

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
SUZANNE M. NIQUETTE	:	Case III
Involving Certain Employes of	:	No. 22849 E-2958
DOLLHAUSEN ENTERPRISES, INC. d/b/a	:	Decision No. 16382-B
GARGANO'S RESTAURANT	:	

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Appearances:

Mr. Robert E. Sweeney, Representative, on behalf of Hotel and Restaurant Employees and Bartenders International Union, Local 257, AFL-CIO, appearing on behalf of the Union.  
Axley, Brynelson, Herrick & Gehl, Attorneys at Law, by Mr. James C. Herrick, appearing on behalf of the Employer.  
Ms. Suzanne M. Niquette, appearing on behalf of herself.

FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER DISMISSING OBJECTION TO CONDUCT OF ELECTION

Pursuant to a Direction of Election previously issued in the above entitled matter, the Wisconsin Employment Relations Commission, on June 2, 1978, conducted an election, pursuant to Section 111.05 of the Wisconsin Employment Peace Act, among certain employes of Dollhausen Enterprises, Inc. d/b/a Gargano's Restaurant, herein the Employer, to determine whether said employes desired to continue to be represented for the purposes of collective bargaining by Hotel and Restaurant Employees and Bartenders International Union, Local 257, AFL-CIO, herein Union. The Union thereafter filed timely objection to the conduct of the election. Hearing in said matter was held in Madison, Wisconsin on August 2, 1978, before Examiner Amedeo Greco. Following the close of hearing, the Employer filed a brief. Having considered the evidence and the arguments of the parties, and being fully advised in the premises, the Commission hereby issues the following Findings of Fact, Conclusion of Law and Order Dismissing Objection to Conduct of Election.

FINDINGS OF FACT

1. Hotel and Restaurant Employees and Bartenders International Union, Local 257, AFL-CIO is a labor organization and it maintains offices at 6320 Monona Drive, Madison, Wisconsin 53716.
2. Dollhausen Enterprises, Inc., d/b/a Gargano's Restaurant, is an employer and it maintains its offices at 437 State Street, Madison, Wisconsin.
3. Suzanne M. Niquette, herein Petitioner, on March 30, 1978, filed a petition which requested the Commission to conduct an election among certain employes of the Employer to determine whether said employes desired to continue to be represented by the union for the purposes of collective bargaining. Thereafter, on May 17, 1978, the Employer, the

4. Thereafter, on June 2, 1978, the Commission conducted an election among the employees in the above described unit. The election poll was scheduled in posted notices to open at 1:00 p.m. and to close at 3:00 p.m. The observers at the election were the Petitioner, and Dave Fierke, the Union's observer. Dean Strohenger, an employe of the Commission, conducted the election. Shortly before the polls were scheduled to open at 1:00 p.m., following a telephonic request by employe Marilyn Klinkner, Niquette and Fierke agreed that the polls should remain open for and extra five or ten minutes, in order to permit employe Klinkner, who was apparently employed elsewhere that day, until 2:30 p.m. to vote. Pursuant to that joint request, agent Strohenger agreed to keep the polls open until 3:15 p.m. Thereafter, Klinkner appeared at the polling place at approximately 2:58 p.m. and voted. Pursuant to the earlier agreement of the parties, the polls were kept open for a few extra minutes, until 3:10 p.m., at which time the parties, including the Union, agreed to close the polls. Thirty-three employes were eligible to vote. Twenty-two cast ballots and all of such ballots were cast prior to 3:00 p.m. No employes appeared to vote between 3:00 p.m. and 3:10 p.m.

#### CONCLUSION OF LAW

That the Union's objection to the conduct of the election, wherein it claims that the election was improperly extended past 3:00 p.m., is without merit since all of the parties present, including Union observer Fierke, agreed to such an extension and furthermore, because no one attempted to or did vote after 3:00 p.m., the regularly scheduled closing time for the polls, and therefore the election was properly conducted as contemplated by Section 111.70(4)(d) of the Municipal Employment Relations Act.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission issues the following

#### ORDER

IT IS ORDERED that the objection to the conduct of the election filed in the instant matter be, and the same hereby is dismissed. 1/

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavpey*  
Morris Slavpey, Chairman

*Herman Torosian*  
Herman Torosian, Commissioner

*Marshall L. Gratz*  
Marshall L. Gratz, Commissioner

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1/ The Commission is also today issuing its certification of the results of the election.

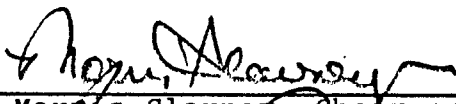
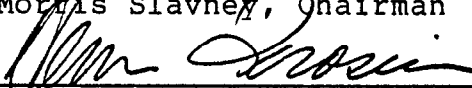
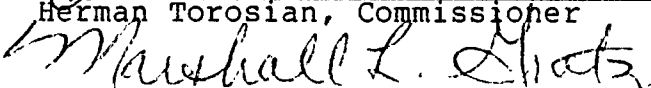
MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION  
OF LAW AND ORDER DISMISSING OBJECTION TO CONDUCT OF ELECTION

In filing the instant objection, the Union argues that it was unfair to keep the polls open past 3:00 p.m. without communicating the fact to all eligible voters before the start of the election, as all employees should have had an equal opportunity to vote after the scheduled 3:00 p.m. closing.

The objection is without merit. In the first place the agreement to extend to polling time was arrived at shortly prior to the opening of the polls. Employees who were working between 1:00 p.m. and 3:00 p.m. had ample time to vote. There was no means for the Commission's agent to notify other employees, who were not working, of the short extension of the polling time. Had other employees appeared to vote during the extended time, they would have been permitted to cast ballots. It is undisputed that Union observer Fierke, prior to the start of the election, expressly agreed to extend the polling period. In light of that Union agreement to such an extension, the Commission concludes, pursuant to its well established policy, 2/ that such a joint agreement to extend the polling time for such a short period does not constitute a valid objection to the conduct of the election.

Dated at Madison, Wisconsin this 11th day of August, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman  
  
Herman Torosian, Commissioner  
  
Marshall L. Gratz, Commissioner

2/ See, for example, Edison Industries, Inc. (5696-B) 4/61 and Shawano Convalescent Center, Inc. (9308-C) 7/70.