

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation of

ALLIED INDUSTRIAL WORKERS OF AMERICA,  
AFL-CIO, LOCAL 619 AND MICRO DESIGN,  
DIVISION OF BELL AND HOWELL COMPANY

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

MICRO DESIGN, DIVISION OF BELL & HOWELL  
COMPANY

Hartford, Wisconsin, Employer

and ALLIED INDUSTRIAL WORKERS OF  
AMERICA, AFL-CIO, LOCAL 619 Union.

Case II

No. 19843 R-5819

Decision No. 14165-B

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Peter D. Goldberg,  
appearing on behalf of the Union.

Vedder, Price, Kaufman & Kammholz, Attorneys at Law, by Mr. John P.  
Jacoby, appearing on behalf of the Employer.

ORDER SUSTAINING OBJECTIONS TO CONDUCT OF REFERENDUM,  
SETTING ASIDE RESULTS OF REFERENDUM AND DISMISSING STIPULATION

Following the filing of a Stipulation for Referendum executed by the parties on November 24, 1975, which stipulation contained a list of employees which the parties had agreed upon as being eligible to participate in the referendum, the Commission, pursuant to a Direction issued by it, conducted a referendum on December 18, 1975, pursuant to Section 111.06 of the Wisconsin Employment Peace Act, among all full-time and regular part-time production and maintenance employees of the Employer, excluding draftsmen and other engineering employees, office clerical employees, professional employees, guards and supervisors as defined in the Act, who were employed by the Employer on November 24, 1975. The purpose of the referendum was to determine whether the required number of eligible employees in the collective bargaining unit described above favored an "All-Union Agreement" between the Union and the Employer named above. The results of the referendum were as follows:

1. Total number eligible to vote. . . . . 144
2. Total ballots cast . . . . . 128
3. Total valid ballots counted. . . . . 127
4. Ballots cast in favor of an "All-Union Agreement" . . . . . 74
5. Ballots cast against an "All-Union Agreement". . . . . 53

On December 23, 1975, the above-named Employer filed timely objections to the conduct of the referendum, alleging that the above-named Union had engaged in election conduct which made a fair and free choice by the employees impossible. A hearing on said objections was held on February 25, 1976, at Hartford, Wisconsin, before Hearing Officer Amedeo Greco, a

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member of the Commission's staff; and the Employer thereafter having filed a brief; and the Commission being fully advised in the premises and satisfied for the reasons hereinafter noted that the Employer's objections should be sustained and that the results of the referendum should be set aside and the stipulation dismissed;

NOW, THEREFORE, it is

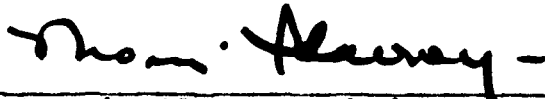
ORDERED

That the objections to the conduct of the referendum be, and the same hereby are sustained; that the results of the referendum be, and the same hereby are set aside; and, further, that the stipulation filed herein be and the same hereby is dismissed without prejudice.

Given under our hands and seal at the  
City of Madison, Wisconsin this 8th  
day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER SUSTAINING OBJECTIONS TO CONDUCT OF REFERENDUM,  
SETTING ASIDE RESULTS OF REFERENDUM AND DISMISSING STIPULATION

In its objections, the Employer primarily contends that the Union misrepresented the legal effects of the referendum during the referendum campaign, and that said misrepresentation materially affected the outcome of the referendum. More specifically, the Employer maintains that the Union erred when it claimed that, if the referendum carried, only new employees hired after December 18, 1975, the date of the election, would be required to then join the Union. In fact, says the Employer, all employees hired after the effective date of the contract, April 4, 1973, (about 127) would be required to so join the Union, pursuant to the express provisions of Article II, Section 2, of the existing collective bargaining agreement. The Employer claims in its brief that the Union's misrepresentation thereby "caused a substantial number of employees to vote in the false comfort that the all-union provision would not require them to join the Union and pay its initiation fees and dues . . ."

The Union, on the other hand, denies that it engaged in any material misrepresentations. It claims that the parties expressly agreed in their 1973 collective bargaining negotiations that only those employees hired after the date of the referendum would be required to join the Union. In support of this position, the Union points out that on the day after the December 18, 1975 referendum, the Employer's Plant Manager, Don Zilmer, announced to employees that only new employees hired after December 18, 1975 would have to join the Union. Furthermore, the Union asserts that any confusion over this issue was dissipated by the fact that employees were informed that Union President Ploeger would reimburse any non-union members hired before December 18, 1975, who had to join the Union as a result of the referendum.

In agreement with the Employer, the Commission finds that the Union did misrepresent the effects of the referendum. Thus, Article II, Section 2, of the contract expressly states that:

"Each employee who on the effective date of this Agreement is a member of the Union in good standing and each employee who becomes a member after that date shall, as a condition of employment, maintain his membership in the Union. Each employee hired on or after the effective date of this Agreement shall, as a condition of employment, beginning on the 90th day following the beginning of such employment or the effective date of this Agreement, whichever is the later, acquire and maintain membership in the Union. This section shall not be operative unless a majority of employees in the collective bargaining unit covered by this Agreement vote affirmatively by secret ballot in favor of an all union shop as provided for in this Agreement in a referendum conducted by the Wisconsin Employment Relations Commission. Upon ratification of this Agreement, the Company will forthwith enter into a stipulation for the holding of said referendum." (Emphasis Added).

By its own terms, then, the contract clearly stated that "each employee hired on or after the effective date of this Agreement . . ." will be required to join the Union. Inasmuch as the Union repeatedly stated during the referendum campaign that only new employees hired after the referendum would have to join the Union, and because the referendum was conducted well over two and one-half years after the April 4, 1973, effective date of the contract, it is clear that the Union's claim was contrary to the contractual language.

In so finding, the Commission is aware of the Union's contention, denied by the Employer, that the parties agreed in their 1973 negotiations that only those new employees hired after the referendum would have to join the Union. Since, however, the contract, on its face, clearly and unambiguously provides otherwise, and inasmuch as parol evidence can be utilized only when a contract is ambiguous, the Commission concludes that it would be inappropriate to go outside the provisions of the contract by relying on such bargaining history. 1/

As noted above, the Union also points out that Zilmer told employees on the day after the referendum that henceforth only new employees hired after that date would have to join the Union. Inasmuch as those remarks were made after the referendum had been conducted, it is obvious that Zilmer's remarks could not possibly have dissipated the effects of the Union's misrepresentations prior to the referendum. Additionally, since the contract so clearly and unambiguously states the opposite of what Zilmer claimed, and because there is no evidence that Zilmer had the effective authority to modify said contractual provisions, 2/ it must also be concluded that Zilmer's statements did not constitute the kind of admission against interest which would otherwise serve to buttress the Union's position.

Further, the Union also claims that Union President Ploeger effectively neutralized the Union's above-noted misstatements when employees were told that Ploeger would reimburse any employees (other than present Union members) hired after April 4, 1973, who were required to join the Union as a result of the referendum. Since the contract so clearly and unambiguously provides to the contrary, and as the Union cannot unilaterally attempt to so change contractual terms, and because in any event Ploeger's message was first conveyed to employees on December 19, 1975, on the day after the referendum, it is clear that Ploeger's statements did not effectively serve to neutralize the Union's misstatements regarding the legal effects of the referendum.

In light of the above-noted considerations, which show that the Union made a material misrepresentation of the effects of the referendum, and because such a misrepresentation may have affected the way in which a substantial number of employees voted, i.e., some of approximately 127 employees who were hired between April 4, 1973 and December 18, 1975, the date of the referendum herein, and who were told by the Union that they would not be affected by the referendum results, the Commission concludes that said misrepresentation affected the conduct of the referendum and that, as a result, the results of said referendum be, and the same hereby are, set aside.


Inasmuch as the 1973-1976 contract has a termination date of April 4, 1976, the Commission concludes that it would be inappropriate to order the holding of another referendum following the contract's expiration date,

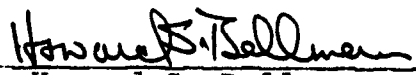
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- 1/ At the hearing, the Hearing Officer reserved ruling on whether such bargaining history could be properly admitted into evidence.
- 2/ There is no evidence that Zilmer was the Employer's spokesman during the referendum campaign during which time the Employer vigorously campaigned against a union shop.

absent the filing of a new petition or stipulation for a referendum.  
Therefore, the stipulation herein has been dismissed without prejudice.

Dated at Madison, Wisconsin this 8th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

  
Herman Torosian, Commissioner