

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
LOCAL 222, UNITED NURSING HOME & :  
HOSPITAL EMPLOYEES FEDERATION :  
For Determination of Bargaining : Case III  
Representatives for Certain Employees of : No. 15140 E-2724  
THE DORCHESTER : Decision No. 10795  
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Appearances:

Mr. Roger Jacobson, Business Representative, appearing on  
behalf of the Petitioner.  
Welsh, Trowbridge, Bills, Planert & Gould, Attorneys at Law,  
by Mr. Lloyd Planert, appearing on behalf of the Employer.  
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Albert  
Goldberg, appearing on behalf of the Intervenor.

DIRECTION OF ELECTION

Local 222, United Nursing Home & Hospital Employees Federation, having filed a petition with the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Wisconsin Employment Peace Act, among certain employees of The Dorchester, Sturgeon Bay, Wisconsin; and a hearing on said petition having been conducted at the Door County Courthouse, Sturgeon Bay, Wisconsin, on January 11, 1972, before George R. Fleischli, Hearing Officer; and Local 150, Service Employees' International Union, AFL-CIO, having been permitted to intervene in said matter on the claim that it currently represents the employees sought to be represented by the Petitioner; and the Commission, having considered the petition, evidence and arguments of Counsel, being satisfied that questions have arisen concerning representation for certain employees of The Dorchester;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this direction among all regular full time and regular part time nurses aides, orderlies, dietary aides, cooks, laundry personnel and housekeeping personnel in the employ of The Dorchester, Sturgeon Bay, Wisconsin, excluding supervisors and all other employees who were employed by the Employer on February 15, 1972,

No. 10795

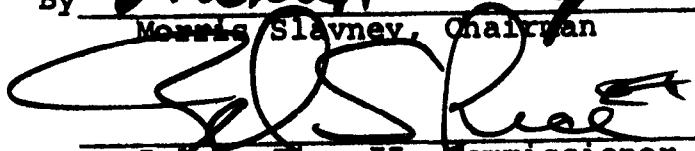
except such employes as may prior to the election quit their employment or be discharged for cause for the purpose of determining whether a majority of such employes desire to be represented for purposes of collective bargaining by Local 222, United Nursing Home & Hospital Employees Federation, or Local 150, Service Employees' International Union, or neither or said organizations.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rise II, Commissioner

  
Jos. B. Kerkman, Commissioner

jurisdiction to conduct an election among the employees of the Employer on the claim that the Employer is engaged in interstate commerce and therefore is subject to the jurisdiction of the National Labor Relations Board.

Subsequent to the hearing and prior to any further action by the Commission, the Petitioner advised the Commission that it had filed a petition for an election among the employees involved with the 30th Region of the National Labor Relations Board and intended to withdraw its petition initiating the instant proceeding should the National Labor Relations Board determine that it had jurisdiction to conduct an election. On February 4, 1972, the Regional Director of the 30th Region of the National Labor Relations Board dismissed that petition for lack of jurisdiction. 1/

On February 10, 1972, Local 150 forwarded to the Commission additional documents containing signatures indicating a desire upon the part of additional employees to withdraw authorizations previously signed on behalf of the Petitioner. Local 150 contends, that on the basis of the latter documents, and the documents presented by it at the time of the hearing, that the petition be dismissed. In addition Local 150 withdrew the three objections raised by it at the hearing, indicating that it was doing so without waiving its right, in future proceedings, to object to the Petitioner's standing as a labor organization.

The Commission is satisfied that Local 150's claim that the petition ought to be dismissed for lack of an adequate showing of interest is without merit. The requirement that a petitioning labor organization provide the Commission with at least a thirty per cent showing of interest to warrant further processing of a petition for an election, wherein the employees sought to be represented are currently represented by a certified or voluntarily recognized labor organization, is intended to prevent the disruptive effect of frivolous and insubstantial claims of representative status and that purpose has been served. The showing of interest procedure is not intended to be a substitute for a secret ballot expression of employee sentiment regarding their desires as to representation. The evidence is clear that a question concerning representation has arisen and the statutory method for resolving that question is for the Commission to direct and conduct an election.

The question of the Petitioner's right to seek to represent employees which was raised by Local 150 at the hearing represents an issue involving a jurisdictional fact which the Commission may not ignore. The evidence is clear that the Petitioner has been asked to represent employees in the bargaining unit involved herein and that the Petitioner seeks to represent said employees. 2/ The fact that it has not yet been certified or voluntarily recognized as the exclusive bargaining representative in any bargaining unit is not controlling in making the determination of whether or not it is

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1/ Case No. 30-RC-1642  
2/ The formality of the organization or the extent of its financial

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At the time of the hearing on January 11, 1972 Local 150 presented the Hearing Officer with documents signed by a number of the employees in the bargaining unit, indicating that such individuals signing the documents were withdrawing authorization statements which they had previously signed indicating their desire to be represented by the Petitioner. In addition, Local 150 raised three objections to the present conduct of an election, contending that (1) the Petitioner is not a labor organization qualified to represent employees within the meaning of the Wisconsin Employment Peace Act, (2) the petition was not timely filed and (3) the Commission lacks

a "representative" within the meaning of Section 111.02(4) of the Wisconsin Employment Peace Act, which states that the term "representative" includes any person chosen by "an employee" to represent him. If the Commission were to adopt Local 150's view that an organization which, or an individual who, seeks to represent employees may not assert such claim until such time as it, or he actually becomes the certified or voluntarily recognized representative of employees in an existing bargaining unit, employees would be effectively deprived of their right to form a labor organization of their own choosing, or to designate a representative, within the meaning of Section 111.04 of the Wisconsin Statutes.

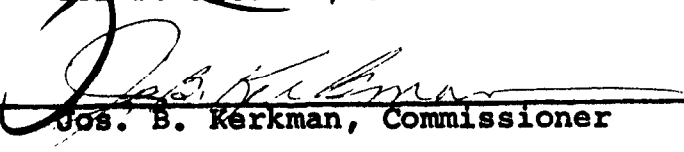
Dated at Madison, Wisconsin, this 15th day of February, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slattery, Chairman

  
Zel S. Rice II, Commissioner

  
Gus B. Kerkman, Commissioner

