

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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INTERNATIONAL PRINTING AND GRAPHIC	:	
COMMUNICATIONS UNION NO. 298	:	Case I
	:	No. 18195 E-2874
For Certain Employees of	:	Decision No. 13073
	:	
CROSS, OBERLIES AND CHRISTENSEN, INC.	:	
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Appearances:

Mr. James F. Ziolkowski, Organizer, and Mr. Robert J. Robinson, Organizer, appearing on behalf of the Petitioner.  
Torgerson, Hesson & Rammer, Ltd., Attorneys at Law, by Mr. Daniel P. Murphy, appearing on behalf of the Employer.

DIRECTION OF ELECTION

International Printing and Graphic Communications Union No. 298, hereinafter referred to as the Petitioner, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.05, Wisconsin Statutes, among certain employees of Cross, Oberlies and Christensen, Inc., hereinafter referred to as the Employer; and hearing on such petition having been held at Neenah, Wisconsin, on September 6, 1974, Sherwood Malamud, Hearing Officer, being present; and the Commission having considered the evidence and arguments of counsel and being satisfied that a question has arisen concerning representation for certain employees of said employer;

NOW, THEREFORE, it is

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 production and maintenance employees, excluding office clerical employees, guards, casual, professional, supervisory and confidential employees, who were employed by said Employer on October 4, 1974, 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 be represented for the purposes of collective bargaining by the International Printing and Graphic Communications Union No. 298.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
 Morris Slavney, Chairman

Howard S. Bellman  
 Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Employer did not object to the description of the unit as it appeared in the petition. 1/ However, during the course of the hearing, the parties could not agree on the eligibility of four individuals in the "employ" of the Employer, namely, Mae Lemke, James J. Konkai II, Mr. Peotter, and Hilda Rackow. There are a total of seven persons associated with Cross, Oberlies and Christensen, Inc. which number includes the two active officers of the corporation and their secretary.

Richard Lemke is the President and major stockholder of the corporation, and his wife, Mae Lemke, works for the Employer as a packer. The Employer maintains that Mae Lemke was not hired by her husband, but by the secretary-treasurer of the corporation, Mr. Oberlies. However, Richard Lemke is present in the shop on a daily basis where he exercises supervisory and managerial control, along with Mr. Oberlies, over the daily operation of the business. The term "employee" is defined in the Wisconsin Employment Peace Act, 111.02(3) of the Wisconsin Statutes, as follows:

"The term 'employee' shall include any person . . . but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse or any employe who is subject to the federal railway labor act." (Emphasis added)

Therefore, the Commission must conclude that because of the marital relationship existing between Mae and Richard Lemke, Mae Lemke is not an employe within the meaning of the Wisconsin Employment Peace Act. 2/

The Employer claims that James Konkai II is a supervisor. Konkai has been employed by the Employer for approximately ten years and is the most senior employe. Konkai does the art and layout work in the Employer's printing operation. He mixes the inks to be used in the printing process. Konkai does not have the authority to hire, fire or discipline any employe. He does have the authority to assign work to one of the other three employes who work in the shop. Konkai's lack of authority to hire, fire or discipline or effectively recommend same leads the Commission to conclude that he is not a supervisor within the meaning of the Wisconsin Employment Peace Act. Any authority which Konkai has to direct the other employes in the shop stems solely from his length of service with the Employer. Therefore, the Commission concludes that Konkai is not a supervisor, and therefore he is eligible to participate in the election.

Peotter was employed in April of 1974. Normally an employe accrues vacation time after one year of service. On the date of the hearing, September 6, 1974, Peotter was not working at the Employer's shop. The Union claims that Peotter was on vacation or on leave of absence. The Employer maintains that Peotter was no longer an employe because it was unclear if he would return to work after his leave of absence. Peotter's last day of employment prior to commencing his absence, was September 3, 1974. Peotter requested and was granted the leave of absence in the beginning of August, for approximately 10 to 14 days. However, prior to his leaving on September 3, 1974 Peotter was advised that if the volume of business required his replacement, he would be replaced. Mr. Oberlies, the officer who originally granted Peotter his leave of absence,

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1/ The description reads as follows: All full-time and regular part-time production and maintenance employes. Excluded: All office clerical employes, guard, casual employes, professional employes and supervisors.

2/ Coronet Printing Co. (6799) 7/64.

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testified at the hearing that if Peotter returned on September 16, in all probability his job would be waiting for him. He also testified that on Peotter's return he would not be required to complete forms normally completed by a new employe. The Commission is satisfied that as of the date of the hearing, Peotter was employed by the Employer, but he was on a leave of absence with the expectancy that he would return to work. Therefore, he is eligible to participate in the election. 5/

Hilda Rackow is a part-time employe. At the hearing, the Employer questioned Rackow's eligibility to participate in the election because of the irregularity of her employment. Rackow works approximately 24 hours per week as a silk screen operator. Occasionally, she takes a leave of absence. However, at the time she takes her leave of absence, and when she returns from her leave, she is treated by the Employer as a continuing employe. Although Rackow does not necessarily work the same days and hours in each week, she is scheduled as opposed to being on call. She works on the average 24 hours per week, and the Employer accepts orders on the basis of her anticipated availability. Therefore, the Commission concludes that Rackow is employed with sufficient regularity to justify her participation in the election. 4/

Dated at Madison, Wisconsin, this 4th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

3/ Generac Corp. (7211) 7/65.

4/ West Allis Memorial Hospital (10061) 2/70.