

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

HOTEL AND RESTAURANT AND BAR EMPLOYEES :
LOCAL 84, AFL-CIO :

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

HEYTENS ENTERPRISES, INC. and HAMMOND :
BAR AND LOUNGE, INC., Joint Employers, :
d/b/a HAMMOND BAR AND STEAK HOUSE :
Superior, Wisconsin :

Case I
No. 15406 E-2736
Decision No. 10901

Appearances:

Mr. George L. Hunter, Business Representative, and Mr. Robert
E. Visina, President, for the Petitioner.
Mr. Roger Cheever, Attorney at Law, for the Employer.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Hotel and Restaurant and Bar Employees Local 84, AFL-CIO, Duluth, Minnesota, requesting that an election be conducted among certain employes of Hammond Bar and Steak House, Superior, Wisconsin, for the purposes of determining what, if any, representation such employes desire for the purpose of collective bargaining; and a hearing on such petition having been conducted at Superior, Wisconsin, on March 16, 1972, by Robert M. McCormick, Hearing Officer; and the Commission having considered the evidence and arguments of counsel, and being satisfied that a question has arisen concerning representation for certain employes of Heytens Enterprises, Inc., and Hammond Bar and Lounge, Inc., as joint Employers, d/b/a Hammond Bar and Steak House;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and all regular part-time employes of Heytens Enterprises, Inc., and Hammond Bar and Lounge, Inc., joint Employers, d/b/a Hammond Bar and Steak House, Superior, Wisconsin, excluding office employes and supervisors within the meaning of the Wisconsin Employment Peace Act, who were employed by said joint Employers on March 16, 1972, except such employes as may prior to the election

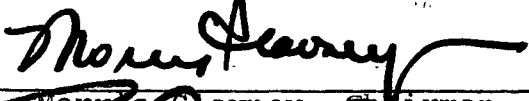
No. 10901

quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented for the purposes of collective bargaining by Hotel and Restaurant and Bar Employees Local 84, AFL-CIO. 1/

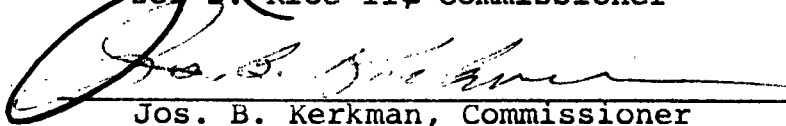
Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

1/ See attached Memorandum accompanying Direction of Election.

HEYTENS ENTERPRISES, INC. and HAMMOND BAR AND LOUNGE,
INC., Joint Employer, d/b/a HAMMOND BAR AND STEAK
I, Decision No. 10901

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Petition

Hotel and Restaurant and Bar Employees Local 84, AFL-CIO filed a petition requesting the Commission to conduct a representation election among certain employees of Hammond Bar and Steak House, Superior, Wisconsin, in a bargaining unit, claimed appropriate, consisting of "all employees excluding office employees and supervisory employees within the meaning of the Act."

The Employer

At outset of hearing, Counsel for the Employer contended that, if an election were to be conducted, that separate elections should be conducted among employees in each of two units of comparable description as set forth above; in one unit of employees employed by Heytens Enterprises, Inc., a corporation which was alleged to have sole control over operations and employees in the upstairs Steak House portion of the building, housing the Hammond; and in a second unit of employees employed by Hammond Bar and Lounge, Inc., a second corporation which exercises sole control over liquor sales, and over employees selling same, anywhere on the premises of the Hammond building, which operation is largely concentrated in the downstairs area of the Hammond.

The record discloses that for a period of time prior to February 29, 1972, Heytens Enterprises, Inc., a corporation whose major shareholder, Robert E. Heytens, now deceased, owned and operated the Hammond Bar and Steak House located in Superior, Wisconsin, which was managed by Robert E. Heytens. Said corporation held the one liquor license for the premises. After the death of Robert E. Heytens, the personal representative for the estate of Robert E. Heytens held the shares of the Heytens Enterprises, Inc. for the eventual distribution to the heirs, Mrs. Heytens, his widow, and two married daughters, Roberta Maker and Terry Warzyn. Mrs. Heytens, thereafter managed the Steak House. On February 29, 1972, just prior to the filing of the petition herein, ^{2/} a second corporation was formed, namely, Hammond Bar and Lounge, Inc. who officers and major shareholders were Richard Heytens, President and Charles Heytens, Vice President, which corporation controls and operates the downstairs Bar and Lounge, said officers being managers. The Steak House and the Hammond Bar & Lounge, Inc. occupy the same building. The former is located on the second floor while the latter is on the ground floor. The Hammond Bar & Lounge, Inc. handles all liquors sold on the premises, including liquors sold to patrons of the Steak House. Provision for a marginal food operation, breakfast to 3:00 p.m. daily, is also handled by the Hammond Bar and Lounge, Inc. and which is served in the downstairs area for the convenience of bar patrons. Such food sales do not compete with the upstairs dinner operation. As of the date of hearing, Heytens Enterprises, Inc. and its personal representative, in behalf of the heirs, holds the one liquor license from the City of Superior for the entire premises. The record further discloses that

^{2/} The petition was filed on March 3, 1972.

application for transfer of same to Hammond Bar and Lounge, Inc. is pending before the City Council, and that Mrs. Genevive Heytens was also named as Vice President, of the Hammond Bar and Lounge, Inc., to provide the chance for orderly transfer of the license in the event the arrangement between Hammond Bar and Lounge, Inc. and Heytens Enterprises, Inc. was terminated.

The evidence discloses that the Hammond Bar and Steak House is operated by both corporations as an integrated operation with arrangements for joint advertising, common parking facilities, physical access between the Steak House and the downstairs Lounge and Bar by connecting stairways; interchange of both bartenders and cocktail waitresses downstairs with bartenders and waitresses upstairs, with some nine employees, in addition to Warzyn and Maker, working regular part time hours both in the Steak House and in the bar-lounge. The record also discloses that the establishment is held out to the public as the "Hammond", or as "Hammond Bar and Steak House", with nothing to indicate from advertising, or identification on the premises, that separate entities operate the Lounge and the Steak House. Meal and drink charges to customers in the Steak House are comingled, but the bartender upstairs records the food, liquor and sales taxes separately, with liquor receipts incurring as income to the Hammond Bar and Lounge, Inc. The employees' hours spent in the upstairs food operation are paid for by Heytens Enterprises, Inc. and the employees' hours of work downstairs are attributed to Hammond Bar and Lounge, Inc., but it would appear that the Steak House bartenders receive common direction and control from the managers of both entities.

In the course of hearing, the Employer conceded that the presence of common advertising, assignments and interchange of employees, physical location of the food and liquor operations with connecting stairways, and the common parking facilities all represented characteristics of one enterprise, namely, the Hammond Bar and Steak House, but that a peculiar eligibility problem necessitates two separate units. Terry Warzyn and Roberta Maker are nieces of the managers and corporate owners of the downstairs operation, Hammond Bar and Lounge, Inc., as well as daughters of the corporate owner and manager of the upstairs operation, Mrs. Genevive Heytens, principal heir to the stock in Heytens Enterprises, Inc., which fact prompted the Employer to insist that both women be permitted to vote as employees who work regular hours downstairs for Hammond Bar and Lounge, Inc., as cocktail waitresses and replacement bartenders.

The Union contended that the Hammond Bar and Steak House was operated jointly as one entity by the two corporations, and that therefore Warzyn and Maker should be excluded from the participating eligibles on the basis that they are daughters of the manager, who is a major shareholder of Heytens Enterprises, Inc., namely, Mrs. Heytens, since by definition, an "employee" under Section 111.02(3) of the Wisconsin Employment Peace Act cannot include "an individual employed by his parent or spouse."

Though the Employer here may concede that both corporations operate the Hammond Bar and Steak House as one entity, save for the eligibility question involving the daughters, or nieces, of the respective corporate managers of each operation, the Commission must determine whether or not the two corporations are joint employers conducting one operation, and if that proves to be the case, direct an election in one bargaining unit, which would of necessity cause the Commission to exclude those individuals who are employed by their parent-corporate-manager.

Discussion

The Commission is satisfied that the Steak House and the Hammond Bar and Lounge, Inc. are operated as one integrated entity, and for the purposes of the Act are a single employer. Therefore the Commission finds the bargaining unit to consist of all regular full time and all regular part time employees employed by Heytens Enterprises, Inc. and Hammond Bar and Lounge, Inc., as joint Employers doing business as Hammond Bar and Steak House, excluding office employees and supervisors. 3/

The eligibility of the daughters of Mrs. Heytens, corporate owner and manager of one of the joint employers, must be resolved on the basis that they are not eligible to vote as they are not considered "employees" within the meaning of 111.02(3) of the Wisconsin Employment Peace Act, because they are "individuals employed by his (their) parent." 4/

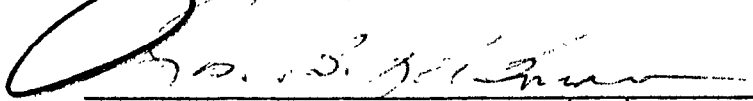
Dated at Madison, Wisconsin, this 29th day of March, 1972.

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3/ Doyle Lithographing & Printing Co. (8126-F), 12/68.

4/ Milwaukee Star News, Inc. (8696-B), 12/69.