

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation of	:	
	:	
LOCAL 150, SERVICE & HOSPITAL EMPLOYEES'	:	
INTERNATIONAL UNION, AFL-CIO	:	
	:	Case XXII
and	:	No. 18015 MR(I)-35
	:	Decision No. 12826-B
WASHINGTON COUNTY (SAMARITAN HOME &	:	
HOSPITAL)	:	
	:	
For a Referendum Authorizing Implementa-	:	
tion of Fair-Share Agreement between	:	
Said Parties	:	

ORDER DETERMINING CERTAIN CHALLENGED BALLOTS
AND CERTIFICATION OF RESULTS OF REFERENDUM

Pursuant to a Direction issued by it, the Wisconsin Employment Relations Commission conducted a referendum on August 1, 1974, among all employes of Washington County employed at the Samaritan Home & Hospital, working twenty (20) hours or more per week, excluding the Superintendent (Administrator), Assistant Superintendent (Assistant Administrator), registered nurses, licensed practical nurses, medical assistants, certified occupational therapy assistants, craft employes, office, clerical and confidential employes, guards and supervisors, for the purpose of determining whether the stipulated number of employes 1/ favored a fair-share agreement between the Municipal Employer and the Union.

The initial results of the referendum were as follows:

- 1. Total claimed eligible to vote 100 2/
- 2. Total ballots cast 78
- 3. Total ballots challenged 10
- 4. Total valid ballots counted 68
- 5. Ballots cast in favor of implementation
of "Fair-Share" Agreement 59
- 6. Ballots cast against implementation of
"Fair-Share" Agreement 9

1/ The parties agreed to implement a fair-share agreement provided that at least 66 percent of the eligible employes in said bargaining unit voted in favor of a fair-share agreement.

2/ This number (100) includes the three persons whose ballots were challenged by the Municipal Employer and seven persons whose ballots were challenged by the Commission's Agent.

During the conduct of the balloting the Municipal Employer challenged the ballots of Bonnie Adelmeyer, Dolores Jensen and Maureen Mitchell, who were included on the stipulated voter eligibility list, contending that prior to the balloting said individuals had indicated an intent to resign from their employment. The Commission Agent conducting the referendum challenged the ballots of Marilyn Breen, Marlene Haney, Joyce Heller, Nancy Huberty, Ruth Kaiser, Bonnie Noegel and James Ward on the basis that their names did not appear on the eligibility list, and it appearing from the tally sheet that said ten challenged ballots would affect the final results of the referendum, the Commission conducted a hearing on said challenged ballots on August 28, 1974, at West Bend, Wisconsin, Douglas V. Knudson, Hearing Officer, being present; and the Commission having considered the evidence and arguments, and being satisfied that the challenges to the ballots of Bonnie Adelmeyer, Dolores Jensen and Maureen Mitchell be sustained; and further being satisfied that Marilyn Breen, Marlene Haney, Joyce Heller, Nancy Huberty, Ruth Kaiser, Bonnie Noegel and James Ward, as well as five other employes 3/ should have been included on the eligibility list, and further being satisfied that the ballots cast by Marilyn Breen, Marlene Haney, Joyce Heller, Nancy Huberty, Ruth Kaiser, Bonnie Noegel and James Ward would not affect the final results of the referendum;

NOW, THEREFORE, it is

ORDERED

That the challenges to the ballots of Bonnie Adelmeyer, Dolores Jensen and Maureen Mitchell be sustained, and further that the challenged ballots cast by Marilyn Breen, Marlene Haney, Joyce Heller, Nancy Huberty, Ruth Kaiser, Bonnie Noegel and James Ward be impounded and remain sealed; and that the final result of the referendum is as follows:

- 1. Total eligible to vote 102
- 2. Total ballots challenged 10
- 3. Total challenged ballots sustained 3
- 4. Total challenged ballots impounded 7 4/
- 5. Total valid ballots counted 68
- 6. Ballots cast in favor of implementation
of "Fair-Share" Agreement 59
- 7. Ballots cast against implementation of
"Fair-Share" Agreement 9

IT IS HEREBY CERTIFIED that at least 66 percent of the eligible employes in the stipulated bargaining unit failed to vote in favor of

3/ Robert Krell, Dennis Anderson, Delmar Wendegatz, Gregory Starr and Mary Solterman

4/ Said seven ballots would not affect the result of the referendum.

a fair-share agreement as required in the stipulation executed by the parties for implementation of a fair-share agreement among the employes in the above-described bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

[Signature]
Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner

No. 12826-B

MEMORANDUM ACCOMPANYING
ORDER DETERMINING CERTAIN CHALLENGED BALLOTS
AND CERTIFICATION OF RESULTS OF REFERENDUM

In a document dated April 30, 1974, representatives of the Municipal Employer and the Union stipulated to a referendum seeking to authorize the implementation of a fair-share agreement among all employes of Washington County employed at the Samaritan Home & Hospital, working twenty hours or more per week, excluding the Superintendent (Administrator), Assistant Superintendent (Assistant Administrator), registered nurses, licensed practical nurses, medical assistants, certified occupational therapy assistants, craft employes, office, clerical and confidential employes, guards and supervisors. In their stipulation the parties further agreed that at least 66 percent of the eligible employes in the bargaining unit had to vote in favor of the fair-share agreement to support its implementation. Said stipulation was filed with the Commission on June 3, 1974.

Although the stipulation set forth that a list of eligibles was attached, no such list was attached to the stipulation. Therefore, on June 3, 1974, the Commission directed a letter to the representatives of the parties indicating that a list of eligibles had not been attached to the stipulation. Such a list was forwarded to the Commission by the Municipal Employer and received by the Commission on June 5, 1974. Prior to the filing of the stipulation the Municipal Employer, by letter, advised the Union that the Union would have an opportunity to review the eligibility list 14 days prior to the date set for the referendum. The Union did not seek to review the eligibility list. However, no evidence was adduced establishing that the Union received a copy of the eligibility list received by the Commission on June 5, 1974. The Municipal Employer neglected to include twelve eligibles on the eligibility list submitted to the Commission and utilized by it during the conduct of the referendum, which was held on August 1, 1974. Said employes were Marilyn Breen, Marlene Haney, Joyce Heller, Nancy Huberty, Ruth Kaiser, Bonnie Noegel and James Ward, as well as the five other employes noted in footnote 3 in the instant Order. During the conduct of the balloting the first seven named employes appeared at the polls to vote. Their ballots were challenged by the Commission Agent on the basis that their names did not appear on the eligibility list. The remaining five employes did not appear at the polls to vote.

The Municipal Employer challenged the ballots of Bonnie Adelmeyer, Dolores Jensen and Maureen Mitchell contending that said employes, prior to the referendum, had indicated an intent to shortly quit their employment, specifically Bonnie Adelmeyer tendered her resignation on June 27, 1974 and her last day of work was August 1, 1974. Dolores Jensen tendered her resignation on July 18, 1974, and her last day of work was August 1, 1974. Maureen Mitchell tendered her resignation on July 29, 1974, and her last day of work was August 15, 1974. It is apparent that said three individuals had tendered their resignation prior to the date on which the referendum was conducted. The Commission has consistently held that employes who have submitted their resignations prior to the date on which the balloting occurs are not eligible to vote even though said employes may still be actively employed as of the

date of the balloting. 5/ Therefore, we are sustaining the challenges to the ballots of Bonnie Adelmeyer, Dolores Jensen and Maureen Mitchell.

The Municipal Employer contends that the employees who were not listed on the "stipulated" eligibility list should not be considered eligible to vote. The Union argues that the eligibility list should have been updated because of the long interval between the drafting of said list and the date of the referendum. The Union argues that, while in the letter of the Municipal Employer dated May 13, 1974, the Municipal Employer indicated that it would afford the Union the opportunity to review the eligibility list fourteen days prior to the date of the referendum, the Union was not afforded said review. It is significant to note that the Municipal Employer informed the Union it would have an opportunity to review the eligibility list so as to eliminate inaccuracies due to employee turnover, and, therefore, it is obvious to the Commission that the eligibility list as submitted was not an agreed final list of eligibles.

At the hearing there was no issue that the twelve employees whose names were not on the eligibility list would otherwise not be eligible to vote although the Municipal Employer explained the omissions on the basis that at the time that the eligibility list was drafted, the twelve employees were in probationary status. To bar them from voting on the basis that their names were not on the list would deprive said employees of their right to cast a ballot on an issue directly affecting them, and, therefore, the Commission concludes that said twelve employees should have been included among the eligibles.

Revision of the eligibility list therefore discloses that 102 employees were employed in the unit and eligible to vote as of the date of the referendum. Only 7 of the 112 employees whose names were omitted from the list appeared at the polls to vote. Assuming that said 7 employees all cast ballots in favor of implementing the fair-share agreement, the total number of "yes" ballots would not be sufficient to meet the 66 percent requirement agreed upon by the parties in their stipulation, since the "yes" ballots would then total 66. We have concluded that 102 employees were eligible to vote, 66 percent of said total is 67.32 employees or, in fact, 68 "yes" votes. Therefore, we see no reason to open the 7 challenged ballots involved, and we have revised the tally sheet to reflect the final results of the referendum.

Dated at Madison, Wisconsin, this 8th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Thomas Slavney, Chairman
Zel S. Rice II
Zel S. Rice II, Commissioner
Howard S. Bellman
Howard S. Bellman, Commissioner

5/ Appleton Joint School District No. 10 (7151) 5/65; Casey Lincoln & Mercury (4538) 5/57; Ashland Joint School District No. 1 (7090) 4/65.