

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RICHARD E. ZACH, et al.,

Complainants,

vs.

STATE OF WISCONSIN and STATE HIGHWAY
ENGINEERS ASSOCIATION,

Respondents.

Case XLIX
No. 18276 PP(S)-22
Decision No. 13809-B

Appearances:

Jenswold, Studt, Hanson, Clark & Kaufmann, Attorneys at Law, by
Mr. Bruce K. Kaufmann, appearing on behalf of Complainants.

Mr. Lionel L. Crowley, Attorney, Department of Administration,
State of Wisconsin, appearing on behalf of Respondent State
of Wisconsin.

Kelly and Haus, Attorneys at Law, by Mr. Robert C. Kelly,
appearing on behalf of Respondent State Highway Engineers
Association.

ORDER AFTER REMAND

Pursuant to an Order set forth in the decision of the Dane County Circuit Court issued on August 5, 1976, in the above-entitled matter, wherein said Court remanded the matter to the Wisconsin Employment Relations Commission for the purpose of fashioning a remedy pursuant to Section 111.07, Wisconsin Statutes, for acts of interference committed by the above-named Respondents with respect to the omission of certain employees from the list of eligibles in a fair-share referendum conducted by the Wisconsin Employment Relations Commission in March 1974; the Wisconsin Employment Relations Commission having conducted a hearing^{1/} on May 13, 1977, Chairman Morris Slavney and Commissioner Herman Torosian being present,^{2/} during which the parties were afforded the opportunity to present argument with respect to the subject matter of said remand; and the Commission, being fully advised in the premises, makes and issues the following

ORDER

IT IS ORDERED that the State of Wisconsin, and specifically the Bureau of Collective Bargaining in the Department of Administration, in any election or referendum directed by the Wisconsin Employment Relations Commission, pursuant to Section 111.83 or Section 111.85 of the State Employment Labor Relations Act:

^{1/} The parties were unable to agree on an appropriate remedy following the Court's decision.

^{2/} Commissioner Hoornstra did not participate in the instant proceeding as a result of the request made by Counsel for the Complainants, contending that said Commissioner should not do so since prior to his appointment to the Commission he represented the Commission, as counsel, in the circuit court proceeding.

1. Cease and desist from:

- (a) Furnishing the Wisconsin Employment Relations Commission an incomplete list of employees eligible to participate in any directed election or referendum.
- (b) Failing to respond to inquiries from employees as to whether they are or are not included among the eligibles in any directed election or referendum, and if not so included, failing to state the reason therefor.

2. Take the following affirmative action, which will effectuate the policies set forth in the State Employment Labor Relations Act, immediately subsequent to the issuance of a direction of election or direction of referendum issued by the Wisconsin Employment Relations Commission:


- (a) Furnish the Commission with an accurate and complete list containing the names (in alphabetical order) and addresses of all eligible employees in the bargaining unit involved, by agency and divisions thereof.
- (b) Furnish each agency of the State, wherein eligible employees in the bargaining unit involved are employed, with a list of the eligible employees (and their addresses) who are employed in the agency involved and require each agency to post notices setting forth the names and addresses of those employees eligible to vote, and in said notices request employees to immediately correct their addresses, if need be. Should any employee correct his or her address, the agency involved shall be instructed to immediately notify the Bureau of Collective Bargaining of the Department of Administration of such change in address, and thereupon the Bureau of Collective Bargaining shall immediately notify the Commission, in writing, of such address change.
- (c) Should any state employee direct an inquiry to the Bureau of Collective Bargaining of the Department of Administration concerning the basis for the inclusion or exclusion of said employee from the eligibility list involved, said Bureau of Collective Bargaining shall immediately respond to such inquiry, and should it be discovered by the Bureau of Collective Bargaining that an individual has been omitted from the eligibility list, the Bureau of Collective Bargaining shall immediately furnish the Wisconsin Employment Relations Commission the name and address of such employee.

