

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

DIRECTION OF REFERENDUM

General Drivers, Dairy Products Employees and Helpers Union, Local No. 56, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having petitioned the Wisconsin Employment Relations Commission to conduct a referendum among certain employes of Van Der Vaart Brick and Building Supply Company, Sheboygan, Wisconsin; and a hearing on such petition having been conducted on August 14, 1975, at Sheboygan, Wisconsin; and the Commission having considered the evidence and being satisfied that a question has arisen concerning an "All-Union Agreement" for certain employes of the above Employer;

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 and batchmen employed by the Employer in Sheboygan County, excluding office, clerical, professional and supervisory employes as defined in the Labor Management Relations Act, as amended, as well as employes represented by the Laborers Local Union No. 1086 and regular mechanics, who were employed by Van Der Vaart Brick and Building Supply Company on December 2, 1975,

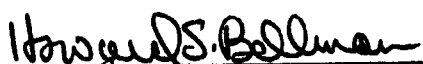
No. 14160

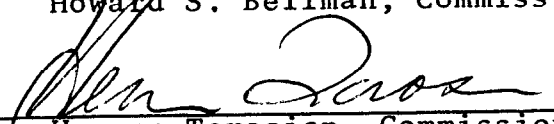
except such employees as may prior to the referendum quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employees favor an "All-Union Agreement" between the Employer and the Union named above.

Given under our hands and seal at the  
City of Madison, Wisconsin this 2nd  
day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF REFERENDUM

During the course of the hearing, evidence was adduced to establish that twenty-one employees were actively employed in the unit as of August 14, 1975. Also during the course of the hearing an issue arose as to two employees who are eligible for recall, i.e., Randall Cline and Lincoln Davies, and, two employees who are eligible for reinstatement, i.e., Roger Lenz and Ray Manthey. The parties stipulated that Cline and Davies have a reasonable expectancy of returning to employment and should be eligible to participate in the referendum.

Contrary to the Employer, the Union contends that Lenz and Manthey also should be eligible to vote for the same reason as Cline and Davies. The Union bases its argument upon the fact that twenty-four employees were working during the peak season in 1975 and, therefore, believes it is reasonable to assume the same employment complements in the peak seasons of 1975, 1976 and 1977, all of which will be covered by the current collective bargaining agreement. The Union further argues that, based on the fact that three more senior employees already have terminated their employment with the Employer in 1975 to date, both Lenz and Manthey, currently numbers 24 and 25 respectively on the seniority list, have a very reasonable expectancy of being recalled to work before, or in, 1977. The Union contends that the fact said two individuals went through a 15 1/2 month strike and are still seeking to return to employment more than two years after their last day of work for the Employer indicates they still are meaningfully attached to the Employer's labor force.

The Employer argues that Lenz and Manthey are no longer employees within the meaning of Section 111.02(3), 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 the strike on June 23, 1973. While the Employer believes Wisconsin law controls the instant issue, it further contends that Lenz and Manthey would be ineligible under National Labor Relations Board rulings that have held economic strikers, who have been permanently replaced, not to be eligible to vote in an election held more than twelve months after the commencement of the strike, even though the strikers have been placed on a Replaced Status List.

From June 23, 1973 to October 1, 1974, the Union engaged in an economic strike against the Employer. The strike ended on October 1, 1974, when the parties entered into the current collective bargaining agreement which remains in effect until September 30, 1977. In accordance with said agreement, on or about October 7, 1974, seventeen former strikers were reinstated, and appear on the seniority list as numbers 1 through 17. The Employer also retained seven strike replacements, who were listed as numbers 18 through 24 on the seniority list. The remaining ten names on the seniority list, numbers 25 1/ through 34, were former strikers who were not reinstated in 1974. Over the 1974 - 1975 winter season, the nine most senior employees, all former strikers, were retained, while the other fifteen employees were laid off for varying lengths of time. In April, 1975, the Employer began recalling employees from lay off. Two of the former strikers, who had not been reinstated in 1974, were reinstated in 1975 as replacements for previously

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1/ At the time of the hearing, because of their termination, Lenz and Manthey are 24 and 25 on the seniority list. Cline and Davies, who have an expectancy of employment, are 15 and 21 on the list.

reinstated former strikers who subsequently had terminated their employment with the Employer. As of the hearing in the instant proceeding, two of the strike replacements who had worked in 1974, Cline and Davies, remained on lay off. As of the same date, eight former strikers, including Lenz and Manthey, had not been reinstated, and that thus they have not actively been employed by the Employer since June 23, 197

Section 111.02(3)(d) of WEPA 2/ includes in the definition of an employe the following:

" . . . any person . . . 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;

. . ."

In the opinion of the Commission, Lenz and Manthey have been absent from work for a substantial period of time, i.e., more than twenty-five months, within the above cited section of WEPA, and therefore, the Commission is satisfied that Lenz and Manthey are not eligible to vote in the referendum directed herein.

Dated at Madison, Wisconsin this 2nd day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner



Herman Torosian, Commissioner