

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IVO ZANELLA, INC.

Case I
No. 24412 E-2974
Decision No. 17097

Mr. Jack S. Bernfeld, District Representative, WCCME, AFSCME, AFL-CIO, appearing on behalf of the Petitioner. 1/

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having, on April 13, 1979, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election among certain employees of Ivo Zanella, Inc., to determine whether such employees desire to be represented for purposes of collective bargaining; and hearing on said petition having been held on May 15, 1979, at Hurley, Wisconsin, before Examiner Dennis P. McGilligan; and the Commission, having considered the evidence and argument of the Petitioner, issues the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization representing employees for the purposes of collective bargaining and has its offices at Superior, Wisconsin.
2. That Ivo Zanella, Inc., hereinafter referred to as the Employer, has its offices at Gile, Wisconsin and at that location conducts a business which includes the operation of a number of buses.
3. That in its petition initiating the instant proceeding, AFSCME contended that it claims to represent the employees of the Employer for the purpose of collective bargaining; and that the unit appropriate for collective bargaining should consist of all employees of the Employer, excluding managerial, supervisory and confidential employees.
4. That during the course of the hearing herein, AFSCME contended that Ivo Zanella should be excluded from the proposed bargaining unit because he is the owner, that Catherine Zanella should be excluded from said bargaining unit on the basis that she is the spouse of Ivo Zanella,

1/ No representative appeared on behalf of the Employer, despite the fact that the Employer was notified by Certified Mail No. 071105, dated April 24, 1979 and received by Catherine Zanella on April 26, 1979, of the date, time and place of the hearing. In addition, Ivo Zanella, in phone conversations with the Union representative on May 9, 1979 and the Examiner on May 11, 1979, indicated that he would attend the hearing as scheduled. Finally, the Examiner spoke with Louis Zanella, Ivo Zanella's son, at several different times on the date of the hearing, in an attempt to persuade a representative of the Employer to attend same, but without success.

that Louis Zanella should be excluded on the basis that he is Ivo Zanella's son.

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

CONCLUSIONS OF LAW

1. That all employees of Ivo Zanella, Inc., excluding managerial, supervisory and confidential employees, constitute an appropriate bargaining unit within the meaning of Section 111.(6) of the Employment Peace Act.
2. That Ivo Zanella, Catherine Zanella and Louis Zanella are not employees within the meaning of Section 111.02(3) of the Employment Peace Act; and therefore are appropriately excluded from the bargaining unit described below and ineligible to participate in the election directed herein.
3. That a question of representation within the meaning of the Wisconsin Employment Peace Act exists among the employees of Ivo Zanella, Inc., in the unit described above, on the basis of the claim of Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.

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

DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this directive among all employees of Ivo Zanella, Inc., excluding managerial, supervisory and confidential employees, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees casting valid ballots desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO for the purposes of collective bargaining with respect to wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 28th
day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing issues arose as to whether Ivo Zanella, Catherine Zanella and Louis Zanella should be excluded from the proposed collective bargaining unit.

Ivo Zanella is the owner of the Employer. As such, the Commission finds that he is not an employe within the meaning of Section 111.02(3) of the Employment Peace Act, which provides that "the term 'employe' shall include any person, other than an independent contractor, working for another for hire in the State of Wisconsin in a nonexecutive or nonsupervisory capacity. . . ." Likewise, the Commission finds that Catherine Zanella, as Ivo Zanella's spouse, and Louis Zanella, as his son, are not employes within the meaning of the above Section of the Act. Said Section provides that the term employe "shall not include . . . any individual employed by his parent or spouse. . . ." Since Ivo Zanella, Catherine Zanella and Louis Zanella are not employes within the meaning of the Act, they are not eligible to vote in the representation election the Commission has ordered among the employes in the collective bargaining unit involved herein.

Dated at Madison, Wisconsin this 28th day of June, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney -
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner