

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DAVID T. LALLEY

Requesting an Election Involving  
Pressmen in the Employ of

STRAUS PRINTING AND PUBLISHING COMPANY

Case IV

No. 25719 E-2986

Decision No. 17736

Appearances:

Mr. David T. Lalley, appearing on his own behalf.

Mr. Richard R. Straus and Mr. Ronald C. Holec, appearing  
on behalf of the Employer.

Mr. James L. Ballweg, Secretary-Treasurer, Madison Printing  
and Graphic Communication Union Local 208, appearing  
on behalf of the Intervenor.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

David T. Lalley, an individual, having filed, on February 4, 1980, a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among pressmen in the employ of Straus Printing and Publishing Company to determine whether said pressmen desired to continue to be represented, for the purposes of collective bargaining, by Madison Printing and Graphic Communication Union Local 208, and hearing in the matter having been conducted at Madison, Wisconsin on March 21, 1980 before Examiner Peter G. Davis; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Straus Printing and Publishing Company, hereinafter referred to as the Employer, operates a commercial printing establishment at Madison, Wisconsin, and that during the year 1979 the Employer had a gross volume of business well in excess of five hundred thousand dollars.

2. That David T. Lalley, hereinafter referred to as Lalley, is an individual residing at Madison, Wisconsin, and that all times material herein Lalley has been, and is, employed by the Employer as a pressman, and has been so employed for at least the past five years.

3. That Madison Printing and Graphic Communication Union Local 208, hereinafter referred to as Local 208, is a labor organization representing employes for the purpose of collective bargaining and has its offices at Madison, Wisconsin; that Local 208 currently, and for the past number of years, has been voluntarily recognized by the Employer as the bargaining representative of pressmen in the employ of the Employer for the purposes of collective bargaining, and in that regard has so represented Lalley, as

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the only pressman presently in employ of the Employer in its pressroom; and that in such representative capacity Local 208 on or about December 1, 1976 entered into a collective bargaining agreement with the Employer, covering the wages, hours of working conditions of pressmen in the employ of the Employer, which agreement contained among its provisions the following material herein:

Section 1  
LIFE OF AGREEMENT

(1) Witnesseth that this contract shall be effective the 1st day of December, 1976 to the 28th day of February, 1980, and shall continue in effect from year to year thereafter unless written notice of desire to terminate this agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration.

(2) Where no such termination notice is served and the parties desire to continue this agreement but also desire to negotiate changes in this agreement, either party may serve upon the other a written notice, at least sixty (60) days prior to February 28, 1980, or any anniversary thereafter advising that such party desired to continue this agreement but also desires to review or change terms or conditions of this agreement. Any negotiations to renew this contract shall commence at least sixty (60) days prior to the termination of this agreement.

4. That on or about December 27, 1979 Local 208 notified the Employer, by letter, that it desired to open negotiations with the Employer on an agreement to replace the agreement which was about to expire on February 28, 1980; that on February 4, 1980 Lalley filed the instant petition seeking an election to determine whether Lalley, the only pressman in the employ of the Employer, desired that Local 208 continue as his collective bargaining representative; and that at no time prior to the filing of said petition, nor thereafter, has any bargaining occurred between Local 208 and the Employer with respect to a successor agreement covering pressmen in the employ of the Employer.

5. That at no time material herein has the Employer been a member of any association of printing employers, having among its purposes that of engaging in collective bargaining with Local 208 on behalf of pressmen employed by printing employers.

That upon the basis of the above and foregoing Findings of Fact, the Commission issues the following

CONCLUSIONS OF LAW

1. That since the National Labor Relations Board lacks jurisdiction to conduct a representation election in a bargaining unit consisting of one employee in the employ of an employer who otherwise meets the jurisdictional standards of that agency, the Wisconsin Employment Relations Commission will exercise its jurisdiction to conduct such an election, pursuant to Sec. 111.05 of the Wisconsin Employment Peace Act.

2. That, since David T. Lalley is the only printing press department employe in the employ of Straus Printing and Publishing Company, a collective bargaining unit consisting of said employe constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.02(6) of the Wisconsin Employment Peace Act.

3. That a question of representation, within the meaning of Sec. 111.05 of the Wisconsin Employment Peace Act, presently exists with respect as to whether David T. Lalley desires to continue to be represented by Madison Printing and Graphic Communications Union Local 208 for the purposes of collective bargaining with Straus Printing and Publishing Company.

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

DIRECTION OF ELECTION

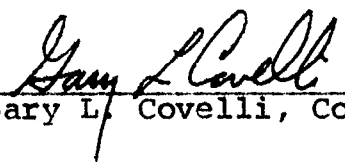
IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this Direction among all commercial printing press department employes, excluding supervisors and executives, who were employed by Straus Printing and Publishing Company on April 16, 1980, except such employes as may prior to the election quit their employment or be discharged for cause, for the purposes of determining whether a majority of such employes desire to be represented by Madison Printing and Graphic Communications Union, Local 208, for the purposes of collective bargaining with Straus Printing and Publishing Company on questions of wages, hours, and conditions of employment.

Given under our hands and seal at  
the City of Madison, Wisconsin this 16th  
day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Gary L. Covelli, Commissioner

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MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Lalley, the only employe in the printing department of the Employer filed the instant Petition requesting the Commission to conduct an election to determine whether Lalley desires to continue to be represented by Local 208, the voluntarily recognized bargaining representative, for the purpose of collective bargaining. Local 208 would have the Commission dismiss the petition on any of the following three grounds, namely: (1) the Commission has no jurisdiction in the matter, inasmuch as the Employer meets the jurisdictional standards of the National Labor Relations Board for the exercise of said agency's jurisdiction; (2) the bargaining unit in which Lalley seeks an election is inappropriate, inasmuch as such an appropriate unit should consist of pressmen in the employ of the instant Employer and other like employers in Madison, since all of said employers bargained with Local 208 as an association; and (3) in any event, the petition was not timely filed.

Jurisdiction of the Commission

It is well established that the NLRB does not have jurisdiction to determine question of representation in a bargaining unit consisting of one employe, even when such employe is employed by an employer whose volume of business meets the jurisdictional standards established by the NLRB. 1/ The volume of annual business of the instant Employer does meet such jurisdictional standards. However, if the one-man unit herein is found to be appropriate, the Commission rather than the NLRB properly may exercise its jurisdiction to determine the question of representation.

The Appropriate Unit

Sec. 111.02(6) of the Wisconsin Employment Peace Act defines the term "collective bargaining unit" as follows:

The term "collective bargaining unit" shall mean all of the employes of one employer (employed within the state), except that where a majority of such employes engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in section 111.05(2) to constitute such group a separate bargaining unit they shall be so considered, provided, that in appropriate cases, and to aid in the more efficient administration of the employment peace act, the commission may find, where agreeable to all parties affected in any way thereby, an industry, trade or business comprising more than one employer in an association in any geographical area to be a "collective bargaining unit". A collective bargaining unit thus established by the commission shall be subject to all rights by termination or modification given by this subchapter I of chapter 111 in reference to collective bargaining units otherwise established under said subchapter. Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employes in each separate unit

1/ Luckenbach Steamship Co., Inc., 2 NLRB 181; Foreign Car Center, 129 NLRB 319; NLRB v. WGOK, Inc., 384 Fed. 2d 500; WERC v. Atlantic Richfield Co., 52 Wis. 2d 126.

shall have voted by secret ballot as provided in section 111.05(2) so to do.

It is clear from the above, that where all parties affected agree, association-wide bargaining units are appropriate under the Act. However, the evidence does not support a finding that such an association existed among printing employers in Madison, at least an association which included the Employer involved herein. Further the instant Employer, as well as the petitioning employee, does not agree to a unit of employees employed in press departments of additional employers. Therefore an association-wide unit is not appropriate under such circumstances.

The pertinent statutory provision permits employees engaged in a single department to constitute an appropriate bargaining unit. The petitioner is the only employee employed in the Employer's pressroom. The Employer and Local 208 has agreed in the past that the Employer's pressroom employees constitute an appropriate unit. We conclude, therefore that the unit claimed to be appropriate by Lalley is indeed appropriate under the Act.

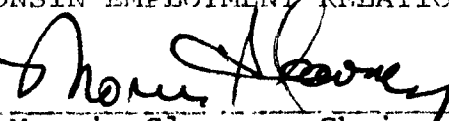
#### The Timeliness of the Filing of the Petition


The petition was filed after Local 208 had notified the Employer that it desired to reopen negotiations leading to a successor collective bargaining agreement, but prior to the expiration date of the existing agreement. In other similar cases arising under the Wisconsin Employment Peace Act, the Commission has processed election petitions filed after the reopening date and prior to the employer and union involved having reached an agreement on a successor collective bargaining agreement. 2/ We note in particular that no negotiations took place after Local 208 notified the Employer of its desire to reopen the agreement and prior to the filing of the petition herein. Therefore we deem the petition to be timely filed, under the circumstances present here.

Dated at Madison, Wisconsin this 16th day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Gary I. Covelli, Commissioner

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2/ Wholesale Meats, Inc. (4138) 1/56; Consumers Market, Inc. (10407) 7/71.