

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

RICHARD STEELE AND STEPHEN ESTERLE :

For Determination of Bargaining Repre- :
sentatives for Certain Employees of :

CONSUMER'S MARKET INC. :

Case V

No. 14640 E-2699

Decision No. 10407

Appearances:

Hale, Skemp, Hanson, Schnurrer & Skemp, Attorneys at Law, by
Mr. Joseph D. Becker, appearing on behalf of the Petitioners.
Mr. Robert L. Riel, Manager, Consumer's Market Inc., appearing
on behalf of the Employer.
Mr. Clifford Roys, Financial Secretary-Treasurer, Bakery and
Confectionery Workers Local 390, AFL-CIO, appearing on
behalf of the Intervenor.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Richard Steele and Stephen Esterle requesting that an election be conducted among certain employees of Consumer's Market Inc., LaCrosse, Wisconsin, for the purpose of determining what, if any, representation such employees desire for the purpose of collective bargaining pursuant to Section 111.05 of the Wisconsin Employment Peace Act; and a hearing on such petition having been conducted at LaCrosse, Wisconsin, on June 4, 1971, Marvin L. Schurke, Hearing Officer, being present; and during the course of said hearing Bakery and Confectionery Workers Local Union 390, AFL-CIO having been permitted to intervene in the instant proceedings on the claim that it represents certain employees covered by the instant petition; and the Commission having considered the evidence and arguments of Counsel and being satisfied that a question concerning representation has arisen;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Direction among all bakery department employees excluding office clerical, supervisors and grocery clerks who were employed by the Employer on June 4, 1971, except such employees as may prior to the election quit their employment or be dis-

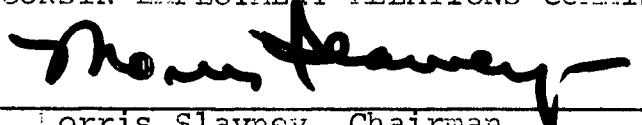
No. 10407

charged for cause, for the purpose of determining whether or not a majority of such employees desire to be represented for the purposes of collective bargaining by Bakery and Confectionery Workers Local 390, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of July, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of hearing the parties stipulated to the unit appropriate for collective bargaining and to the list of employees eligible to vote in an election directed by the Commission. The Union contends however that its collective bargaining agreement with the Employer is a contract bar to the conduct of a representation election. The collective bargaining agreement between American Bakery and Confectionery Workers Union Local 390, AFL-CIO (now known as Bakery and Confectionery Workers Union Local 390, AFL-CIO), dated May 1, 1969 and Consumer's Market Inc. contains the following provision under Article XIV - Term of Contract.

"ARTICLE XIV - Term of Contract

Two (2) copies of this Agreement shall be signed by both parties hereto, one (1) to be retained by the employer and the other one (1) by the Union, and all articles, provisions and wage scales as hereto attached, shall remain in full force and effect from the date of signing until May 1, 1971, and thereafter until a new Agreement has been consummated and signed; or this Agreement, after the above-mentioned expiration date has, upon notice, been cancelled or terminated by the Employer or by the Union with the sanction of the AMERICAN BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION.

Either party to this Agreement can give written notice by registered mail, of desire to negotiate, to the other party, sixty (60) days immediately prior to the termination date of this Agreement or any successive anniversary date thereof."

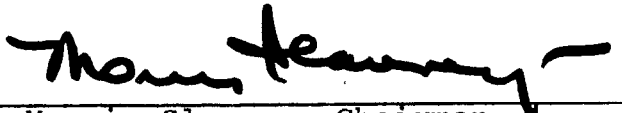
On April 13, 1971, the Union reopened its contract with the Employer and sent a notice to the Commission stating that the contract had been reopened for negotiations. The Union admits that it reopened the contract, but now asserts that its reopening of the contract does not open the contract for purposes of the conduct of a representation proceeding in that the contract is by its terms, perpetual. In Wholesale Meats, Inc. (4138) 1/56 the Commission held that the filing of timely notice to reopen a collective bargaining agreement prevents the agreement from constituting a bar to a present determination of bargaining


representatives. The contract in this case has been reopened and therefore cannot constitute a bar to the petitioned-for election. Even if the Union's claim that the contract is perpetual were to be given weight, the contract would then be indefinite in nature and contracts indefinite as to their duration have also been held not to constitute a contract bar. This principle has also been applied to a contract indefinitely continued during negotiations, because during such period it is an agreement for an indefinite period. Capital Garage (2175) 9/49.

Dated at Madison, Wisconsin, this 9th day of July, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner