

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Mr. Al Panetti, appearing on behalf of the Employer.
Mr. Martin H. Koenig, Recording Secretary, and Mr. Lee Wenker,
appearing on behalf of the Intervenor.
Mr. Harold F. LaShay, Business Manager, appearing on behalf
of the Petitioner.

No. 15332

MEMORANDUM ACCOMPANYING ORDER HOLDING
CONDUCT OF REFERENDUM IN ABEYANCE

Petitioner and Intervenor are the voluntarily recognized collective bargaining representatives of certain individuals employed by the Employer. They have had a joint collective bargaining agreement with the Employer since 1963; all agreements since that year have included an all-union agreement. 1/ The Petitioner represents the classifications of working foreman, blockman, laborer and equipment operator; the Intervenor represents the classifications of mechanic and over-the-road truck driver.

The parties agree that Louis Patchett, Paul Henke, Reveriste Faucher, Thomas Halfman, Jerry Burg, Mark Potratz and Wilbur Rhode are eligible to vote in the referendum. The Petitioner and Intervenor, contrary to the Employer, claim that Robert Tonn, David Haller and Donald Kern are also eligible to vote.

Tonn and Haller were hired as laborers in October, 1975 and were laid-off in December, 1975. They were recalled in March and April, respectively, and were laid-off at the end of May, 1976. They have not worked for the Employer since that time. The Employer contends that they are temporary employees and not eligible to vote.

Kern was hired as a laborer in March, 1974 and was laid-off in November, 1974. He was recalled in July, 1975 and worked until September 22, 1975 when he was injured while on the job. Although Kern was released by his doctor to return to work in the spring of 1976, the Employer has refused to reemploy him. The Employer contends that Kern is not eligible to vote as he is no longer employed by the Employer.

Prior to the hearing in this matter, the Petitioner filed unfair labor practice charges with the National Labor Relations Board and had proceeded to arbitration concerning the lay-offs of Tonn and Haller and the Employer's refusal to reemploy Kern. No final determination had been made in either forum at the time of the hearing.

Subsequent to the hearing, the Petitioner and Employer resolved the charges and grievances and signed settlement agreements wherein the Employer agreed to pay the three individuals specified sums of money and to place Tonn and Haller: ". . . on the seniority list with a seniority date of October 23, 1975" and to place Kern ". . . on the seniority list." The Employer was not required to reinstate any of the three individuals to active employment. The Petitioner contends that the agreements to place Tonn, Haller and Kern on the seniority list entitled them to be recalled to work should the need arise and that, therefore, they are eligible to vote in the referendum.

Although the settlement agreements do not specify the consequences of being placed on the seniority list, it is possible to infer, as the Petitioner suggests, that the parties intended to grant Tonn, Haller and Kern the right to be recalled in accordance with the

1/ For a number of years since 1963, a third union was also a recognized representative and a signatory to the contract. This third union no longer represents any of the employees involved herein.

provisions of the parties' collective bargaining agreement. 2/ However, the parties presently have no collective bargaining agreement in effect. Their last agreement expired on May 31, 1976 and no successor agreement has been entered into. Negotiations for a successor agreement took place, the Petitioner and Intervenor believed that an agreement had been reached and an agreement was reduced to writing, but the Employer has refused to sign the successor agreement.

Subsequent to the hearing, the Petitioner notified the Commission that it intended to file unfair labor practice charges with the National Labor Relations Board alleging that the Employer had unlawfully refused to bargain. Because whatever recall rights the three individuals may have are dependent upon the existence of a collective bargaining agreement between the parties and the inclusion in that agreement of a provision providing for recall based on seniority, and because the Commission has been advised that the National Labor Relations will shortly be requested to resolve the issue concerning the Employer's obligation to sign the successor agreement, the Commission concludes that the instant petition should be held in abeyance pending the outcome of the unfair labor practice charges which the Petitioner intends to file with the NLRB.

Moreover, assuming an outcome favorable to the Petitioner, it may be necessary to reopen the record to ascertain what recall rights the settlement agreements and the parties' collective bargaining agreement provide Tonn, Haller and Kern. For example, the proposed successor agreement provides that:

"In reemploying, those employees having the greatest length of service shall be called back first, provided they are qualified to perform the available work.

. . .

Seniority shall be lost for the following reasons:

. . . 2. If for illness or a layoff for twelve (12) consecutive months or length of actual service, whichever is less, except employees who have less than nine months of actual service shall not lose seniority for a layoff or illness of less than nine months."

Assuming that these provisions are binding upon the Employer and apply to Tonn, Haller and Kern, it is not clear how they would be affected. Therefore, this proceeding will be held in abeyance pending disposition of the Petitioner's unfair labor practice charge concerning the Employer's alleged refusal to bargain, and pending clarification of the recall rights of Robert Tonn, David Haller, and

2/ The parties' last collective bargaining agreement provided that employees would be recalled from lay-off status based on their length of service.

Donald Kern should the Commission conclude that further evidence is necessary on that issue.

Dated at Madison, Wisconsin this 8th day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner