

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
MADISON INDEPENDENT WORKERS UNION	:	Case I
Involving Certain Employes of	:	No. 19769 E-2904
MANDAR INN II	:	Decision No. 14250-B

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Appearances:

Frankel, Langhammer and Pines, Attorneys at Law, by Mr. Lester Pines, appearing on behalf of the Union.  
Melli, Shiels, Walker and Pease, S.C., Attorneys at Law, by Mr. Jack D. Walker, appearing on behalf of the Employer.

ORDER SETTING ASIDE DIRECTION OF ELECTION  
AND DISMISSING PETITION FOR ELECTION

Madison Independent Workers Union, having on November 5, 1975, filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted pursuant to Section 111.05 of the Wisconsin Statutes among certain employes of Mandar Inn II, Madison, Wisconsin; and hearing in said matter having been held on November 24, 1975; and the Commission having been satisfied that a question of representation had arisen for certain employes of Mandar Inn II and having, on January 15, 1976 directed that an election be conducted among said employes; and prior to any further action by the Commission, the Employer, through counsel, having advised the Commission by letter dated January 28, 1976 that said Employer had gone out of business, and having moved for dismissal of said petition; and said Petitioner having advised the Commission on February 11, 1976 that it opposed said motion; and thereupon the Commission having indefinitely postponed said election; and hearing on the motion of the Employer having been held on March 18, 1976, Kay Hutchison, Hearing Officer, having been present; and the Commission having reviewed the testimony, evidence and arguments of counsel, and being fully advised in the premises; and being satisfied that the Employer has ceased business and that a question of representation no longer exists;

NOW, THEREFORE, it is

ORDERED

That the Direction of Election be and the same hereby is set aside; and 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 13th 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

MEMORANDUM ACCOMPANYING ORDER SETTING ASIDE DIRECTION  
OF ELECTION AND DISMISSING PETITION FOR ELECTION

Hearing on the motion of the Employer to discuss the instant proceeding was held on March 18, 1976. The Employer averred that on or about the third Saturday of January, 1976 the Employer ceased operation and has no intention of subsequently resuming business. The Petitioner contests neither the fact that the Employer has not operated the restaurant facility since said period, nor that the cessation of business by said Employer is permanent. Furthermore, the Employer argues that although the facility is presently for sale, there is no certainty as to if or when a buyer will be found. Accordingly, the Employer requests that the Direction of Election issued by the Commission in the instant proceeding be set aside and that the petition for election filed with the Commission by the Petitioner on November 5, 1975 be dismissed on the basis that there no longer is an employing entity and therefore, a question of representation does not exist.

The Petitioner argues that whereas the Employer was in business on January 15, 1976, the date upon which the Commission directed an election among certain employes of said Employer, it is appropriate to proceed with the conduct of an election. The Petitioner reasons that the conduct of an election would avoid further delays in determining collective bargaining representation for said employes in the event that the establishment is sold to and reopened by a subsequent Employer.

The Commission is satisfied that a question of representation no longer exists. Efforts to sell the Employer's operation coupled with the complete cessation of business convince the Commission that it is appropriate to grant the Employer's motion for dismissal.

The Petitioner's contention that the conduct of an election herein would be "administratively expedient" in the event that an employer-successor is established, is without merit. The instant petition concerns certain employes of Mandar Inn II, only an entity which has ceased operation. The prospect of employment with the instant Employer has been eliminated; the possibility of employment with a successor is unsubstantiated. Accordingly, no question of representation exists and we have dismissed the petition herein.

Dated at Madison, Wisconsin this 13th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY *Don Scamney*  
Morris Slavney, Chairman

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

*Herman Torosian*  
Herman Torosian, Commissioner