

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

GENERAL DRIVERS, DAIRY PRODUCTS EMPLOYEES  
AND HELPERS UNION, LOCAL NO. 56, affiliated  
with the INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA

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

VAN DER VAART BRICK AND BUILDING SUPPLY  
COMPANY

and GENERAL DRIVERS, DAIRY PRODUCTS  
EMPLOYEES AND HELPERS UNION, LOCAL NO. 56,  
affiliated with the INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA

Case X  
No. 19269 R-5780  
Decision No. 14160-A

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ORDER DISMISSING MOTION

The Wisconsin Employment Relations Commission heretofore and on December 2, 1975, issued a Direction of Referendum in the above entitled matter, wherein, with respect to individuals eligible to participate in the referendum, the Commission determined that Roger Lenz and Ray Manthey were not eligible to participate in the referendum; and on December 9, 1975, the above named Labor Organization, by its Counsel, having filed a motion requesting the Commission to reconsider its determination with regard to Lenz and Manthey, together with an argument in support of said motion; and on December 19, 1975, the above named Employer, by its Counsel, having filed a memorandum opposing said motion; and the Commission, being fully advised in the premises, being satisfied that the motion filed herein to reconsider and clarify the Direction of Referendum previously issued by the Commission be dismissed;

NOW, THEREFORE, it is

ORDERED

That said motion be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin this 8th  
day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

*Morris Slavney*

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Morris Slavney, Chairman

*Howard S. Bellman*

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Howard S. Bellman, Commissioner

*Herman Torosian*

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Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER DISMISSING MOTION

In the Memorandum accompanying its Direction of Referendum, the Commission determined that Lenz and Manthey are not employes within the meaning of Section 111.02(3)(d) of the Wisconsin Employment Peace Act (WEPA) inasmuch as both individuals have been absent from work for a substantial period of time, i.e., since the inception of a strike on June 23, 1973.

In its motion requesting the Commission to reconsider and clarify its Direction of Referendum, the Union contends that the Commission erred in excluding Lenz and Manthey from the eligibles on the basis that they were not employes within the meaning of Section 111.02(3)(d) of WEPA. The Union characterizes the persons described in the relevant portion subsection (3)(d) as "workers who have been permanently replaced during the course of a strike . . .", and further argues that there is no current labor dispute in effect. The Union further argues that any individual who has worked for an employer continues to be an "employee" for all statutory purposes, unless said person falls into one of the precisely defined exceptions set forth in Section 111.02(3), including "the class of workers whose present absence from the job is caused solely by a current labor dispute which is presently unsettled." It further argues that both Lenz and Manthey have a reasonable expectancy of employment.

Section 111.02(3)(d) reads, in full, as follows:

"The term 'employee' shall include any person...and shall include any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute or because of any unfair labor practice on the part of an employer and (a) who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employe or his representative, (b) who has not been found to have committed or to have been a party to any unfair labor practice hereunder, (c) who has not obtained regular and substantially equivalent employment elsewhere, or (d) who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout;..."

It is clear that the active employment of both Lenz and Manthey was interrupted by the strike in which they engaged. Further, there is no doubt that said individuals were absent from their employment for a substantial period of time, the strike having commenced in June 1973 and continued until October 1, 1974. Although they continue to be on the seniority list of the Employer, their prospects for employment are dependent on the size of the work force.

Counsel for the Union interprets subsection (3)(d) as requiring that the Commission only exclude from voting eligibility those "workers who have been permanently replaced during the course of a strike and lockout which is still in active progress and final settlement is dubious."

We do not accept Counsel's interpretation of said subsection, as setting forth the exclusive test for eligibility to vote in a representation or referendum proceeding. There are reasons for excluding individuals from voting eligibility other than those specified in Section 111.02(3). The record establishes that the date or dates on which either Lenz or Manthey would be recalled to active employment is so in doubt that the Commission concludes that they should not be eligible to vote in the referendum, because their expectancy of recall is so uncertain, and, therefore, we have dismissed the motion filed by the Union.

Dated at Madison, Wisconsin this 8th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

*Herman Torosian*  
Herman Torosian, Commissioner