

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case III
No. 20804 R-5831
Decision No. 15332-C

Mr. Harold F. LaShay, Business Manager, appearing on behalf of the Petitioner.

Mr. Lee Wenker, Representative, appearing on behalf of the Intervenor.

Mr. Eldor C. Panetti, Owner, appearing on behalf of the Employer.

No. 15332-C

FINDINGS OF FACT

1. That on September 1, 1976, Laborers Union Local 1086 filed a petition with the Wisconsin Employment Relations Commission on behalf of itself and Teamsters Union Local 126, both of Fond du Lac, Wisconsin, requesting that a referendum be conducted among "working foremen, blockmen A, blockmen B, general laborers and equipment operators, mechanics and over-the-road truck drivers" in the employ of Panetti Stone Company, Inc., Fond du Lac, Wisconsin, to determine whether the required number of employees in said unit favored the authorization of an all-union agreement between said labor organizations, as the joint collective bargaining representative of said employees, and said Employer; that hearing on said petition was commenced on October 19, 1976 at Fond du Lac, Wisconsin, and following the review of the testimony adduced during the hearing on said date, the Commission, on March 8, 1977, issued an Order holding the matter in abeyance as a result of unfair labor practice charges pending before the National Labor Relations Board concerning possible "employee" determinations; that thereafter, and on June 3, 1977, hearing was reopened in the matter, during which the parties entered into a stipulation for the conduct of a referendum, and in that regard stipulated that the only employees eligible to participate in such referendum were Darold Battermen, Jerry Burg and Thomas Halfmann, and further that Louis Patchett was a supervisor having the authority to effectively recommend the hiring and firing of employees; that thereafter, and on June 15, 1977 the Commission issued a Direction, wherein it directed the conduct of a referendum among employees in an appropriate bargaining unit consisting of working foremen, blockmen, laborers, equipment operators, mechanics and over-the-road truck drivers, who were employed by the Employer on June 15, 1977, except such employees as may prior to the referendum quit their employment or be discharged for cause; that thereafter, and pursuant to previous notice, the Commission conducted a referendum on July 8, 1977, during which employees Darold Battermen and Thomas Halfmann appeared to vote and cast ballots; that employee Jerry Burg did not appear to vote; that, in addition, three other individuals namely, Louis Patchett, Steve Panetti, and Walter Schroeder appeared at the ballot site and requested a ballot; that the Unions' observer present during the balloting voiced objection to the eligibility of said individuals to participate in the referendum, on the basis that said individuals were not included on the agreed-upon eligibility list; that the Commission agent conducting the referendum permitted said individuals to cast ballots which were challenged by the Unions' observer; and that following the conclusion of the balloting the Commission agent conducting the referendum tallied the results of the balloting and issued a tally sheet, which was signed by the observers for all parties, and which reflected the following:

1.	Employees eligible to vote	6
2.	Total ballots cast	5
3.	Total ballots challenged	3
4.	Valid ballots counted	2
5.	"YES" ballots	2
6.	"NO" ballots	0

2. That inasmuch as the challenged ballots might affect the results of the referendum, the Commission, on July 20, 1977, issued an Order setting hearing on the challenged ballots; that such hearing was conducted on August 1, 1977 at Fond du Lac, Wisconsin; that during said hearing evidence was adduced with respect to the "employee" status of Louis Patchett, Steve Panetti and Walter Schroeder; that despite the fact that the Employer had previously stipulated that Patchett was a supervisor, testimony of Eldor Panetti, the Employer's owner, was permitted in the record with respect to the duties of Patchett; that evidence was also

received with respect to Steve Panetti and Walter Schroeder, which evidence established the following:

- (a) Steven Panetti, is the son of John Panetti, who in turn is the son of owner, Eldor Panetti, and that John Panetti is employed in a managerial capacity, and, further, that Steven Panetti is employed only during the summer months; and that
- (b) Walter Schroeder is employed on a "call basis" when needed by the Employer.

3. That the "employee" status of Louis Patchett, Steven Panetti, and Walter Schroeder as of the date on which the referendum was conducted was identical to their individual status on June 3, 1977, the date on which the parties stipulated as to the employees eligible to participate in the referendum.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That, since Louis Patchett is a supervisor having the authority to effectively recommend the hiring and firing of employees, Patchett is not an "employee" within the meaning of sec. 111.02(3) of the Wisconsin Employment Peace Act, and therefore Patchett is not eligible to vote in the referendum conducted herein.

2. That, since Steven Panetti is the son of John Panetti, a managerial employee of the Employer herein, Steven Panetti is considered to be employed by his parent, Steven Panetti is not an "employee" within the meaning of sec. 111.02(3) of the Wisconsin Employment Peace Act, and therefore Steven Panetti is not eligible to vote in the referendum conducted herein.

3. That, since Walter Schroeder is a casual employee, he is deemed to have an insufficient interest in the terms and conditions of his employment so as to be considered an "employee" within the meaning of sec. 111.02(3) of the Wisconsin Employment Peace Act eligible to vote in the referendum conducted herein.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

ORDER

That the challenges to the ballots of Louis Patchett, Steven Panetti and Walter Schroeder be, and the same hereby are, sustained.

Given under our hands and seal at the
City of Madison, Wisconsin this 26th
day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman
Herman Torosian
Herman Torosian, Commissioner
Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER RULING ON CHALLENGED BALLOTS

As previously noted in the Findings of Fact, three individuals not included in the previously agreed upon eligibility list namely Louis Patchett, Steven Panetti and Walter Schroeder, presented themselves to vote during the balloting and requested a ballot. The Commission agent conducting the balloting permitted said employees to vote by challenged ballot. The Unions' observer challenged their ballots on the basis that they were not included in the stipulated list of eligibles. During the course of the hearing on the challenged ballots Eldor Panetti, who owns the Employer's business, testified that he did not mention that said three individuals are in his employ for the reason that he had "put those names in, the Union, would have been writing them letters, see, and it was none of their business. These employees quit the Union. Why should they be subject to letters from the Union wanting them to rejoin? They won't -- they all belonged to the Union and have withdrawn."

It should be noted that in the hearing conducted prior to the issuance of the Direction herein the Commission examiner conducting said hearing read a stipulation agreed upon by the parties into the record, which stipulation included the following references to Patchett, ". . . Louis Patchett is a supervisor employed by Panetti Stone Company, Inc. and has the authority to effectively recommend the hiring and firing of employees." Under such circumstances the Commission will not permit the Employer to subsequently contend that Patchett was not, in fact, a supervisor. 1/

Steve Panetti, a grandson of the Employer's owner and a son of John Panetti (a son of the owner), is employed during the summer months. John Panetti is a managerial employe and therefore Steve Panetti, as his son, is not deemed an employe because he is employed by his father. Such lack of eligibility status is set forth in sec. 111.02(3) of the Wisconsin Employment Peace Act 2/ and therefore, on that basis alone, Steve Panetti is not eligible to vote in the referendum had he been employed after the stipulation entered into on the eligibles. Further, Steve Panetti is employed only during the summer months and had he no relationship to the son of the owner, Steve Panetti would have been excluded from the eligibility list as a casual employe. The evidence establishes that Walter Schroeder is employed on a call in basis and thus, Schroeder is a casual employe and is not eligible to be included among the eligibles. The Commission has long held that employees who work only on occasion are not eligible to participate in either a referendum or an election. 3/

We wish to note that the reason put forth by Employer's owner, during the course of the hearing for his not including the three individuals on the eligibility list indicates a patent disregard of the statute and the procedures involved in the conduct of referenda by this agency.

1/ City of Milwaukee (6215-K) 4/66.


2/ Douglas Plymouth Corp. (6605) 1/64.

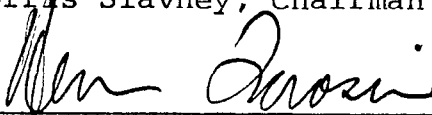
3/ The Pad, Inc. (13751) 6/75.

Therefore the Commission has sustained the challenges to the three ballots involved and is today issuing the certification of results of the referendum.

Dated at Madison, Wisconsin this 26th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner