

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case III
No. 21303 E-2932
Decision No. 15366

Coe, Dalrymple, Heathman and Arnold, S.C., Attorneys at Law,
by Mr. Edward Coe, appearing on behalf of the Employer.
Mr. Edward Conley, Attorney at Law, appearing on behalf of the
employees named in the petition.
Goldberg, Previant and Uelmen, S.C., Attorneys at Law, by Mr.
Alan M. Levy, appearing on behalf of the Union.

Lampert Yards, Inc. hereinafter referred to as the employer, having, on January 31, 1977, filed a petition with the Wisconsin Employment Relations Commission requesting the commission to conduct an election pursuant to section 111.05 of the Wisconsin Employment Peace Act among certain of its employees to determine whether said employees desire to be represented by General Drivers and Helpers Union, Local 662, hereinafter referred to as the union, for purposes of collective bargaining; and a hearing on such petition having been held at Rice Lake, Wisconsin on March 11, 1977, Ellen J. Henningsen, examiner, being present; and during the course of said hearing the union having moved that the petition be dismissed for the reason that the commission is without jurisdiction to direct an election; and the commission having considered the evidence and being fully advised in the premises and being satisfied that the commission lacks jurisdiction to determine the question of representation since the volume of the employer's business meets the jurisdictional standards of the National Labor Relations Board;

ORDERED

That the petition for election filed herein be, and the same hereby is, dismissed without prejudice to the filing of a new petition in the event that the National Labor Relations Board should refuse to exercise its jurisdiction with respect to the alleged question of representation existing between the parties.

Given under our hands and seal at the
City of Madison, Wisconsin this 21st
day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER DISMISSING
PETITION FOR ELECTION

The employer filed the instant petition to determine whether the employees who work in its Rice Lake, Wisconsin yard desire to continue to be represented for collective bargaining purposes by the union.

The parties stipulated that the employer is a retail seller of lumber and building materials; that the annual gross retail sales of the Rice Lake yard for the calendar year 1976 were in excess of \$500,000; and that the total gross purchases by the Rice Lake yard from suppliers located outside the state of Wisconsin for the calendar year 1976 were in excess of \$50,000. Based on these facts, the union moved to dismiss the petition for lack of jurisdiction since the employer's volume of business meets the jurisdictional standards applied by the National Labor Relations Board (NLRB).

The commission's jurisdiction under the Wisconsin Employment Peace Act (WEPA) extends to all employers doing business in Wisconsin. 1/ The exercise of its jurisdiction over such employers is preempted, however, if the employer is subject to the statutory jurisdiction of the NLRB and also meets the jurisdictional standards promulgated by the NLRB. The employer would appear to be subject to the NLRB's statutory jurisdiction, that is, its operations affect interstate commerce, as its purchases from suppliers outside the state exceed \$50,000 for the calendar year 1976. 2/ The NLRB's current standard for asserting jurisdiction over retail enterprises within its statutory jurisdiction is a gross volume of business of at least \$500,000 per year. 3/ The employer clearly meets this jurisdictional standard. Therefore, the commission lacks jurisdiction to determine the question concerning representation raised by the petition filed in this matter. The petition is being dismissed without prejudice as noted in the attached order.

Dated at Madison, Wisconsin this 21st 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

1/ Section 111.02(2).

2/ In Catalina Island Sightseeing Lines, 124 NLRB 813 (1959), the Employer received \$23,000 in revenue from out-of-state sales and the NLRB determined that its operations affected commerce.

3/ See e.g., Cox's Food Center, Inc., 164 NLRB No. 16 (1967).