

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CANAAN DAY CARE CENTER

Appearances:

No appearances were made on behalf of the Employer.

FINDINGS OF FACT

No. 18190

to the date set for the hearing. The Union appeared for the scheduled hearing on that date, but the Employer failed to appear and did not attempt to contact the Examiner at any time on or before that date to provide any basis or explanation for such failure to appear at the hearing. Examiner Mukamal attempted to contact the Employer by phone on the morning of the date set for hearing but was unsuccessful in such attempt.

5. Examiner Mukamal, after consultation with the Commission, set a second date for hearing on the Union's petition on October 2, 1980, and provided notice to the parties of the date, time and place of said hearing in a timely fashion. The Union appeared for the hearing scheduled on October 2, 1980. The Employer failed to appear at said hearing. Examiner Mukamal contacted the Employer's Administrator following its failure to appear at the hearing, and was advised that the Employer would not make an appearance. Examiner Mukamal thereupon conducted the hearing in the absence of any representative of the Employer.

6. During the course of said hearing, the Union agreed to amend its description of the appropriate collective bargaining unit to read as follows:

All full-time and regular part-time teachers, teacher's aides, bus drivers, dietary, housekeeping and maintenance employees employed by the Employer, excluding the administrator, director and all supervisory, confidential and managerial employees.

7. The Employer employs eight teachers, four teacher's aides, three maintenance workers, one cook and one bus driver. The aforementioned employees comprise all employees of the Employer other than the Administrator, the Director and the Administrative Secretary, whom the Union contends are supervisory and/or managerial employees and does not seek to include in the bargaining unit referred to above. The Administrator, Director and Administrative Secretary all perform substantial duties of a supervisory nature.

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

CONCLUSIONS OF LAW

1. The teachers, teacher's aides, maintenance, bus drivers, dietary, and housekeeping employees in the employ of the Canaan Day Care Center are employees within the meaning of Section 111.02(3) of the Wisconsin Employment Peace Act.

2. The bargaining unit comprised of all full-time and regular part-time teachers, teacher aides, bus drivers, dietary, housekeeping and maintenance employees employed by the Employer, excluding the Administrator, Director, and all supervisory, confidential and managerial employees constitutes an appropriate collective bargaining unit within the meaning of Sections 111.05 and 111.02(3) of the Wisconsin Employment Peace Act.

3. The Administrator, Director and Administrative Secretary employed by the Employer are appropriately excluded from the definition of "employee" as set forth in Section 111.02(3) of the Wisconsin Employment Peace Act, and therefore said individuals shall be excluded from the bargaining unit in question and shall not be permitted to vote in the election directed herein.


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

An election shall be conducted by secret mail ballot (with ballots to be mailed to the last known addresses of each of the eligible voters in said election) under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive among all full-time and regular part-time teachers, teacher aides, bus drivers, dietary, housekeeping and maintenance employees in the employ of the Canaan Day Care Center, excluding the administrator, the director, the Administrative Secretary and all other supervisory, confidential and managerial employees, who were employed on October 24, 1980, 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 voting desire to be represented for the purpose of collective bargaining by Local 1444, United Food and Commercial Workers Union, AFL-CIO, on matters relating to wages, hours and working conditions.

Given under our hands and seal at the
City of Madison, Wisconsin, this 24th
day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

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

The Union seeks an election in an overall unit consisting in effect of all employees of the Employer, excluding the Administrator and the Director. During the course of the hearing, the Union agreed to the exclusion of the Administrative Secretary from the unit on the basis of her supervisory and managerial status.

The hearing was conducted on October 2, 1980, by Examiner Stuart S. Mukamal in the absence of the Employer or any representative of the Employer and in the presence only of the Union's representatives. The events leading up to this hearing were as follows: Following the filing of the Union's representation petition on July 29, 1980, 1/ the Commission appointed Mr. Mukamal as Examiner to hear all issues concerning said petition. The Examiner set hearing on the matter for August 22, 1980, and by certified mail, dated August 6, 1980, notified both the Union and the Employer of the date, time and place of said hearing. The Union received said notice on August 7, 1980. However, no return receipt from the Employer was received prior to the date set for the hearing. The Union's representatives appeared at the hearing as scheduled, but no representative of the Employer appeared. The Examiner thereupon attempted to contact the Employer to ascertain the reasons for its failure to appear at the hearing but was unsuccessful.

Following the occurrence of said events, the Examiner contacted the Commission and was advised to set another date for hearing and to notify the Employer by regular mail of the date, time and place of the rescheduled hearing. The Commission further instructed the Examiner that he was empowered to proceed with the hearing on an ex parte basis in the event that the Employer or its authorized representative, failed to appear at the rescheduled hearing and directed him to inform the Employer in writing of that fact. The Examiner did so by letter dated September 10, 1980, to which was attached a Notice of Rescheduling of Hearing setting forth the date, time and place of the rescheduled hearing. This letter (and Notice) was sent both by regular and by certified mail to the Employer.

The Employer received the certified mail notice of the originally scheduled August 22, 1980, hearing on August 25, 1980. Although there can be no doubt that the Employer was as of that time aware of the nature or pendency of this proceeding, the Employer did not contact the Commission or the Examiner at any time thereafter. The Employer also received the certified mail letter and Notice of the October 2, 1980 rescheduled hearing on September 11, 1980.

On October 2, 1980 the Union's representatives appeared at the rescheduled hearing. The Employer failed to appear. The Union's representative informed the Examiner that an employee of the Employer, Ms. Gloria Wilson, personally hand-delivered the Examiner's letter of September 10, 1980 together with the Notice of Rescheduling of Hearing, to the Rev. H. Matthew Beecham, Administrator of the Employer's facility several weeks prior to the hearing. The Examiner contacted Ms. Wilson by telephone, who confirmed this fact. The Examiner thereupon telephoned Rev. Beecham at approximately 10:30 a.m. on the morning of October 2, 1980 and informed him that the hearing was to take place that morning as scheduled, that the Employer would

1/ The Union had previously filed its petition with the National Labor Relations Board in Case No. 30-RC-3803 but had been advised by the NLRB on July 28, 1980 that it could not process said petition on the grounds that the Employer did not meet its jurisdictional standards.

be afforded until 11:30 a.m. to appear by a representative of its own choosing, and that, in the event of the Employer's failure to appear, the hearing would proceed ex parte. The Examiner reminded Rev. Beecham, that the Employer had had ample advance notice of the date, time, place and nature of the hearing. Upon the Employer's failure to appear by 11:30 a.m., the Examiner proceeded to conduct the hearing ex parte.

On the basis of the foregoing, the Commission concludes that the Employer was afforded sufficient notice of the pendency and nature of this proceeding, and of the date, time and place of the hearing scheduled for October 2, 1980. Furthermore, it is clear that the Examiner diligently notified the Employer on the date of hearing that the hearing would commence in the event of the Employer's failure to appear. We conclude that the Examiner properly proceeded to hear this matter in the Employer's absence. 2/

The Union presented the Examiner prior to the hearing with a list of names and mailing addresses of all of the employees within the claimed bargaining unit, which list it updated at the hearing. 3/ It then presented evidence it believed to be relevant as to the appropriateness of the claimed bargaining unit. Said unit consists of 17 employees occupying five classifications: teachers, teacher's aides, bus drivers, maintenance employees and cooks.

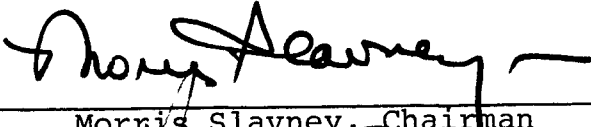
Section 111.02(6) of the Wisconsin Employment Peace Act defines the term "collective bargaining unit" as all of the employees of one employer, with certain exceptions not material herein. For this reason alone we conclude, based on the evidence of record that the unit, as amended at the hearing, is an appropriate bargaining unit.

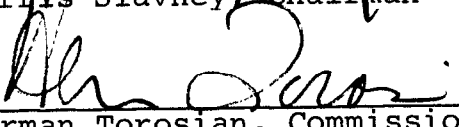
The Commission finally concludes that, in view of the circumstances existing herein, that the purposes and efficient administration of the Act would be best served by conducting the election by mail within thirty (30) days hereof, with mail ballots, as well as a notice as to the purpose of the election to be sent to the mailing addresses of each of the eligible voters as they appear in the record. A copy of said notice will be sent to the Employer.

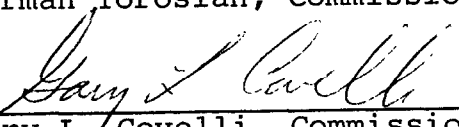
Dated at Madison, Wisconsin, this 24th day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

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- 2/ Ample precedent exists supporting the Examiner's course of action. See Edward Ryan Inc. (12390-A, B) 5/74 (Aff'd. Milw. Co. Circuit Court 7/75). Kohlberg Theatres (12147-A, B) 3/74, United Contractors (10253-A, B) 1/74 (Aff'd Waukesha Co. Circuit Court 8/74)
- 3/ Marked and introduced at the hearing as Union Exhibit 1. One employee, Terri Woulard was on maternity leave of absence but is expected to return to work in a few weeks.