

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:	
MRS. SYLVIA FEHLHABER	:	Case II
Involving Employes of	:	No. 16670 E-2790
MOTOR HOTEL WAUSAU, LTD.	:	Decision No. 11892
Wausau, Wisconsin	:	

Appearances:

- Mrs. Sylvia Fehlhaber, the Petitioner, on behalf of herself and other individual employes.
- Mr. Roy F. Kocik, Manager, Motor Hotel Wausau, Ltd., for the Employer.
- Mr. Alan Grasskamp, International Representative, Hotel, Restaurant Employees and Bartenders International Union, AFL-CIO, for the Intervenor.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Mrs. Sylvia Fehlhaber, an employe of Motor Hotel Wausau, Ltd., requesting that an election be conducted among certain employes of Motor Hotel Wausau, Ltd. for the purpose of determining whether said employes desire to continue representation by Hotel, Restaurant Employees and Bartenders International Union, AFL-CIO, Local 215, for purposes of collective bargaining; and a hearing on such petition having been conducted on May 1, 1973, at the Marathon County Courthouse, Wausau, Wisconsin, by a Hearing Officer for the Commission, Robert M. McCormick; and at out-set of hearing Hotel, Restaurant Employees and Bartenders International Union, AFL-CIO, Local 215, having been permitted to intervene on the basis of its claim to be the recognized exclusive bargaining representative of said employes under the terms of an existing collective bargaining agreement between it and said Employer; and the Commission having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of Motor Hotel Wausau, Ltd.;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall 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 employes employed by Motor Hotel Wausau, Ltd. who are employed for 24 hours or more per week, 1/ excluding the manager, assistant manager, private secretaries, auditors and supervisors,

1/ The parties agreed at hearing that the 24 hours per week definition of regular part-time employes would be calculated from the average hours worked by certain part-time employes over the 60 day period prior to the hearing. The indeterminate status of the following part-time employes would be resolved by said calculation for: George Neuberger, Eleanor Ewenko, Joyce Johnson, and others if employed prior to May 1, 1973.

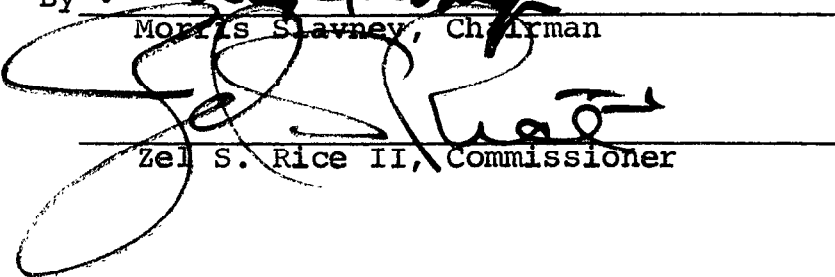
and employes employed less than 24 hours per week, who were in the employ of the Employer on May 1, 1973, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented for the purposes of collective bargaining by Hotel, Restaurant Employees and Bartenders International Union, AFL-CIO, Local 215.

Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Intervenor does not assert that the contract constitutes a bar to processing the Petitioner's petition, but does argue that the Commission should not conduct the representation election before the expiration date of the current labor agreement, which expires June 30, 1973. It grounds its contention on the fact that the conduct of a representation election prior to contract expiration could disrupt the Intervenor's administration of the labor agreement and hinder its processing grievances.

In the course of hearing, the Employer and the Intervenor agreed with the Hearing Officer's observation, that the Commission's taking administrative notice of the facts as to whether an all-union-agreement referendum had ever been conducted among employees of the Employer-Hotel or its predecessors, would reveal no such referendum having been conducted. However, there is some testimony of the Petitioner that as early as 1937, either regular monthly dues or permit fees were deducted from employe's pay checks. The Commission concludes that there is insufficient evidence to indicate that a continuous series of collective bargaining agreements prevailed since May 5, 1939 which contained some form of all-union agreement, which condition, if proven, would make operative the "grandfather clause" of Section 111.06(1)(c)1. of the Wisconsin Employment Peace Act, so as to otherwise obviate the need for an all-union agreement referendum. Presumptively, the current agreement contains an invalid union security provision, which fact alone would prevent the agreement from being a bar to an election petition even if Petitioner's petition were untimely.

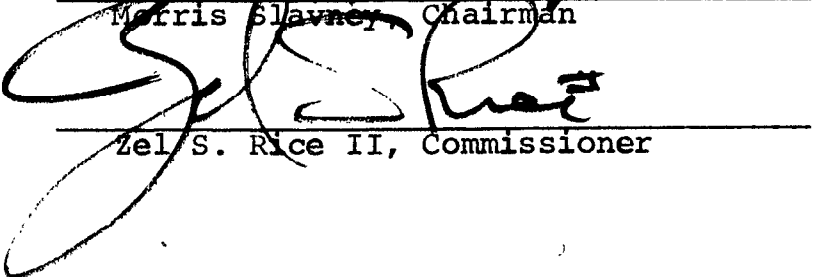
The Commission concludes that Petitioner's petition, filed some 105 days prior to contract expiration, is timely and that the necessary showing of interest has been established administratively. Therefore the Commission sees no reason to delay the representation vote, and if the incumbent Union is not selected as the exclusive representative, the contract may continue to be viable for the remainder of its term, except for the union security provision contained therein.

Dated at Madison, Wisconsin, this 25th day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner