

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I  
No. 26728 E-2990  
Decision No. 18104-A

During the conduct of a representation election conducted by the Wisconsin Employment Relations Commission among certain employees of Teeson Construction Company, to determine whether said employees desired to be represented by Carpenters Local Union 836/AFL-CIO, the Employer challenged the ballot of one of the employees voting, contending that the ballot was marked in such a manner that the intent of the employee casting said ballot was not clear; and thereafter the Commission determined to resolve the validity of said ballot since it affected the results of the election; and the parties having waived hearing in the matter and having filed statements of their positions with respect to the matter; and the Commission, having examined and considered the ballot involved, and having considered the arguments of the parties, being satisfied that the ballot was marked in such a manner so as to reflect the intent of the employee voting, and further being satisfied that the ballot should be included as a valid ballot.

ORDERED

Given under our hands and seal at the  
City of Madison, Wisconsin, this 5th  
day of November, 1980.

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Gary L. Covelli  
Gary L. Covelli, Commissioner

No. 18104-A

MEMORANDUM ACCOMPANYING ORDER  
OVERRULING CHALLENGED BALLOT

Pursuant to a Direction of Election previously issued by it the Commission, on October 7, 1980, conducted an election among all full-time and regular part-time carpenters, who spend more than 50 percent of their time doing carpentry work, in the employ of the Employer, to determine whether said employees desired to be represented by the Union for the purposes of collective bargaining. All nine employees in said bargaining unit appeared at the polls and cast ballots. Upon the opening of the ballot box and during the counting of the ballots, the Employer objected to the validity of one ballot, contending that it should be voided, claiming that the intent of the employee marking that particular ballot was not clearly indicated. Eight of the ballots were not challenged. Thus the initial tally of ballots indicated that four of the employees favored the Union as their bargaining representative, four employees voted against such representation, and the remaining ballot remained challenged. It is clear therefore that the Commission must determine whether the latter ballot should or should not be included as a valid ballot, since such determination will affect the outcome of the election.

The ballot in question is in the usual form utilized by the Commission. It instructs the voter to "MARK 'X' in ONE SQUARE ONLY" (emphasis in original). The question presented on the ballot is "Do you desire to be represented for the purposes of collective bargaining by Carpenters Local Union 836/AFL-CIO?" Boxes are then set out under the words "YES" and "NO". On the ballot in question the entire box under the word "YES" has been shaded in by a series of lines, most of which are roughly parallel and horizontal. However, there is an appearance of some other lines in the "YES" box which are not parallel or horizontal or even necessarily straight. There are no other marks on the ballot.

The Employer, contrary to the Union, takes the position that the ballot should be held to be void on its claim that it does not clearly indicate the intention of the voter.

The Employer contends:

"A close examination of the ballot will indicate that there is a heavier demarcation in the 'yes box' which does not appear as a full 'x', but may have been the start of an 'x'. That heavier demarcation has been covered by a scribbling over in that box."

The Employer is correct in its belief that the Commission's standard for determining whether a ballot is valid and should be counted is whether the voter's intention is clearly indicated. <sup>2/</sup> It does not matter that the voter uses a mark other than an "x" if the intention is clearly expressed by the manner of marking. We believe that the voter's intent was clearly expressed on the ballot involved, especially in the absence of any other markings on the ballot. We do not believe it is appropriate to speculate as to what marking, if any, might be underneath the shading in the "YES" box. In fact, if the Commission were to engage in such an undertaking it could lead to other possible speculations.

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a/ City of Milwaukee (6253-B) 4/63, aff'd sub nom Milwaukee County Dist. Council 48, AFSCME v. WERB et al. 23 Wis. 2d 303 (1964).

For the above and foregoing reasons we have concluded that the ballot is valid, and we have certified the results of the election.

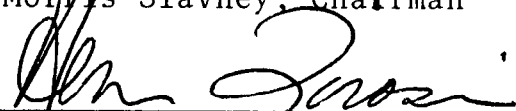
Dated at Madison, Wisconsin, this 5th day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

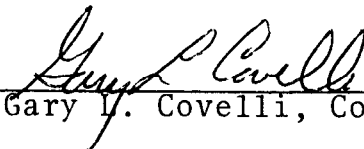
By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary V. Covelli, Commissioner