

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I
No. 22881 E-2959
Decision No. 16454

Ms. Mary Lynne Donohue, Business Agent, and Mr. Conrad Amenhauser, appearing for the Petitioner.
Mr. Albert McGinnis, Attorney at Law, appearing for the Employer.

Madison Independent Workers Union having, on April 10, 1978, 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 employees in the employ of Simehow, Inc., d/b/a Dos Bandidos to determine whether said employees desired to be represented by the Petitioner for the purposes of collective bargaining; and a hearing on said petition having been held at Madison, Wisconsin on May 1, 1978, before Douglas V. Knudson, a member of the Commission's staff; and the Commission, having reviewed the evidence and arguments of the parties, and being fully advised in the premises, issues the following Findings of Fact, Conclusions of Law and Direction of Election.

1. That Madison Independent Workers Union, hereinafter referred to as the Union, consists of one or more individuals and exists for the purpose of representing employees in collective bargaining, and has its offices at Madison, Wisconsin.

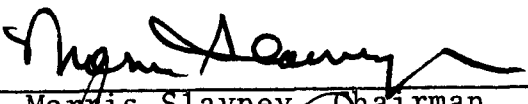
2. That Simehow, Inc., d/b/a Dos Bandidos, hereinafter referred to as the Employer, operates a restaurant at Madison, Wisconsin; and that one of its principal owners is George Pease of Madison, Wisconsin.

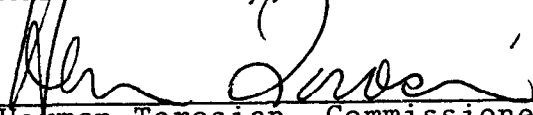
3. That on April 10, 1978 the Union filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election to determine whether all regular full-time and regular part-time employes, including waiters, waitresses, bartenders, cooks, dishwashers, janitors and buspersons in the employ of the Employer, but excluding clerical employes, bookkeepers, professional and managerial employes, guards and supervisors, desire to be represented by the Union for the purpose of collective bargaining; that during the course of the hearing on the petition, held on May 1, 1978, the parties agreed to the appropriateness of the aforementioned unit, however the Union claimed, contrary to the Employer, that Lillian Patterson is a supervisor, that George B. Pease was the son of one of the owners and therefore not an "employee", that Theresa Spaude was not a temporary employee, Trygve Larsen was a temporary employee, and that Jane Dushak and Carol Beal should be declared by the Commission as not being eligible to vote in the election since they were hired on a date after the date of the filing of the petition herein.

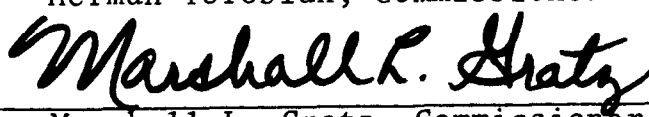
except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by Madison Independent Workers Union for the purposes of collective bargaining with Simehow, Inc., d/b/a Dos Bandidos with respect to wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 6th
day of July, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

election. Section 111.02(3) specifically excludes "any individual employed by his parent" from the definition of the term "employee" under WEPA. Therefore, George B. Pease is not eligible to participate in the election.

Theresa Spaude

The Employer, contrary to the Union, contends that Spaude should not be eligible to vote since she has indicated an intent to quit her employment. Spaude initially indicated to the Employer that she would quit in April 1978. However, her plans changed and she continued employment at least to the date of the hearing. However, prior to the hearing Spaude advised one of the Employer's owners that she would be resigning at the end of May 1978, and as a result, the Employer hired a new waitress to replace Spaude. Spaude testified that she did not tell one of the owners that she was quitting at the end of May. However, her testimony reveals that she would probably quit in July or August 1978. We are satisfied that, since Spaude has indicated her intentions to quit she is presently a temporary employee 1/ and therefore not eligible to vote in the election.

Trygve Larsen

The Union contends, contrary to the Employer, that Trygve Larsen is a temporary employee. The Union based its claim on the testimony of a waitress who claims to have overheard a conversation between the Employer's two owners, wherein Larsen was referred to as a temporary employee. We credit instead the first hand testimony of one of the owners that Larsen is a permanent part-time employee, whose work record indicates that he works approximately 10 hours per week as a cook. We are therefore satisfied that Larsen is a regular part-time employee, and eligible to participate in the election.

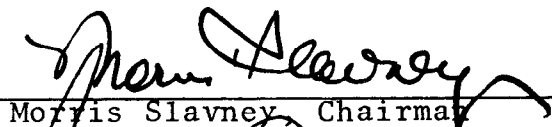
Jane Dushak and Carol Beal

Dushak commenced employment as a waitress on April 28, 1978. Beal began working for the Employer as a hostess on April 29, 1978. The Union would exclude said two individuals from the eligibles, contending that they were hired after the date on which the petition was filed, namely April 10, 1978. The Employer argues that Dushak and Beal should be eligible to vote. It has long been established by the Commission that the eligibility date to participate in an election is ordinarily the date on which the Commission directs the election unless mutually agreed otherwise by all parties. 2/ Since Dushak and Beal commenced their employment before the eligibility date established by the Commission for the conduct of the election, they are eligible to vote. 3/

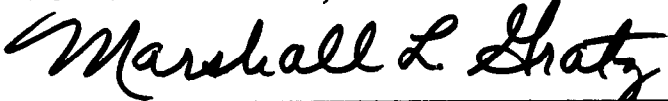
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Marshall L. Gratz, Commissioner

1/ See Casey Lincoln and Mercury (4538) 5/57; City of Middleton (10381) 7/71.

2/ W. H. Krantz Co. (4135) 1/56.

3/ It should be noted, as indicated in the Direction, that employees who are discharged for cause or voluntarily quit their employment prior to the date on which the balloting is conducted, will not be eligible to vote.

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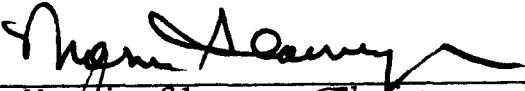
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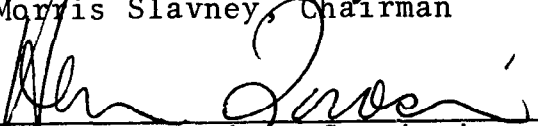
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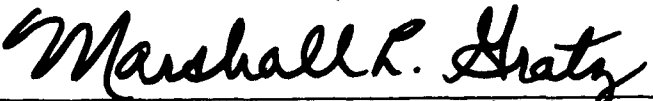
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