

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  
ANDREA'S  
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Case I  
No. 19862 E-2906 R-5820  
Decision No. 14317

Appearances:

Ms. Susan Sternberg, Representative, appearing on behalf of the  
Petitioner

Ms. Andrea Craig, owner, appearing on behalf of the Employer.

ORDER DISMISSING PETITION FOR ELECTION  
AND DIRECTION OF REFERENDUM

Madison Independent Workers Union having filed a petition with the Wisconsin Employment Relations Commission wherein it requested the Commission to conduct an election and referendum among certain employees of Andrea's, Madison, Wisconsin; and hearing on such petition having been conducted on January 8, 1976, at Madison, Wisconsin, by Kay Hutchison, Hearing Officer, and prior to any further action by the Commission, said Employer having voluntarily recognized the Petitioner as the exclusive collective bargaining representative for all regular full-time and regular part-time employees employed by Andrea's, Madison, Wisconsin, but excluding supervisory, managerial and confidential employees; and the Commission being fully advised in the premises 1/ and being satisfied that no question of representation presently exists among the employees in the unit described above; however, further being satisfied that a question concerning referendum does exist;

NOW, THEREFORE, it is

ORDERED

That that portion of the petition filed requesting an election among all regular full-time and regular part-time employees of Andrea's, Madison, Wisconsin, be, and the same hereby is, dismissed;

IT IS DIRECTED that a referendum by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission in the collective bargaining unit consisting of all regular full-time and regular part-time employees of Andrea's, Madison, Wisconsin, excluding supervisory, managerial and confidential employees, who were employed by the Employer on January 8, 1976, except such employees who quit their employment or were terminated for cause prior to the referendum, for the purpose of determining whether the required number of such employees favor an "all-union agreement" between Andrea's, Madison, Wisconsin and Madison Independent Workers Union.

Given under our hands and seal at the  
City of Madison, Wisconsin this 9th  
day of February, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

1/ The parties waived, in writing, the preparation of a transcript of the proceeding under the provisions of Section 227.12 of the Wisconsin Statutes.

MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION FOR ELECTION  
AND DIRECTION OF REFERENDUM

Subsequent to the filing of the instant petition, Andrea's, hereinafter the Employer, voluntarily recognized Madison Independent Worker's Union, hereinafter the Union, as the exclusive collective bargaining representative of "all regular full-time and regular part-time employees of the Employer but excluding supervisory, managerial and confidential employees." During the course of the hearing conducted in the instant proceeding, an issue arose with regard to the supervisory status of Joe Pfiffner.

The Employer owns and operates a gourmet restaurant in Madison, Wisconsin. The restaurant is open daily for lunch and for dinner on Thursday, Friday and Saturday evenings. Joe Pfiffner, a trained chef, is employed as the night cook. During Pfiffner's evening hours of work, another cook and a dishwasher are customarily present in the kitchen.

Pfiffner is responsible for overseeing the operation of the kitchen whenever the owner is not directing or participating in the preparation of food. In addition to his cooking duties, Pfiffner checks supplies, suggests menu entrees, requests the ordering or purchase of kitchen equipment and food stocks, determines menu substitutions, and, on occasion, directs the dining room hostess to limit dinner reservations according to the amount of food prepared. Pfiffner has consulted with the owner concerning the initial hiring of a second evening cook. He was not consulted with respect to the hiring of the night dishwasher or the day cook. Pfiffner is authorized to direct the disposal of inferior raw food. He oversees the preparation and appearance of the food in accordance with the restaurant's standards.

While the restaurant is open 70 hours per week, Pfiffner is employed an average of 43 hours per week. He receives a base salary of \$152.50 plus approximately \$40 to \$50 per week from the gratuity charge. The other evening cook works approximately 35 hours per week for a base salary of \$80.00, plus the aforementioned gratuity.

The Employer, contrary to the Union, contends that Pfiffner is a supervisory employee, and therefore should be excluded from the collective bargaining unit. The Employer argues that Pfiffner is relied upon to direct and supervise employees during the Employer's absence. Accordingly, the Employer avers, Pfiffner is compensated at approximately the same rate which the Employer affords herself. Furthermore, the Employer asserts that Pfiffner has effective input into matters relating to kitchen operations and personnel. The Employer reasons that Pfiffner makes on the spot decisions in the areas of menu changes, food spoilage and equipment purchase which have an economic impact upon the Employer.

The Union argues that Pfiffner is not a supervisor and should be included in the collective bargaining unit. The Union contends that Pfiffner, in his role as a night cook, may suggest or recommend actions concerning personnel or operations, but that the owner has sole authority to accept or reject such actions. The Union asserts that Pfiffner's duties are not supervisory but rather those of a professional chef exercising his culinary talents.

The Commission is satisfied that Pfiffner, as night cook, performs duties customarily associated with a lead worker position. We conclude that Pfiffner's duties concern the exercise of cooking expertise rather than the exercise of supervisory responsibilities. Whereas, Pfiffner may

assume supervisory responsibilities in the absence of the owner, such occurrence appears to be infrequent and insufficient to warrant the exclusion of the position of night cook from the collective bargaining unit. Accordingly, we have included the position of night cook, presently occupied by Joe Pfiffner, in the collective bargaining unit in which a referendum has been directed herein.

Dated at Madison, Wisconsin this 9th day of February, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman

Howard S. Bellman, Commissioner