

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of

GENERAL DRIVERS, DAIRY PRODUCTS  
EMPLOYEES & HELPERS UNION, LOCAL NO.  
56 of the I.B.T.C.W. & H. of A.

Case I  
No. 16858 R-5505  
Decision No. 12103

For a Referendum on the Question  
of an All-Union Agreement between

CLAUDE SPIELVOGEL & SONS, INC.  
Sheboygan, Wisconsin, Employer, and

GENERAL DRIVERS, DAIRY PRODUCTS  
EMPLOYEES & HELPERS UNION, LOCAL NO.  
56 of the I.B.T.C.W. & H. of A., Union  
-----

Appearances:

Mr. Richard Patterson, Secretary-Treasurer, for the Petitioner.  
Mr. H. C. Humke, Attorney at Law, for the Employer.

DIRECTION OF REFERENDUM

Petition having been filed with the Wisconsin Employment Relations Commission by the General Drivers, Dairy Products Employees & Helpers Union, Local No. 56 of the I.B.T.C.W. & H. of A. requesting that a referendum be conducted among certain employees of Claude Spielvogel & Sons, Inc., Sheboygan, Wisconsin, for the purpose of determining whether the required number of such employees desire an "All-Union Agreement" between the Employer and the Union pursuant to the provisions of Section 111.06 of the Wisconsin Statutes; and a hearing on such petition having been held on July 10, 1973, by Sherwood Malamud, Hearing Officer; and the Commission having considered the evidence and being satisfied that a question has arisen concerning an "All-Union Agreement" for certain employees of Claude Spielvogel & Sons, Inc.;

NOW, THEREFORE, it is

DIRECTED

That a referendum by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the collective bargaining unit consisting of all truck drivers employed in or about the Employer's operations at Sheboygan, Wisconsin, who were employed by the Employer on July 10, 1973, except such employees as may prior to the referendum quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employees favor an "All-Union Agreement" between the Employer and the Union named above.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 16th  
day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

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

No. 12103

MEMORANDUM ACCOMPANYING  
DIRECTION OF REFERENDUM

The Union and Employer, who is an excavating contractor, are parties to a collective bargaining agreement wherein the bargaining unit is described as follows:

"The Employer recognizes the Union as the exclusive bargaining agent for all employees represented by it and covered by this agreement. Excluded are office clerical, professional and supervisory employees as defined in the Labor Management Relations Act, as amended."

The "scope of agreement" states as follows:

"This agreement covers all employees of the Employer working at or out of Sheboygan, Wisconsin, who are within the jurisdiction of the Union working on jobs hereinafter classified and described on the wage schedule."

The wage provision in the agreement sets forth as follows:

"The minimum wage rate for all employees covered by this Agreement shall be as follows:

	<u>July 1, 1972</u>
Truck Driver, Semi - Tri-axle	\$5.23
Truck Driver, Tandem	\$5.17
Shop Work	\$3.00 per hour for months of December, January, February and March"

The eligibility of employees John Prettie and Norbert Summer are in issue. The Employer contends that they are not included in the collective bargaining agreement and, therefore, should be excluded from the unit. The Union argues otherwise. The evidence disclosed that Prettie spends a majority of his time performing mechanical duties in the shop while Summer spends a majority of his time driving a truck. There is some conflict as to whether Summer is a regular full-time or regular part-time employee. Whether Mr. Summer is a regular full-time employee or regular part-time employee is not determinative in this matter inasmuch as the Commission has held that regular part-time employees are eligible to vote in a referendum. 1/

It should be further noted that other employees of the Employer are represented by the Laborer's Union and a local of the Operating Engineers' Union.

---

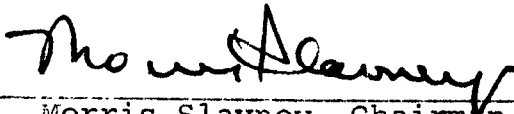
1/ Schlicht Select Sausage, Decision No. 6948, (11/64). The unit was clear, and it was clear that the parties considered the unit to be "truck drivers" as specified in the petition.

It appears to the Commission that if the unit were to include mechanics who spend a majority of their time doing mechanical work, the parties would have established a wage rate for such position in the collective bargaining agreement. No such wage rate was established. It appears, however, that the parties did establish a wage rate for shop work during the winter months of the year which shop work in all probability, has been performed by truck drivers who were not devoting their full duties to truck driving during those months of the year. Therefore, Prettie is not included in the unit and, therefore, ineligible to participate in the referendum.

Dated at Madison, Wisconsin, this 16th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Jos. B. Kerkman, Commissioner