections are filed, the Commission will not set aside the results of a referendum (or election), regardless of whether it finds merit in the unfair labor practice allegations. Further, although the Union alleges that it had no knowledge of the alleged unfair labor practices at the time of the referendum, the Commission finds that such lack of knowledge is immaterial, since there is no exception to the five-day time limit contained in ERB 4.05.

In light of the above, the Commission finds that the Union's failure to file timely objections precludes it from now attacking the validity of the prior referendum (Seaman Company (10929-A 5/72). Accordingly, it will not pass on the merits of the alleged improper conduct supposedly committed by the Employer prior to the referendum.3/

That being so, the Commission concludes that the instant petition is untimely in that it seeks a second referendum within the one-year period following the prior November 26 referendum. A second referendum within this one-year period would be contrary to the Commission's long-established policy of waiting one full year before conducting a second referendum or election (Hudson Sharp Machine Co., (3062) 1/52 and Cram's Markets (3646) 12/53.) The Commission has adopted said one-year rule 4/ to encourage stability in labor relations and to preclude frequent referenda and elections. Accordingly, as the Union has offered no persuasive reason as to why the one-year rule should be waived on the basis of the facts presented, the Commission finds that its petition is untimely and that it should be dismissed.

Dated at Madison, Wisconsin, this 22nd day of July, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Howard S. Bellman, Commissioner

3/ In light of our disposition of the case, the Commission finds it unnecessary to decide whether the above-noted NLRB documents relied upon by the Union in fact established that the Employer here engaged in the conduct alleged.

4/ The only exception to this rule is when facts establish that there has been a substantial change in the employe complement. In such circumstances, the Commission will direct another referendum within the one-year period. Here, however, the Union stipulated at the hearing that no such substantial employe turnover existed.