STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BARTENDERS, HOTEL, RESTAURANT, MOTEL AND CAFETERIA EMPLOYEES LOCAL 453, Complainant, vs. KRAUSES TOWN & COUNTRY RESTAURANT, Respondent.	Case II No. 16524 Ce-1474 Decision No. 11626-A

Appearances:
Mr. Alan J. Graskamp, International Representative, for the Complainant.
Grimm & Elliott, Attorneys at Law, by Mr. Robert J. Elliott, for the Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint of unfair labor practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter and the Commission having authorized Howard S. Bellman, a member of the Commission's staff to act as an Examiner and to make and issue Findings of Fact, Conclusions of Law and Orders as provided in Section 111.07(5) of the Wisconsin Employment Peace Act; and a hearing on said complaint having been held at Janesville, Wisconsin, on March 12, 1973, before the Examiner; and the Examiner having considered the evidence and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. That Bartenders, Hotel, Restaurant, Motel and Cafeteria Employees Local 453, hereinafter referred to as the Complainant, is a labor organization having offices at 15 South Franklin Street, Janesville, Wisconsin.

2. That W. W. Schwartzlow and E. A. Krause, a co-partnership, d/b/a Krauses Town & Country Restaurant, hereinafter referred to as the Respondent, is an Employer engaged in operating a restaurant located at 22 South River Street, Janesville, Wisconsin.

3. That Respondent, for many years, has recognized the Complainant as the collective bargaining representative of certain of Respondent's employes; that pursuant to said recognition and representative status the aforesaid parties have entered collective bargaining agreements, including one such agreement which had as its initial term September 1, 1964 to December 31, 1967; that said collective bargaining agreement, by its terms, was automatically renewed each year subsequent to 1967, except that on October 30, 1972, Complainant precluded such a renewal for 1973 by a letter bearing that date and requesting commencement of negotiations for a succeeding collective bargaining agreement.

4. That also on October 30, 1972, Complainant held a meeting of the employes of Respondent whom it represents, at which meeting officials of Complainant informed said employes of its aforesaid request to commence negotiations, and of certain demands which they planned to propose during such negotiations; and that neither the commencement of negotiations nor the particular demands to be proposed were fully concurred in by said employes.

5. That pursuant to the aforesaid letter to Respondent of October 30, 1972 and another letter from Complainant to Respondent dated November 1, 1972, in which the aforesaid particular bargaining demands were specified, Complainant, by its officials Ray Blum and Alan J. Graskamp, met on November 27, 1972 with partner Schwartzlow at the office of Complainant; and that in the course of said meeting Schwartzlow stated that he wished to postpone negotiations because partner Krause was ill and could not participate and because he wished to consult an attorney, and a stipulation was entered by Complainant and Respondent extending the aforesaid 1964-1967 collective bargaining agreement beyond 1972 "on a month to month basis until such time that a new agreement is reached."

6. That on November 28, 1972, Blum approached partner Krause at the Respondent's restaurant and requested that another negotiations meeting be scheduled; that Krause, who was at the time under a physician's care and at the restaurant during a trip from his home to meet certain personal needs, agreed to such a meeting to be held on January 11, 1973.

7. That on approximately January 2 or 3, 1973 employe Marge Belky, a member of the bargaining unit represented by the Complainant, called a meeting of off-duty employes at the aforesaid restaurant during business hours, and invited both the aforesaid partners to attend same, which they did along with approximately twelve employes; and that during the course of said meeting which lasted approximately 10 to 15 minutes, some employes expressed a desire to end the representative status of Complainant and Krause stated he would not comment on said expression, and Krause further stated, in response to direct questions from employes, that he could not offer them a wage rate increase at that time because business conditions did not warrant same.

8. That on the evening of approximately January 2 or 3, 1972, a meeting was held of members of the aforesaid bargaining unit with Complainant's official Blum at which meeting employe Elmer Venable moved, as requested by some of the employes, that Complainant's representative status be ended, and Blum ruled said motion out of order.

9. That on January 11, 1973, as previously scheduled, there was a meeting between officials of Complainant and Respondent at which Krause stated that although he would not discuss the Complainant's proposals at that time, he would consider them further and submit a written counter-proposal; that on the same date, the Union attempted unsuccessfully to initiate mediated negotiations with the Respondent through the mediation service of this Commission.

Relations Commission; and that Venable received no assistance or support in these matters from the Respondent.

11. That also since mid January, 1973, the Respondent has not engaged in any collective bargaining negotiations with Respondent.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That the Respondent, by its conduct regarding the aforesaid efforts of certain of its employes to end the status of the Complainant as their collective bargaining representative, and by its conduct regarding the requests of Complainant that it engage in negotiations for a new collective bargaining agreement, has not committed any unfair labor practices within the meaning of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint of unfair labor practices filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 14th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Complaint was filed in the instant matter on February 16, 1973 and operated, thereupon, to block further processing by the Commission of a petition by an employe of the Respondent for a representation election, filed on February 7, 1973, for the purpose of determining whether certain employes of Respondent continue to desire that the Complainant represent them for the purposes of collective bargaining. Hearing was held on March 12, 1973, and the transcript thereof was issued on April 16, 1973. Pursuant to arrangements entered at the hearing, the parties were given until approximately May 2, 1973 for filing briefs.

Essentially, the complaint alleges that the Respondent committed unfair labor practices within the meaning of the Wisconsin Employment Peace Act by (1) encouraging and assisting its employes "in an attempt to abandon the Union", and (2) by refusing to bargain with Complainant for a new collective bargaining agreement.

The parties have engaged in collective bargaining with each other for decades and there is no indication on the record herein of any substantial conflict or animosity predating the present episode. The Respondent has administered an "all-union agreement" and apparently complained only that its competitors were not unionized. A collective bargaining agreement effective from September 1, 1964 to December 31, 1967 was automatically renewed by its terms every year thereafter on the basis of the Union's not requesting otherwise, until the October 30, 1972 reopener referred in the Findings of Fact.

The Examiner concludes that there was no refusal to bargain by the Respondent prior to January, 1973 because (1) Respondent entered the stipulation to extend the collective bargaining agreement, which has apparently never been rescinded, and (2) Schwartzlow's requests to wait for his partner to recover, and for an opportunity to consult an attorney, were not unreasonable.

It further appears that during January, 1973, by operation of the meeting of employes at the restaurant and/or the NLRB proceeding, the Respondent was apprised that the Union's representative status was in doubt; and that such knowledge was not based upon any improper conduct by the Respondent. Nonetheless, the Respondent not only did not move to vitiate the month to month extension of the collective bargaining agreement, but also met with the Union representatives on January 11, and indicated a willingness to continue in collective bargaining. It may be, as the Complainant contends, that said indications of willingness were not genuine, but the Examiner is concerned that in view of the doubtful nature of the Complainant's representative status, it may have been an improper time for the parties to engage in collective bargaining. 1/

1/ There is also reference in the record to an approach by Krause to the Union, probably on February 28, 1973, and therefore subsequent to the filing of the instant complaint, in which Krause asked for suggestions to "alleviate the situation". Blum replied, somewhat questionably, that the Employer should "give us a proposal and sign a contract after we agreed upon what he proposed." Given the doubt cast upon Complainant's status at that time, both parties might be held to have assumed legally unsustainable postures in such exchange.

It is established labor law that bargaining with a representative of less than a majority of the employes in the bargaining unit is an unfair labor practice, and that it is an appropriate response to a demand for bargaining at a time when there is a good faith doubt as to majority status, to decline bargaining until such doubt is resolved in favor of the assertion of the labor organization. 2/

Every indication on the record is to the effect that Venable filed the "decertification" petitions upon consultation with his own legal counsel and without any assistance or encouragement from the Respondent. It may be inferred that Schwartzlow learned that Venable was obtaining employe signatures on "showing of interest" documents to support his petitions, in that the restaurant is a relatively small operation and Schwartzlow works side by side with the employes, and Venable obtained some signatures during working hours. However, his knowledge, which can only be inferred, does not constitute participation in or support of Venable's activities.

Dated at Madison, Wisconsin, this 14th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner

2/ See H. C. Prange Co., Dec. No. 4823 (1958); and Shea Chemical Corp., NLRB, 42 LRRM 1486 (1958).