

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Stipulation of

RETAIL STORE EMPLOYEES UNION, LOCAL  
#444, AFL-CIO and PILGRIM LIQUOR

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

PILGRIM LIQUOR  
Menomonee Falls, Wisconsin, Employer

and RETAIL STORE EMPLOYEES UNION,  
LOCAL #444, AFL-CIO, Union  
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Case I  
No. 18151 R-5675  
Decision No. 12911-B

ORDER DETERMINING CHALLENGED BALLOTS

Pursuant to a Direction of Referendum issued by it, the Wisconsin Employment Relations Commission conducted a referendum on August 13, 1974, among all employees employed by Pilgrim Liquor, Menomonee Falls, Wisconsin, excluding one store manager, guards and supervisors, for the purpose of determining whether the required number of employees favored an "All-Union Agreement" between the instant parties. The results of the referendum were as follows:

1. Total claimed eligible to vote .....	14
2. Total ballots cast .....	10
3. Total ballots challenged .....	2
4. Total valid ballots counted .....	8
5. Total "Yes" ballots .....	6
6. Total "No" ballots .....	2

During the conduct of the balloting the Commission agent challenged the ballot of David Curran as not being on the stipulated eligibility list, and the Union challenged the ballot of Edward Nolan on the basis that he is a supervisor within the meaning of the Act; and the Commission having, by Order, dated September 4, 1974, determined that the ballots of said two individuals, if they are entitled to vote in said referendum, may affect the results of the referendum; and on that basis ordered that hearing be held thereon; and hearing thereon having been held September 18, 1974, at Milwaukee, Wisconsin, Stanley H. Michelstetter II, Hearing Officer, being present; and the Commission being fully advised in the premises and being satisfied that the challenge to the ballot of David Curran be sustained, and that the challenge to the ballot of Edward Nolan be overruled;

NOW, THEREFORE, it is

ORDERED


1. That the challenge to the ballot of Edward Nolan be overruled and that his ballot be opened at 10:00 a.m. on Monday, October 14, 1974, at the offices of the Wisconsin Employment Relations Commission, Room 560, Milwaukee State Office Building, 819 North Sixth Street, Milwaukee, Wisconsin, and be counted at that time, and that such ballot shall thereupon be included in the final tally of ballots and that the parties may have representatives present when such ballot is counted.


2. That the challenge to the ballot of David Curran be, and the same hereby is, sustained and that said ballot remain sealed.

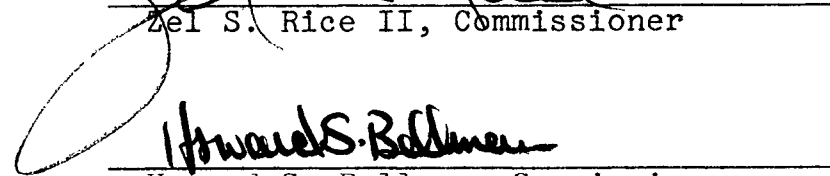
Given under our hands and seal at the  
City of Madison, Wisconsin, this 30th  
day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER DETERMINING CHALLENGED BALLOTS

The Commission's agent challenged the ballot of David Curran, who had been an on-call employee, on the basis that Curran's name did not appear on the stipulated eligibility list submitted with the parties' Stipulation for Referendum. The Union challenged the ballot of Edward Nolan, Assistant Manager, on the basis that he is a supervisor.

The National Labor Relations Board conducted a representation election in the instant unit on March 8, 1974. At that time, David Curran cast his ballot without challenge and Edward Nolan's ballot was challenged by the Union on the basis of Nolan's alleged supervisory status. Such challenge was later withdrawn by the Union in accordance with the agreement reached with the Employer.

No contention has been raised regarding changed circumstances concerning Nolan's employee status. The Union, at all relevant times, has been aware of all material facts in the matter. In view of the parties' stipulated eligibility list, including Nolan's name, and the Union's previous acceptance of his status as non-supervisory, we have ordered that Nolan's ballot be included among the eligibles.

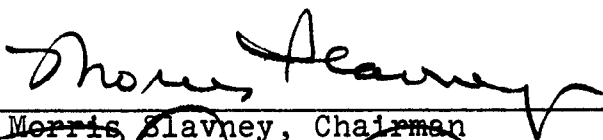
In the parties' discussions previous to their agreement upon a stipulated voting eligibility list for this proceeding, the Employer objected to Curran's inclusion on said list on the basis that Curran had quit his employment. Thereupon, the Union attempted to contact Curran but was unable to reach him, and on the basis of the Employer's representation, agreed to omit Curran's name from said list.

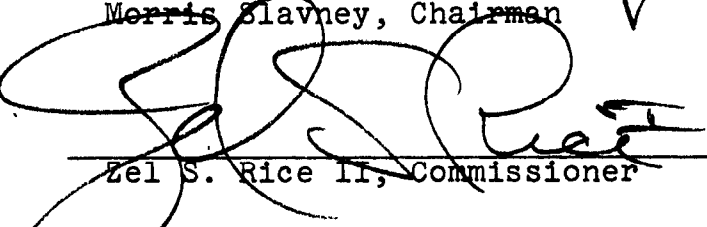
Thereafter, approximately two weeks prior to the polling herein, the Union learned from Curran that he believed that he was discharged by the Employer and had not quit. The Union then urged him to appear at the polling and vote, but also decided to take no other action in order to avoid delaying the referendum.

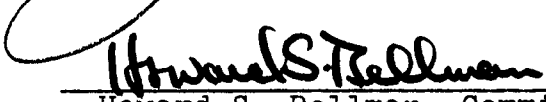
On the basis of the parties' stipulation and the fact that said stipulation only conflicts with a possible contention that Curran was discharged without cause, the challenge to his ballot is sustained.

Dated at Madison, Wisconsin, this 30th day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner