

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of

HOTEL & RESTAURANT EMPLOYEES AND  
BARTENDERS INTERNATIONAL UNION, LOCAL  
215, AFL-CIO

and

BILLY MOY'S ONE-WORLD INN  
Wausau, Wisconsin  
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Case I  
No. 15465  
E-2740 R-5283  
Decision No. 11262

DIRECTION OF ELECTION AND REFERENDUM

Hotel and Restaurant Employees and Bartenders International Union, Local 215, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election and referendum among certain employees of Billy Moy's One-World Inn, pursuant to Sections 111.05 and 111.06 of the Wisconsin Statutes; and hearing on such petition having been conducted at Wausau, Wisconsin, on April 11, 1972, and the Commission having considered the evidence and being satisfied that questions have arisen concerning representation and concerning an "All-Union Agreement" for certain employees of the Employer named above;

NOW, THEREFORE, it is

DIRECTED

That an election and referendum by secret ballot 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 full-time and regular part-time employees of Billy Moy's One-World Inn, including cooks, salad employees, dishwashers, porters, bus boys, waitresses, and bartenders, but excluding managers, assistant managers, office clerical, casual employees, guards and supervisors who were employed on August 31, 1972, except such employees as may prior to the election quit their employment or be discharged for cause for the purposes of determining: (1) whether a majority of such employees desire to be represented for purposes of collective bargaining by the above named Union; and (2) whether the required number of such employees favor an "All-Union Agreement" between the above-named Union and Employer.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 31st  
day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

No. 11262

MEMORANDUM ACCOMPANYING DIRECTION OF  
ELECTION AND REFERENDUM

During the course of the hearing a question arose concerning the eligibility of three employees to vote in the election and referendum. 1/ Judith Koenig, a waitress, was terminated as an employee on March 26, 1972; James Laiham, a part-time cook, left his employment shortly before the hearing; and Tsui Han Moy Ng, a part-time cook is the mother-in-law of the Employer.

Terminated Employee

In a decision issued August 10, 1972, by Examiner Marvin Schurke and affirmed by the Commission today, the Commission found that the termination of Judith Koenig was not the result of discrimination within the meaning of Section 111.06(1)(c) of the Wisconsin Employment Peace Act. 2/ Individuals who have ceased work as a result of a non-discriminatory discharge are not employees within the meaning of Section 111.02(3) and are not eligible to vote. 3/

Part-time Cook

James Laiham voluntarily left his employment as a part-time cook sometime after April 2, 1972 and before April 11, 1972. If Laiham returns in October and seeks re-employment, as he did in October 1971, the Employer indicates that it will rehire him. Laiham is semi-retired and lives in Milwaukee when he is not working for the Employer at Wausau.

The Employer contends that Laiham has a sufficient interest in the outcome of the election and referendum to be permitted to vote; the Union contends that Laiham voluntarily terminated his status as an employee and therefore lacks sufficient interest to be allowed to vote.

Laiham is not a casual employee in that he has been employed as a regular part-time employee during the two periods when he has worked for the Employer. The problem arises because he has voluntarily left his employment with only the prospect that he may return in October. Where there is evidence that the nature of the Employer's business is seasonal the Commission will allow seasonal employees to vote. 4/ However, where an employee voluntarily leaves his employment which is not seasonal, he lacks sufficient, present interest in the employment relationship to be allowed to vote even though he may return at a later date if he so chooses. Laiham is not eligible to vote.

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- 1/ The parties stipulated that Thomas Cloutier, the full-time bartender, was not a supervisor and therefore eligible to vote.
- 2/ Billy Moy's One-World Inn (10947-A & B) 8/72. Action on the petition in this matter was withheld pending the outcome of the Union's claim that the termination was discriminatory.
- 3/ Checker Cab Company (7) 7/39.
- 4/ Libby, McNeill & Libby (8163) 8/67.

Mother-In-Law

The Employer is a sole proprietorship, owned and operated by Billy Moy. Moy's wife has a proprietary interest in the business to the extent that she is obligated under the terms of the mortgage on the premises where the restaurant is located. Her mother, Tsui Han Moy Ng, works as a part-time cook. The Employer contends that Tsui Han Moy Ng is eligible to vote along with the other part-time cooks. The Union contends otherwise.

Section 111.02(2) of the Wisconsin Employment Peace Act specifically excludes individuals who are employed by their parent or spouse from the definition of employee. In a number of cases the Commission has excluded other individuals from the bargaining unit, and consequently from eligibility to vote in representation elections, because of their special status even though they are not specifically excluded from the definition of the term employee. Confidential employees are the most obvious example of this policy. In addition, the Commission has excluded other individuals who, because of the closeness of their family relationship, have interest naturally allied with management, though they do not, strictly speaking, fall within the letter of the statutory exclusion. For example, a stepmother who was employed by her stepson has been excluded. 5/ Although the statute speaks in terms of a child being employed by his parent, which is the usual situation, the Commission indicated a policy in that case to exclude parents who are employed by their children since the same family relationship is involved.

In this case, Mrs. Moy has sufficient proprietary interest in the operation of the Employer's business to warrant exclusion of her parent. Her mother's inclusion in the bargaining unit would result in a conflict of interest situation and has the potential for interference with or domination of the affairs of the Union.

Dated at Madison, Wisconsin, this 31st day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner