STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

JOHN A. KRESKEN

Involving Certain Employes of

FRANK W. VOSS CONSTRUCTION CO.

Case I
No. 18080 E-2866
Decision No. 13178

Appearances:
Mr. John A. Kresken, Petitioner.
Foltz and Torhorst, Attorneys at Law, by Mr. Richard F. Foltz, for Employer.
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, for Intervenor.

ORDER OF DISMISSAL

Petition having been filed with the Wisconsin Employment Relations Commission June 25, 1974 by Mr. John A. Kresken, herein referred to as the Petitioner, to conduct an election among certain employes of Frank W. Voss Construction Co., herein referred to as the Employer, pursuant to Section 111.05 of the Wisconsin Employment Peace Act to determine whether said employes desired to continue to be represented by Local 290, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, with respect to wages, hours and working conditions; and hearing on said petition having been conducted at Racine, Wisconsin, on July 11, 1974 and August 7, 1974 by Hearing Officer, Stanley H. Michelstetter II; and at the outset of the hearing Local 290, United Brotherhood of Carpenters and Joiners of America, having been permitted to intervene in the matter on the basis of its claim that it is the exclusive bargaining representative of the employes involved; and said labor organization having moved that the petition herein be dismissed, contending that the Commission is without jurisdiction in the instant matter; and the Commission, having considered the evidence and arguments adduced at the hearing; and being satisfied that it lacks jurisdiction to determine the question of representation raised in the instant petition;

NOW, THEREFORE, it is

ORDERED

That the petition filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner

FRANK W. VOSS CONSTRUCTION CO., I, Decision No. 13178

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

The evidence presented indicates that the Union has been the representative of the carpenters employed by the Employer and other members of the Lakeland Contractors Association (herein Association) for at least 20 years. During this period the Association's representatives have always negotiated on behalf of all of its Employer members, and its president or his designate has executed all the collective bargaining agreements (except the recently expired agreement) on behalf of the Association. In addition thereto, the Union has also regularly obtained the signature of each Employer to the identical agreement. The July 1, 1970; June, 1971 and June 1, 1972 to May 15, 1974 agreements each provide: "The Association and the Employer hereby recognize the Union on a multi-employer basis as the sole and exclusive bargaining agent for all workmen performing bargaining unit work." The latter agreement was not executed by the Association or its representative, but was executed by each member of the Association. Under the Labor Management Relations Act, as amended, the National Labor Relations Board has held that unequivocal assent and a clear history of the individual Employer's delegation of authority to a single representative establish the consent necessary to find that a multi-employer unit exists despite the fact that the collective bargaining agreements were signed only by individual members. 1/ Where the National Labor Relations Board has found that a multi-employer unit exists, it determines whether the combined activities of the members meet its jurisdictional standards. The undisputed evidence presented herein fully establishes that the Association's combined activities take place across state lines (Illinois and Wisconsin) and that the gross non-retail business of the Association exceeds $50,000 per year. Thus, the Association may be an "Employer" within the meaning of the Labor Management Relations Act, 2/ as amended.

On or about March 12, 1974 the Union gave notice pursuant to Article XXVIII, Sections 1 and 2 of the instant Agreement that it wished to negotiate changes in the Agreement. A copy of that notice was received by Frank W. Voss and the Association. Pursuant thereto bargaining took place prior to the termination date of the Agreement, May 15, 1974 and thereafter until the parties reached impasse on or about June 10, 1974. At that time the Union struck the Employer and all other members of the Association. The Employer made no attempt to withdraw from the Association until July 9, 1974 when it mailed a notice of its intent to withdraw to the Association only. At hearing, July 16, 1974, the Employer expressed its intention to withdraw from the Association to the Union.

In Retail Associates, Inc. 120 NLRB No. 664, 42 LRRM 1119 at p. 1121 (1958) the National Labor Relations Board established its present policy that:

> "We would accordingly refuse to permit the withdrawal of an employer or a union from a duly established multi-employer bargaining unit, except upon adequate written

notice given prior to the date set by the contract for modification, or to the agreed upon date to begin the multi-employer negotiations. Where actual bargaining negotiations based on the existing multi-employer unit have begun, we would not permit, except on mutual consent, an abandonment of the unit upon which each side has committed itself to the other, absent unusual circumstances."

The evidence herein indicates unequivocally that the Employer withdrew in an untimely manner.

Thus, notice after negotiations have begun, even when the parties are at impasse with a strike in progress, is not sufficient to permit the Employer's withdrawal without the Union's consent. 3/ In a well established multi-employer bargaining unit, employes may not raise a question of representation in an individual Employer's bargaining unit to justify or require withdrawal of either party from a multi-employer unit. 4/ Where withdrawal is untimely the multi-employer unit remains the only appropriate unit. 5/ We are therefore satisfied that under the Labor Management Relations Act, as amended, the employes of the instant Employer are included in a multi-employer unit consisting of employes of the Association Employers, and jurisdiction in the matter lies with the National Labor Relations Board.

Dated at Madison, Wisconsin this 27th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner

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Howard S. Bellman, Commissioner

3/ Hi-Way Billboards, Inc. 206 NLRB No. 1, 84 LRRM 1161 (1973); dist. Ice Cream Council, Inc. 145 NLRB No. 71 55 LRRM 1059 (1964).

4/ The three employes approached the Union on May 16, 1974, and other evidence indicated that the Employer was aware of their desire, to withdraw from the Union. Sheridan Creations, Inc. 148 NLRB 1503, 57 LRRM 1176 (1964), enforced 357 F. 2d 245, 60 LRRM 2536 (CA 2, 1966), cert. denied 385 U.S. 1005, 64 LRRM 2108.

5/ John J. Corbett Press Corp. 172 NLRB No. 116, 68 LRRM 1410 (1968); Donaldson Sales, Inc. 141 NLRB No. 116, 52 LRRM 1500 (1963); Thomas H. Murrow Trucking Co. 155 NLRB 271, 60 LRRM 1289 (1965).