

In the Matter of the Petition of
STATE HIGHWAY ENGINEERS ASSOCIATION
Requesting a Referendum Among
Professional Engineers Employes
On the Question of Directing Said
Petitioner and the
STATE OF WISCONSIN
To Enter Into a Fair-Share Agreement

Case XLIV
No. 17541 SR(I)-6
Decision No. 12463-A

Pursuant to a Direction of Referendum issued by it, the Wisconsin Employment Relations Commission conducted a referendum among the other-wise eligible employees of the State of Wisconsin included in the existing appropriate unit consisting of all professional - engineering employees in the employ of the State of Wisconsin; that such referendum was conducted by mail ballot, with the ballots being tallied on March 6, 1974, and the result of such balloting was as follows:

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|----|--|-----|
| 1. | Total number eligible to vote | 933 |
| 2. | Total ballots cast | 811 |
| 3. | Total valid ballots counted | 811 |
| 4. | Ballots cast in favor of implementation of Fair-Share Agreement | 552 |
| 5. | Ballots cast against implementation of Fair-Share Agreement | 259 |

That thereafter the Commission having been advised by a department of the State Employer that some employees in the unit had been inadvertently omitted from the eligibility list utilized by the Commission in the conduct of the mail ballot; that upon further inquiry the Commission discovered that 16 employees had been so inadvertently omitted from the eligibility list; and the Commission being satisfied that had said 16 employees been sent mail ballots, their ballots may have affected the result of the referendum; and, therefore, the Commission being satisfied that the result of the referendum previously conducted in the unit involved should be set aside and that a new referendum be directed;

NOW, THEREFORE, it is

ORDERED

That the result of the referendum conducted on March 6, 1974, be, and the same hereby is, set aside.

IT IS FURTHER ORDERED that a new referendum by mail ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive among all employees employed in the classified service of the State of Wisconsin occupying the classifications of:

| | |
|--------------------------------|--------------------------------|
| Architect 1, 2, 3, 4, 5, 6 | Environmental Engineer 1, |
| Building Construction | 2, 3, 4 |
| Superintendent 1, 2 | Landscape Architect 1, 2, |
| Civil Engineer 1, 2, 3, 4 | 3, 4 |
| Civil Engineer, Transporta- | Mechanical Engineer 1, 2, |
| tion, 1, 2, 3, 4, 5 | 3, 4, 5, 6 |
| Electrical Engineer 1, 2, 3, | Public Service Engineer 1, |
| 4, 5 | 2, 3, 4, 5 |
| Engineering Technician 4, 5, 6 | Specification Writer 1, 2, 3 . |

excluding all other employees, limited term employees, non-permanent seasonal employees, sessional employees, confidential employees, supervisory employees, and managerial employees, who were employed by the State of Wisconsin on April 13, 1974, 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 (two-thirds of those voting) desire to direct the State Highway Engineers Association and the State of Wisconsin to enter into a fair-share agreement.

Given under our hands and seal at the
City of Madison, Wisconsin, this 29th
day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER SETTING ASIDE REFERENDUM AND
DIRECTION OF NEW REFERENDUM

On February 1, 1974, the Wisconsin Employment Relations Commission issued a Direction of Referendum, wherein it directed that a referendum by mail ballot be conducted, pursuant to Section 111.81(13) of the State Employment Labor Relations Act (SELRA), to determine whether employees included in the collective bargaining unit consisting of professional - engineering employees in the employ of the State of Wisconsin desired to select State Highway Engineers Association, hereinafter referred to as SHEA, as the collective bargaining agent of the employees in said unit, and that the State of Wisconsin enter into a fair-share agreement.

In said Direction, the Commission established January 19, 1974, as the eligibility date, and therefore, employees in the unit involved, who were employed on said date, were eligible to participate in the referendum. In preparing for the mail balloting, the Commission requested the Division of Employment Relations of the Department of Administration, hereinafter referred to as the State Employer, to furnish to the Commission a list setting forth the names and addresses of the employees in the unit. Said eligibility list was furnished to the Commission, and, thereafter, and on February 15, 1974, the Commission mailed ballots and notices of the referendum to all employees whose names and addresses appeared on the eligibility list furnished by the State Employer. Said Notice set forth the engineering classifications eligible to vote, the purpose of the referendum, a definition of the term "fair-share agreement," as well as instructions to the employees as to how to maintain the secrecy of their mail ballot. Further, the Notice advised the employees that, in order for their ballots to be counted, the ballots would have to be received in the Commission's offices on or before March 4, 1974.

On March 6, 1974, representatives of the State Employer and SHEA, together with agents of the Commission, opened and counted the ballots received by the Commission. The results of said count are set forth in the preface of this Order. If the Commission were to permit the results to stand, the required number of employees voted in favor of directing the implementation of the fair-share agreement. 1/

Prior to any further action by the Commission, and on March 12, 1974, a petition supported by 32 employees in the unit, was filed with the Commission requesting the Commission to set aside the referendum and to conduct a second referendum. The employees supporting the petition alleged that, since the ballots were mailed "first class" instead of "first class, return receipt requested," there was no evidence that all eligible employees received referendum ballots and further that 122 employees did not return ballots. The Petitioners, as an alternative, also requested that the Commission send ballots by registered mail to those employees who did not return their ballots and that the ballots received from those employees be included in the final result of the referendum. Finally, one of said Petitioners requested that the Commission permit said employee to become a party in the matter as a representative of said petitioning employees.

1/ Section 111.81(13) provides in part, "For a fair-share agreement to be effective, at least two-thirds of the eligible employees voting in a referendum must vote in favor of the agreement."

Thereafter and prior to March 26, 1974, the Commission was advised by a managerial employee of the University of Wisconsin-Madison that 14 employees in the unit involved were not included on the eligibility list furnished to the Commission by the State Employer. A review of the eligibility list utilized in the referendum disclosed this to be a fact.

On March 26, 1974, the Commission directed a letter to the State Employer and SHEA advising them of said omissions of University employees and soliciting their positions in the matter. In written reply, both the State Employer and SHEA indicated that, assuming all 14 employees who did not receive ballots had voted against implementation of the fair-share agreement, the result of the referendum would not have changed. The spokesman for the employees who signed the petition noted above, on March 29, 1974, in writing, modified their original petition, contending that the failure of the 14 employees to receive ballots demonstrated that all employees in the unit did not receive ballots. It should be noted that with regard to the petition filed by the 32 employees, that 27 cast ballots and further that the remaining 5 employees who did not cast ballots did not claim that they had not received a mail ballot.

Subsequently, upon inquiry by the Commission, the State Employer confirmed the fact that two additional employees in the unit employed at Milwaukee were not included in the list of eligibles utilized in the conduct of the referendum.

DISCUSSION:

While the Commission has not formally adopted rules for the conduct of referenda under SELRA, it has conducted same in accordance with the rules governing the conduct of elections in state employment, particularly with respect to objections to the conduct of such elections (Rules ERB 21.10 and 21.11). ERB 21.10 provides, in material part, as follows:

"(1) FILING; FORM; COPIES. Within 5 days after the tally of ballots has been furnished, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election."

We do not consider individual employees, singularly or in concert, or for that matter a labor organization or any type of employee organization not involved in the referendum, to be a "party" in the referendum proceeding within the meaning of the cited rule, and therefore, the Commission will not entertain the motion of the employees, who filed the "petition", to become a "party", nor will the Commission entertain their petition.

However, the petitioning employees raise a matter, which a proper party may raise in the future, namely, whether mail balloting, in the conduct of an election or referendum under SELRA should be conducted by registered or certified mail. The Commission will not conduct mail balloting by registered or certified mail primarily because of the costs involved. The State Employer is required to furnish an eligibility list which should contain the correct names and addresses of all the eligible employees. The responsibility for providing current addresses to the State Employer lies with the employees. A significant number of State employees do not inform their supervisors of address changes. In that regard, since a considerable time may lapse between the date on which the Direction is issued and the date on which ballots are to be received in the Commission's offices, department heads should advise eligible employees that to insure their receipt of a ballot, said employees should immediately notify the personnel officers of their department of their address change, and in turn such information should be relayed to the Department of Administration.

While the Commission will not sustain objections on the ground that employees by their own choice have failed to vote, we deem that the omission of the 16 eligible employees from the eligibility list, in effect, prevented such employees from voting since they were not sent mail ballots; and since the ballots of said 16 employees may have affected the result of the referendum, we are setting aside the results of the initial referendum and directing that a new referendum be conducted.

Dated at Madison, Wisconsin, this 29th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner