

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WILLIAMS CAFETERIA, INC.

Case I
No. 14997 E-2720
Decision No. 11010

Peck, Brigden, Petajan, Lindner, Honzik & Peck, Attorneys at Law, by Mr. Albert H. Petajan and Mr. Dennis A. Lindner; and Mr. William E. Williams, of Williams Cafeteria, Inc., appearing on behalf of the Employer.

Williams Cafeteria, Inc., having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among certain of its employees to determine whether said employees desire to continue to be represented by Hotel, Motel, Restaurant, Cafeteria Employees and Bartenders' Union, Local 122, AFL-CIO; and hearing on said petition having been conducted by John T. Coughlin, Hearing Officer, on November 11 and 24, 1971; and the Commission, having reviewed the evidence, arguments and briefs of counsel and being satisfied that a question concerning representation has arisen concerning certain employees of the Employer;

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 directive in the collective bargaining unit consisting of all regular full time and regular part time employees of Williams Cafeteria, Inc., except supervisors, who were employed by the Employer on May 16, 1972, except such employees as may prior to the election quit their employment or be discharged

for cause, for the purpose of determining whether a majority of such employees desire to continue to be represented by Hotel, Motel, Restaurant, Cafeteria Employees and Bartenders' Union, Local 122, AFL-CIO, for the purpose of collective bargaining on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 16th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

The instant proceeding was initiated by a petition filed on October 13, 1971, by Williams Cafeteria, Inc., hereinafter referred to as the Employer, requesting the Commission to conduct an election, pursuant to Section 111.05 of the Wisconsin Statutes, to determine whether certain of its employees desire to continue to be represented by Hotel, Motel, Restaurant, Cafeteria Employees and Bartenders' Union, Local 122, AFL-CIO, hereinafter referred to as the Union. Hearing was held on the matter on November 11 and November 24, 1971. Both the Employer and the Union filed post-hearing briefs, which briefs were received on March 20 and March 28, 1972. In its petition the Employer claimed that it has a good faith doubt as to the Union's majority status.

BACKGROUND

The Employer has voluntarily recognized the Union since 1938. Up until December 1, 1971, the Union and the Wisconsin Restaurant Association had a collective bargaining agreement and Williams Cafeteria was one of the members of the aforesaid Association. On September 29, 1971, the Association notified the Union that as of the expiration of the then current contract it would not be representing Williams Cafeteria in collective bargaining matters. At the time of the hearing in the instant case there was no contract in existence between the Employer and the Union. The aforementioned expired contract which ran from December 1, 1969 to November 30, 1971, contained the following relevant contract provisions:

"ARTICLE I

1. The union shall be the exclusive bargaining agent for all of the employees of the Employer.

2. All present employees who are members of the Union on the effective date of this Article shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired hereafter shall become and remain members in good standing of the Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this subsection, whichever is the later.

. . .

ARTICLE V

. . .

3. There shall be no more than two (2) bona fide students, employed in any one establishment. With the

approval of the Union, a greater number may be employed as circumstances demand, it being understood that such student help shall not replace or exclude full-time employees.

. . . ."

DISCUSSION OF UNIT

The Employer testified that he has nine employees who average 20 hours of work per week. One additional employee works an average of six hours per week. It is uncontested that the Employer has checked off the dues for the following four Union members: Ursula McGann, Audrey Shrenn, Mary Tryba and Agripine Machtel.

The Employer contends that in accordance with the language contained in Article I, Section 1, the Union represents all of the employees of the Employer and therefore the proper unit would be comprised of ten employees. The Union argues that historically students were not asked to become Union members and that at least three of the six non-Union members are students. The Union further stresses that the Employer did not request that the six non-Union employees join the Union and therefore the proper unit is solely comprised of the four employees who are Union members.

The Commission determines that the appropriate unit in the instant case consists of all ten of the employees of the Employer for the following reasons: (1) Article I, Section 1, states that, "The Union shall be the exclusive bargaining agent for all of the employees of the Employer." (emphasis supplied) (2) All the employees work on a regular basis; nine of the ten employees average 20 hours of work a week, while the newly hired relief employee regularly averages 6 hours a week. (3) Union Representative Barwick testified that if a student, who is not a member of the Union, desired to file a grievance, the Union would represent said student and that the Union represented all the employees, including students, but that students historically were not required to join the Union.

DISCUSSION OF QUESTION CONCERNING REPRESENTATION

During the course of the hearing the Union presented as evidence a statement signed by Union members Ursula McGann, Audrey Shrenn, Mary Tryba and Agripine Machtel, which stated that, "we, the employees of Williams Cafeteria, want an all-union shop and do not need an election to prove it." The record reveals that none of the Employer's ten employees ever stated that they did not desire to be represented by the Union. In fact, Mr. Williams testified that he only had the impression that the four Union members no longer wished to be represented by the Union and that this conclusion was at least partly based on conjecture. Furthermore, he based his belief on the Union's loss of majority status on a meeting held in October of 1971 with the four Union members during which he concluded that, "I got a good response from their eyes and conduct" when he suggested that he might file an election petition in order to decertify the Union.

While it is patently clear from the foregoing that the Employer has failed to establish by any sort of current objective consideration

that the employes have changed their attitude with regard to representation, the Union's introduction of the above quoted document signed by only four of the Employer's ten employes for the purpose of setting forth their "intent or interest relative to continued membership in the Union" does raise a question concerning the Union's majority representation status, and therefore we conclude that an election is the appropriate means to resolve said question.

Dated at Madison, Wisconsin, this 16th day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slawney
Morris Slawney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner