

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of
MADISON INDEPENDENT WORKERS UNION
Involving Certain Employees of
THE PAD, INC.
Madison, Wisconsin
- - - - -

Case I
No. 18928 E-2889 R-5754
Decision No. 13751

Appearances:

Mr. Ian Blant, Employee, for the Union.
Mr. David E. Lasker, Attorney at Law, for the Employer.

DIRECTION OF ELECTION AND REFERENDUM

Petition having been filed with the Wisconsin Employment Relations Commission by Madison Independent Workers Union requesting that an election to determine bargaining representative and a referendum on seeking authorization for "All-Union Agreement" be conducted among certain employees of The Pad, Inc. of Madison, Wisconsin; and hearing on said petition having been conducted at Madison, Wisconsin, on April 10, 1975 by Kay Hutchison, Hearing Officer; and the Commission having considered the record and being satisfied that questions have arisen concerning representation and the authorization for an "All-Union Agreement" for certain employees of the Employer;

NOW, THEREFORE, it is

DIRECTED


That an election and referendum be conducted within thirty (30) days from the date of this Directive in the unit consisting of all regular full-time and regular part-time employees of The Pad, Inc., Madison, Wisconsin, but excluding managerial and supervisory employees, who were employed by the Employer on June 23, 1975, except such employees as may prior to the election and referendum quit their employment or be discharged for cause for the purpose of determining:

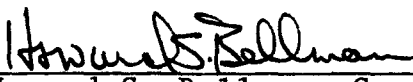
- (1) Whether a majority of such employees voting desire to be represented for the purposes of collective bargaining by Madison Independent Workers Union; and

- (2) Whether a majority of the eligible employes favor an "All-Union Agreement" between Madison Independent Workers Union and The Pad, Inc., of Madison, Wisconsin.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION
OF ELECTION AND REFERENDUM

The Pad, Inc. operates and maintains a restaurant in the University campus area of Madison, Wisconsin. The establishment features a variety of sandwiches which may be purchased in the restaurant or delivered per telephone order to residents throughout the City. The Employer presently employs fifteen individuals, including a manager, during the 94 hours per week the facility is in operation.

At the onset of the hearing conducted on April 10, 1975, the Employer raised issues concerning the appropriateness of the collective bargaining unit as petitioned for by the Union and the eligibility of certain employees to participate in an election and referendum. In its petition the Union requested an election among "all employees including counter help, food preparation help, janitors and 'padmen' (delivery persons), but excluding all managers and supervisory personnel." The Employer argues that incumbents of certain positions work so infrequently as to eliminate any community of interest with regular employees, in regard to wages, hours and conditions of employment. Furthermore, the Employer asserts that several employees have been employed for an insufficient period of time to evidence an interest in continued employment.

The Employer initially argued that the diversity of employment interests existing among the employees requires separate and distinct collective bargaining units rather than a single overall unit. The Wisconsin Employment Peace Act sets forth the appropriate collective bargaining unit as being:

". . . all of the employees of an employer . . ., except that where a majority of such employees engaged in a single craft, division, department or plant shall have voted by secret ballot . . . to constitute such group a separate bargaining unit . . ."

The Employer offered neither testimony nor evidence to substantiate that employees function within distinctive craft, divisions, department or plants. To the contrary, there appears to be significant interchange of job duties among all employees. The record discloses that the Union has petitioned for a statutorily appropriate collective bargaining unit and that the Employer has failed to demonstrate that alternative units are warranted.

The Employer avers that there is a high rate of turnover among employees with many individuals working briefly, and subsequently quitting their employment. The Employer regards such employees as temporary, and as lacking an interest in the terms and conditions of employment. Accordingly, the Employer urges the Commission to conclude that only those employees who have been continuously employed for two months or longer to be eligible to participate in the representation and referendum balloting. The Employer argues that Matt Roberts and Tom Reuschlein should be found ineligible to vote on the basis that, as of the date of hearing, they had been employed for a period of less than two months. Furthermore the Employer asserts that it no longer intends to schedule work for either Fred Kitchen or Paul Konetzke and that they, therefore, should be found ineligible.

The Commission is satisfied that the aforementioned individuals are not temporary employees. (Temporary employment is determined on the basis of a given employee's lack of expectation of continued employment. The record discloses no indication that the employment of those employees, who at the time of hearing had been employed less than two months, would not be continued. The fact that there is high employee turnover, or that certain

employees have been employed for a period of less than two months does not eliminate or reduce such individuals' interest in the terms and conditions of employment. Accordingly, all employees including Roberts, Reuschlein, Kitchen and Konetzke, who do not prior to the election and referendum quit their employment or be discharged for cause who, were employed on June 23, 1975, shall be deemed eligible to vote. 1/

Ms. Sue Ann Camp is employed by the Employer from time to time to perform food preparation or counter work. Ms. Camp, wife of the restaurant's manager, is infrequently scheduled to work, but she may be called in to work in the place of a scheduled, absent employee. The Commission is satisfied that Ms. Camp is appropriately excluded from the collective bargaining unit herein on the basis of her infrequent, on-call employment. 2/

Two employees are held by the Employer to work so few hours a week as to eliminate any community of interest with the regular employees and thereby render them ineligible to participate in the election and referendum. One individual, identified only as "Robert" by the parties at the time of hearing, 3/ is employed by the Employer as a part-time janitor. The incumbent works on a regularly scheduled basis for approximately six hours per week. The manager testified that Robert is compensated out of the manager's pocket who in turn is reimbursed by the Employer. A second employee, Fred Kitchen, whose continuation of employment was discussed above, had, prior to the hearing, been scheduled to work on the average of ten hours per week.

The Commission has never adopted a policy of requiring part-time employees to work a specified number of hours in order to be included among those eligible to participate in an election. If an employee is regularly employed, regardless of the number of hours worked by him, such an employee has a definite interest in wages, hours and working conditions governing his employment) 4/ Based upon the fact that Robert and Kitchen work on a regularly scheduled basis although for a limited number of hours, the Commission is satisfied that they are appropriately included among the eligible employees.

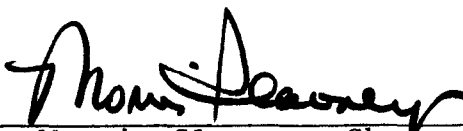
At the time of the hearing, the Employer employed Andy Jones in one of two delivery positions denoted as "Padman". The second "Padman" position was vacant on the date of hearing. The Employer indicated that he was uncertain as to whether the second delivery position would be subsequently filled. Jones works approximately five hours per week and is

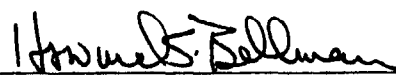
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- 1/ The parties did not object to the specification of the dates of the hearing as the cutoff date for eligibility. However, in light of the interim lapse of time between the date of hearing and direction of election, the Commission deems that date of this Direction as the designated cutoff date to be appropriate.
- 2/ Douglas Plymouth Corp., (6605) 1/64; Riverview Hospital (6813) 7/64, Picasso Plaza (8606-C) 11/68.
- 3/ The request of the hearing officer for the subsequent submission of said employee's last name has remained unanswered. The Employer is directed to submit said individual's full name to the Commission within 10 days of receipt of this Directive.
- 4/ Pavillion Nursing Home, Inc., (7932) 3/67, Prigge's Chartered Buses, Inc. (8061) 6/67.


compensated on a percentage of sales basis, as opposed to an hourly rate as the other employees are. Whereas the method of compensation may vary, the Padman shares common supervision and related conditions of employment with the other employees. The Commission finds no basis upon which to exclude the Padman positions from the unit and therefore individuals who occupy said position are eligible to participate in on balloting.

Dated at Madison, Wisconsin, this 23rd day of June, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Morris Slavney, Chairman


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