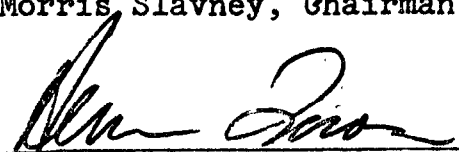
IT IS FURTHER ORDERED that the State Highway Engineers Association, in any election or referendum conducted by the Wisconsin Employment Relations Commission, pursuant to Section 111.83 or Section 111.85 of the State Employment Labor Relations Act, take the following affirmative action, which will effectuate the policies set forth in the State Employment Labor Relations Act by:

1. Immediately subsequent to the issuance of a direction of election or direction of referendum issued by the Wisconsin Employment Relations Commission, wherein said labor organization is involved:
 - (a) Make every diligent effort to determine that all employes in the bargaining unit involved are included in the eligibility list utilized in any such election or referendum, and if it should find that said list of eligibles omits any eligible employes, immediately notify the Bureau of Collective Bargaining of the Department of Administration as to the names of those employes omitted from said list.

Given under our hands and seal at the City of Madison, Wisconsin, this *23rd* day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner

[illegible]

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Age Group	1970	1980	1990	2000
0-14	18	16	14	12
15-24	15	14	13	12
25-34	14	15	16	17
35-44	13	14	15	16
45-54	12	13	14	15
55-64	11	12	13	14
65+	12	13	15	22

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MEMORANDUM ACCOMPANYING ORDER AFTER REMAND

In issuing its original decision in this proceeding, the Commission concluded that the Respondents did not commit any unfair labor practices by inadvertently omitting 16 employees from the eligibility list utilized in the conduct of a referendum conducted to determine whether the required number of employees in the professional-engineering state-wide unit desired to require the State to implement a fair-share agreement with the State Highway Engineers Association, and, therefore, the Commission dismissed the complaint. Complainants appealed said decision to the Dane County Circuit Court. Honorable Charles P. Jones reversed the Commission's Conclusion of Law and found such omission to have constituted an unlawful act of interference. The Court remanded the matter to the Commission for an appropriate remedy.

During the hearing after remand, Counsel for the Complainants contended that the only remedy appropriate would be to set aside the results of the referendum. Both Respondents opposed the remedy sought by Complainants.

The fact that Respondents committed an act of interference does not in itself require the setting aside of the referendum results in order to effectuate the purposes of the Act as argued by the Complainants. The declared policy of the State Employment Labor Relations Act recognizes that there are three major interests involved: That of the public; that of the state employees; and that of the State as an employer. Section 111.80(1) further states the following:

"It is the policy of this state to protect and promote each of these interests with due regard to the situation and to the rights of the others."

Accordingly, the Commission, in fashioning a remedy, must weigh and balance the rights of the 16 employees who did not receive ballots, and consequently did not vote, with the rights of 811 employees who, in fact, cast valid ballots, resulting in requiring the State to enter into a fair-share agreement with the State Highway Engineers Association. The stability of the referendum process and procedure and the parties' labor relations relationship is an interest which must also be considered.

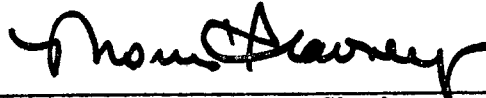
Complainants argue that the appropriate remedy requires the Commission to set aside the results of the referendum and direct a new referendum. We do not agree. We are persuaded by the following: (1) the conduct of the referendum itself was untainted; (2) neither the State nor the Association intentionally caused the names of the 16 employees to be omitted from the list of eligible employees; (3) the ballots of the 16 employees would not have affected the results of the referendum even had said employees voted against implementation of a fair-share agreement; and (4) Complainants' position to set aside the results, logically extended, would require the Commission in future cases to set aside the results of an election or referendum where only one employee was inadvertently omitted from the list of eligibles, regardless of the results of the balloting.

For reasons stated above, the Commission determines that the appropriate remedy in the instant matter is to require the Respondents to establish a procedure to assure that the omission of names of eligible employees will not occur, and to provide a procedure to assure employees an adequate response concerning their inquiries, if any, regarding their inclusion or exclusion from eligibility lists utilized in referenda and elections conducted by the Commission.

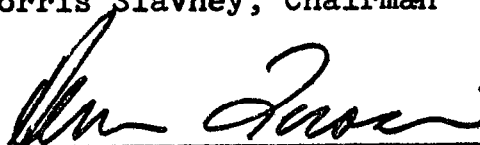
Dated at Madison, Wisconsin, this 23rd day of June, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner