

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
In the Matter of the Petitions of :
:
IBEW LOCAL NO. 134, UAW, UFCW LOCAL : Case 1
NO. 1444, IBT LOCAL NO. 744, HERE : No. 44420 E-3068
LOCAL NO. 122, IAMAW DISTRICT NO. 8, : Decision No. 26850
and IBT LOCAL NO. 43 :
:
: Case 2
Involving Certain Employes of : No. 44421 E-3069
: Decision No. 26851
DAIRYLAND GREYHOUND PARK, INC. :
:

Appearances:

Michael, Best & Friedrich, Attorneys at Law, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, by Mr. Thomas W. Scrivner and Mr. Jonathan O. Levine, appearing for the Employer.
Mr. Michael Fitzgerald, Business Representative/Organizer, IBEW Local No. 134, 600 West Washington Boulevard, Chicago, Illinois 60606, appearing for IBEW Local No. 134.
Gillick, Murphy, Wicht & Prachthausen, Attorneys at Law, Suite 260, 300 North Corporate Drive, Brookfield, Wisconsin 53045, by Mr. George F. Graf, appearing for the UAW.
Mr. Paul Whiteside, Jr., Representative UFCW Local No. 444, 2001 North Mayfair Road, Milwaukee, Wisconsin 53226, appearing for UFCW Local No. 444.
Mr. Gary M. Williams, Attorney at Law, 12065 West Janesville Road, Hales Corners, Wisconsin 53130 and Mr. Charles W. Walker, Trustee, IBT Local No. 744, 300 South Ashland Avenue, Chicago, Illinois 60607, appearing for IBT Local No. 744.
Mr. Frank J. Schiro, Attorney at Law, Suite 530, 135 West Wells Street, Milwaukee, Wisconsin 53203, and Mr. Jerry W. Koskoski, International Organizer, and Mr. Michael R. Enea, Business Representative, HERE Local No. 122, Room 602, 213 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, appearing for HERE Local No. 122.
Mr. Donald Stella and Mr. Kenneth Black, District Representatives, IAMAW District No. 8, 12365 St. Charles Rock Road, Bridgeton, Missouri 63044, appearing for IAMAW District No. 8.
Mr. Charles G. Schwanke, President, IBT Local No. 43, 1624 Yout Street, Racine, Wisconsin 53404, appearing for IBT Local No. 43.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DIRECTION OF ELECTIONS

On August 15, 1990, IBEW Local No. 134 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of Dairyland Greyhound Park, Inc. Additional petitions were filed by the UAW on August 17, 1990, by UFCW Local No. 1444 on September 6, 1990, by IBT Local No. 744 on September 13, 1990, by HERE Local No. 122 on September 17, 1990, by IAMAW District No. 8 on October 1, 1990, by IBT Local No. 43 on October 17, 1990, and by IUOE Local No. 139 on January 18, 1991. A pre-hearing conference on the petitions was held on September 19, 1990 in Kenosha, Wisconsin by Douglas V. Knudson, an Examiner on the Commission's staff. Hearing on the petitions was conducted by said Examiner on October 1, 8 and 23, 1990 in Kenosha, Wisconsin. A stenographic transcript of the hearing was prepared. Post-hearing briefs were received on or before December 26, 1990 from the Employer, IBEW Local No. 134, the UAW, IBT Local No. 744 and HERE Local No. 122. The Commission, being fully advised in the premises, makes and issues the following:

FINDINGS OF FACT

1. Dairyland Greyhound Park, Inc., herein the Employer, is an employer with its principal offices at 5522 - 104th Avenue, Kenosha, Wisconsin 53144-7450.
2. The International Brotherhood of Electrical Workers, Local Union No. 134, AFL-CIO, herein IBEW, is a labor organization with its principal offices at 600 West Washington Boulevard, Chicago, Illinois 60606.
3. The United Automobile, Aerospace and Agricultural Implement Workers of America International Union, herein UAW, is a labor organization with its principal offices at 7435 South Howell Avenue, Oak Creek, Wisconsin 53154.
4. The United Food and Commercial Workers International Union, Local No. 1444, AFL-CIO, herein UFCW, is a labor organization with its principal

offices at 2001 North Mayfair, Milwaukee, Wisconsin 53226.

5. The International Brotherhood of Teamsters, Local Union No. 744, herein IBT 744, is a labor organization with its principal offices at 300 South Ashland Avenue, Chicago, Illinois 60607.

6. The Hotel Employees and Restaurant Employees International Union, Local Union No. 122, herein HERE, is a labor organization with its principal offices at Room 602, 213 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.

7. District No. 8, International Association of Machinists and Aerospace Workers, AFL-CIO, herein IAM, is a labor organization with its principal offices at 50 West Oakton Street, Des Plaines, Illinois, 60018.

8. The International Brotherhood of Teamsters, Local Union No. 43, herein IBT 43, is a labor organization with its principal offices at 1624 Yout Street, Racine, Wisconsin 53404.

9. The International Union of Operating Engineers, Local No. 139, herein IUOE, is a labor organization with its principal offices at N27 W23233 Roundy Drive, Pewaukee, Wisconsin 53272.

10. On August 5, 1990, the IBEW filed a petition for an election among the pari-mutuel clerks and tellers employed by the Employer. On September 27, 1990 the IBEW filed an amended petition to include the money room employes and information clerks with the pari-mutuel clerks.

11. Subsequently, petitions were filed on August 17, 1990 by the UAW, on September 6, 1990 by the UFCW, on September 13, 1990 by the IBT 744, on September 17, 1990 by the HERE, on October 1, 1990 by the IAM, on October 17, 1990 by the IBT 43, and on January 18, 1991 by the IUOE. In a letter dated January 28, 1991, IBT 43 withdrew its petition. The petition by HERE sought an election in a unit of food and beverage employes. The other six petitions all sought an election in a unit of all the employes of the Employer. The parties were able to resolve all questions concerning the eligibility of employes to vote in an election. The parties agreed that the following positions would be excluded from any bargaining unit; Money Room Manager, Assistant Money Room Manager, Assistant Director of Parking, and three confidential employes, who are Barbara Kruski, Mary Serpe and Janet Vidas. The parties also agreed that the following employes would be eligible to vote; Valet Parking Captains, Lure Operators, Racing Office Assistant, and Mutuel Line Supervisors. The only issue which remains for determination by the Commission is whether there should be one overall bargaining unit consisting of all eligible employes, or whether the Employer's operation consists of several departments, which would permit multiple bargaining units to be established.

12. The Employer is the largest greyhound racing facility in Wisconsin and is one of the largest of such facilities in the United States. The central attraction is dog racing. The track opened to the public on June 20, 1990. The main building, i.e., the grandstand building, has over 200,000 square feet of floor space and seats more than 7,000 spectators indoors with some outside bleacher seating for additional spectators. The track is open 50 weeks in a calendar year closing during approximately the last two weeks of December. There are nine performances per week. Wednesdays, Saturdays and Sundays are "matinee" days having both afternoon and evening performances. Tuesdays, Thursdays and Fridays have only evening performances. There are no performance on Mondays. Each performance consists of 13 races and lasts approximately three hours. Average attendance per performance has been about 4,600. The average gross receipt per performance has been a little over \$460,000.

13. Dog racing is the sixth largest spectator sport in the United States. The sport is heavily regulated by the individual states in which the tracks are located. In Wisconsin the regulating body is the Wisconsin Racing Board, herein the WRB. The WRB must approve and license on an annual basis all racing officials and employes, including the General Manager. Each employe is issued a color coded badge which identifies the areas of the track to which the employe has access. The WRB maintains an office and staff at the track to monitor wagering, to ensure the teller machines are operated in accordance with WRB rules, to oversee the activities of racing officials, and to make sure the greyhounds are identified properly and meet racing weights.

14. The track is run on a day-to-day basis by a three member executive committee, who are members of the eleven member Employer's Board of Directors. The Employer's General Manager, Ron Sultemeier, meets with the Executive Committee on a weekly basis. The track is organized around a group of functions, or areas, each of which is headed by a director. Those functions are Marketing/ Public Relations, Racing, Mutuels, Admissions/Programs, Security, Parking, Maintenance, Office, Comptroller, Food/Beverage, and Personnel. The directors and their respective subordinate supervisors meet weekly, as a group, with Sultemeier to coordinate plans for the following week's racing schedule, to discuss personnel issues, and to plan marketing activities.

15. The track has separate parking areas for office staff, for non-office employes, and for customers. There are three types of customer parking, i.e., general public, preferred customers, and valet parking. Parking employes collect parking fees, direct vehicles, park vehicles for the valet service and drive shuttle buses.

16. The maintenance area is responsible for keeping the entire facility and grounds in good working order. Housekeeping is part of the maintenance function. Maintenance and housekeeping employes work in all areas of the building before, during and after performances.

17. Pari-mutuel wagering occurs on all four floors of the building at eight "mutuel lines." The approximately 300 mutuel employes are divided into three groups: 15 money room employes; 12 line supervisors; and 270 mutuel clerks or tellers. On the first, or grandstand, floor are two main mutuel lines on the east and west sides of the building entrance and two small lines at the northeast and northwest corners of the grandstand. Behind one of the main lines is the Mutuel Manager's office, the main money room and a tote room.

There are also automated machines on the first floor where patrons may place bets. On the second floor, or sports lounge level, there are two mutuel lines.

On the third floor, or clubhouse level, there are two mutuel lines, one each on the east and west sides of the dining room. There is one small line in the press box area on the fourth floor. Five mutuel line are open on a normal night with two line supervisors assigned to each line. The line supervisors are responsible for the smooth operation of the lines. They make sure the clerks are ready to go when the races begin, work teller machines when necessary, dispense information from the office, and, handle customer and employe problems, or, refer those problems to the Director of Mutuels, Robert Jordan, or the office. Most mutuel clerks work four or five performances a week, some working more and some working less. Each performance lasts about three hours. The mutual clerks report in 45 minutes before the first race and finish their work about 15 minutes after the end of the last race. Thus, a mutuel clerk works about four hours per performance. The primary responsibility of a mutuel clerk is to sell and cash tickets (bets). Their transactions are recorded on computers provided and maintained by the American Totalizator Company. The main money room on the first floor serves as a temporary bank for all of the track's operations, except food and beverage. There are five mini money rooms with one or two employes each on the other three floors. Money is moved between the main money room and the mini money rooms and other operational areas before, during and after performances. At the end of each day, the revenue for each area is delivered to the main money room and is counted separately for each area. The money room staff consists of a manager, assistant manager, division dealers and helpers. Prior to the start of each performance, the division dealers prepare and dispense banks for parking, programs, admissions and gift shop employes and an initial bank roll (a tote) to each clerk. Also, any necessary exchanges with the food and beverage money room are made. During the performances skims and other receipts are counted. All cash deliveries and pick-ups by armored car are done through the main money room. The average shift for money room employes is four and one-half to five hours. There is a door at each end of the mutuel line. After the tellers are at their windows and the cash draws arrive from the money room, the line supervisor locks the doors, which then remain locked until the money is removed to the money room after a performance ends. The doors of the money rooms also are locked when money is present, as is the case with concession stands and most of the booths receiving cash for parking and admissions.

18. The Food/Beverage Director, Bruce Shubrook, is an employe of another company and works for the Employer on a consulting contract. There are several operational components of the food and beverage functions: concessions, kitchen, dining room, beverages and administrative/bookkeeping. Shubrook has an Operations Manager who assists him in overseeing the food/beverage operation. There are two bars and two food, or concession, stands (one of each on each side) and a central five-sided food court on the first floor. A bar and a concession stand are located at each end of the sports lounge (second floor). On the third floor, clubhouse level, there are three bars and a food court, in addition to the 347 table, 1600 seat restaurant. The Concessions Manager oversees the concession stands, which are fast food operations selling items ranging from hot dogs to pizza and are staffed by cashiers, cooks, utility employes (stock and clean) and a manager. The bars are staffed by bartenders and stockers and are supervised by the Beverage Manager. The kitchen prepares food for the concession stands, bars, dining room and special group meals. The chef manages the kitchen and its staff of cooks, food preparers, dishwashers, stockers, laundry and warehouse employes. The 1600 seat dining room is run much like a restaurant. It employs hosts/hostesses and wait, bus, setup and cleaning staff. These employes report to floor supervisors who in turn report to the Administrative Assistant and the Operations Manager. The Group Sales Director oversees the coordinating of special events, such as arranging banquets or brunches for large groups and making sure the kitchen is ready to serve these groups in addition to its other tasks. The clerical staff of the group sales office also handles reservations for the dining room. The food/beverage operation has its own money room to

handle revenue from the dining room, concession stands and bars, which uses the same accounting procedures and prepares the same reports as the main money room. The supervisor of each area in the food/beverage operation reports to Shubrook.

19. Admissions includes employes who sit in booths taking money from patrons or checking their passes and directing patrons to the general admissions or clubhouse areas. Admissions also includes ushers and program sellers. Programs and tip sheets are sold at various locations on the first, second and third floors and in two gift shops on the first and second floors.

20. Employes in the racing area include chartwriter, lure operator, starter, brakeman and leadout. These employes organize and conduct the races.

21. John Serpe, Jr. is the Employer's Personnel Director and has been since April 1, 1990. Serpe reports to Sulzemeier. Personnel maintains all personnel records, receives employment applications, interviews and hires employes (except when special skills are required), ensures that new hires complete the WRB forms and are fingerprinted and forward those documents to the WRB, responds to employe questions concerning payroll, advises area directors and supervisors on employment matters such as discipline, and develops, implements and administers employment policies. The payroll and accounting functions for all employes and track operations are also located in the main office, as is personnel.

22. All of the Employer's employes have to be licensed annually by the WRB, while racing officials and certain operating officials also need formal approval of the WRB. All employes fill out the same license applications, are fingerprinted, undergo a security check, and pay the licensing fee. While at work, each employe wears a colored badge which designates both the type of license the employe holds and the areas of the facility to which the employe has access. Some employes hold more than one license.

23. The employes, who are eligible to vote, are paid weekly on either an hourly or a performance basis. Office, most food/beverage, housekeeping, and maintenance employes are paid an hourly rate ranging from \$4.50 to \$6.00, although wait staff in the dining room receive \$2.50 per hour plus tips. Some food/beverage employes and employes working in mutuels, parking, leadout, racing, and admissions are paid on a performance basis. The amount of performance pay an employe receives varies based on the job and the amount of time involved. For example, leadouts receive \$22.00, mutuel clerks receive \$35.00 and a chartwriter receives \$65.00. A performance shift is generally from four to five hours in length. Many employes, both hourly and performance paid, work both performances on a matinee day. There is no fringe benefit package in place for any employe. Hourly employes record their hours of work on a time clock. One time clock is located near the kitchen and is used by food and beverage employes. A second clock is located across from the kitchen and is used primarily by housekeeping employes. A third time clock is in the maintenance hallway and is used by maintenance employes. The Employer initially considered having only one time clock for all hourly employes, but discovered multiple smaller clocks would be less expensive. Most performance paid employes sign an attendance sheet, although the time worked by mutuel clerks is recorded on their machines.

24. There is an employe lounge adjacent to the sports lounge on the second floor which has room for 100 employes and can be used by any employe. Employes can also use the sports lounge when the employe lounge becomes crowded and mutuel clerks often gather in the sports lounge because they receive their window assignments from a line supervisor in the sports lounge. The employe lounge has vending machines and a hot meal, prepared by the kitchen staff, is available to all employes from 4:00 p.m. to 6:00 p.m. Tuesday through Sunday at a cost of \$2.00. There are two locker rooms both located on the second floor, one on the east side and one on the west side. The east side locker room is used primarily, but not exclusively, by food and beverage employes because it is closest to the kitchen area and the food and beverage employes began working before most other employes started working. The Employer has not restricted either locker room to the use of specific groups of employes.

25. All employes wear uniforms which identify them as employes. Most food and beverage employes, except the kitchen staff who wear white outfits, wear black slacks, a white shirt and a teal bow tie. Concession stand employes wear a polo shirt and no tie. Wait staff also wear a teal apron. Bartenders wear a teal cummerbund, but no apron. Mutuel clerks wear black slacks, a white shirt, a teal vest and a black bow tie. Money room employes wear black slacks and a white shirt, but no tie or vest. Parking, admissions and racing staff wear tan slacks and a white polo shirt with a red insignia.

26. The majority of the initial complement of employes occupying positions involved in this proceeding were hired through a job fair held on March 30 and 31, 1990. Over 1,500 applications were received at the job fair. Each applicant completed the same type of application form, which contained a brief description of each work area and a list of the available jobs.

Applicants were asked to check an area of preference and some applicants checked all areas and jobs. Very few applicants had prior experience in the racing industry, but such lack was not an impediment to employment. Hiring was done through follow-up interviews with the initial applicants and focused on personal appearance, background and communication skills, rather than on specific experience and training. Each new hire was given a general orientation and varying amounts of training. The training for mutuel clerks consisted of two sessions each of which lasted four hours. The mutuel clerks than had to pass a test before beginning employment. Training for other employes ranged from about two hours for concessions workers up to about one week for kitchen employes and wait staff. In addition to training in their respective tasks, non-mutuel employes were trained in betting formats and terminology so as to be able to answer questions from customers.

27. Most employes have remained employed in the area into which they initially were hired. While there has been some employe turnover, as of the hearing the Employer had not found it necessary to replace many of the employes who had terminated. However, there has been some interchange between areas. Approximately once a week mutuel clerks have been solicited for volunteers to work in the racing area as leadouts and handlers. At least one mutuel employe worked one performance as a handler at the employe's request. Another mutuel clerk worked in the racing area for one week as a chartwriter at the Employer's request. Another mutuel clerk regularly has worked one performance per week in the parking area. Mutuel clerks have worked in the office to assemble various paper materials. Another mutuel clerk is licensed as a bartender and could perform those duties if needed. As of the hearing, all but two of the money room employes had been trained as mutuel clerks. Some of them have worked as clerks. Admissions employes relieve office employes for breaks and also have worked in the office to assist in times of heavy workload. Parking and admissions employes interchange as necessary on a regular basis. Several employes, not more than 20, have transferred to mutuels positions from parking or admissions positions. At least a dozen other employes have expressed an interest in transferring to mutuels when openings occur. Some food/beverage employes have worked as leadouts and some employes transferred to food/beverage from racing. There have been some employe transfers between housekeeping and food/beverage positions. Sometimes, especially during sellouts, security employes assist admissions employes. The Employer anticipates additional cross-training of employes in different areas to increase its flexibility to cope with variations in attendance, as time permits.

28. The Employer has basic policies which apply to all employes and are set forth in a handbook which was given to all employes at a pre-opening meeting. Subsequently, some of the policies have been revised. For example, employes now report an absence to a central location, i.e., security, rather than to their respective departments. Personnel, payroll and accounting are centralized. Wages, hours and working conditions are determined by the General Manager, Personnel Director, Executive Committee and area directors together, rather than individually by area directors.

29. Employes in several of the areas experience time pressures. Parking and admissions are busiest as customers arrive for the performance. The busiest times for concession workers are prior to the first race and between races. Mutuel clerks are busy prior to each race and are much less busy during the races. The level of activity in the kitchen is of a more steady basis, although many customers prefer to finish eating in the dining room before the races begin. Because of the size of the dining room, 1600 seats, the kitchen and dining room staffs can be very busy prior to the start of the races.

30. All employes who handle cash are responsible for payment of cash shortages. However, concession, beverage/bar and cashier employes are allowed a variance of \$5.00 per performance. The largest shortage a food and beverage employe has had to repay was about \$25.00. One mutuel clerk testified that his largest shortage was \$20.00. One of the mutuel line supervisors testified that the largest shortage by a clerk for one performance, of which he was aware, was between \$150.00 and \$200.00. The supervisor had seen cumulative weekly shortages for one clerk as high as \$500.00. Mutuel clerks are allowed to keep overages from incorrectly issued tickets.

31. A supervisor can discipline an employe. However, any discipline past a second written warning must be approved by the Personnel Director and the appropriate area director. The General Manager also must approve the discharge of an employe.

32. The Employer's operating budget is a composite of budgets for several cost accounting areas, which areas roughly correspond to the operating areas headed by directors. The budgets are prepared annually with monthly review and adjustment by the Comptroller, General Manager and area director.

33. Both the Mutuels and Food/Beverage operations constitute departments based on the Employer's organizational and supervisory structure

and the employes' work location, duties and limited interchange with other employes.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. A collective bargaining unit consisting of all regular full-time and regular part-time Food/Beverage Department employes of Dairyland Greyhound Park, Inc., excluding supervisory, managerial and confidential employes, is an appropriate collective bargaining unit within the meaning of Sec. 111.02(3), Stats.

2. A collective bargaining unit consisting of all regular full-time and regular part-time Mutuels Department employes of Dairyland Greyhound Park, Inc., excluding supervisory, managerial and confidential employes, is an appropriate collective bargaining unit within the meaning of Sec. 111.02(3), Stats.

3. A collective bargaining unit consisting of all regular full-time and regular part-time employes of Dairyland Greyhound Park, Inc., conditionally excluding Mutuels Department employes and Food/Beverage Department employes, and fully excluding supervisory, managerial and confidential employes, is an appropriate collective bargaining unit within the meaning of Sec. 111.02(3), Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

DIRECTION OF ELECTIONS

That elections by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this direction in the following voting groups for the purposes indicated:

Voting Group 1

All regular full-time and regular part-time Food/Beverage Department employes of Dairyland Greyhound Park, Inc., excluding supervisory, managerial and confidential employes, who were employed on March 29, 1991, except such employes as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of said employes in said voting group desire to be either a separate collective bargaining unit or potentially be included in a collective bargaining unit with other employes; and (2) whether a majority of the employes voting wish to be represented for the purposes of collective bargaining by the Hotel Employees and Restaurant Employees International Union, Local Union No. 122 or any other labor organization who advises the Commission within 10 days of the date of this Direction that it wishes to be on the ballot, or not to be so represented.

Voting Group 2

All regular full-time and regular part-time Mutuels Department employes of Dairyland Greyhound Park, Inc., excluding supervisory, managerial and confidential employes, who were employed on March 29, 1991, except such employes as may, prior to the election, quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of said employes in said voting group desire to be either a separate collective bargaining unit or potentially included in a collective bargaining unit with other employes; and (2) whether a majority of the employes voting wish to be represented for the purposes of collective bargaining by the International Brotherhood of Electrical Workers Local No. 134 or any other labor organization who advises the Commission within 10 days of the date of this Direction that it wishes to be on the ballot, or not to be so represented.

Voting Group 3

All regular full-time and regular part-time employes of Dairyland Greyhound Park, Inc., conditionally excluding employes in the Mutuels Department and the Food/Beverage Department, and fully excluding supervisory, managerial and confidential employes who were employed on March 29, 1991, 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 the employes voting wish to be represented for the purposes of collective bargaining by the United Automobile, Aerospace and Agricultural Implement

Workers of America International Union; the United Food and Commercial Workers International Union, Local No. 1444, AFL-CIO; the International Brotherhood of Teamsters, Local Union No. 744; District No. 8, International Association of Machinists and Aerospace Workers, AFL-CIO, or the International Union of Operating Engineers, Local No. 139 or any other labor organization who advises the Commission within 10 days of the date of this Direction that it wishes to be on the ballot, or not to be so represented.

1991.

Given under our hands and seal at the City of
Madison, Wisconsin this 29th day of March,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

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

The sole issue before the Commission is whether the employees who are eligible to vote on the question of union representation should all be included in one bargaining unit, or whether there are departments within the Employer's operation which would require that employees be given a choice of being a separate unit.

POSITIONS OF THE PARTIES

The IBEW seeks a finding that the mutuels employees, i.e., pari-mutuel clerks, money room clerks and information clerks, constitute a separate division or department and, therefore, are eligible to constitute a bargaining unit separate from other employees of the Employer. Because the mutuels employees have different duties, skills, wages, hours, working conditions and supervision, do not share a common work place, and have no functional interchange with employees of other divisions or departments, they do not share a community of interest with those employees.

HERE seeks a finding that the food and beverage employees constitute a separate division or department. In prior cases the Commission consistently has found a separate bargaining unit of food and beverage employees, who are part of a large and otherwise integrated organization, to be appropriate. Such a finding in this case is supported by several factors: uniforms which are distinguishable from those of other employees; a separate locker room; different colored badges based on restricted geographic areas of work; distinct duties, so as to preclude interchange with other employees; type of pay, since food and beverage employees typically are paid hourly and most receive tips; separate supervision; distinct experience and training; the food and beverage operation is a separate profit center in terms of standard accounting procedures; and, food and beverage employees have health and safety concerns not shared with other employees. Even if there has been some interchange of employees between departments, the functions of the departments remain largely separate. The food and beverage employees share a community of interest which is not shared with the rest of the employees.

The Employer takes the position that the only appropriate bargaining unit consists of all its eligible employees. Said position is shared by the UAW, the UFCW, the IBT 744, the IAM, the IBT 43, and the IUOE. That position is based on the following assertions. Neither the mutuel employees nor the food/beverage employees possess a distinct community of interest sufficiently unique from the other employees to meet the test for department status under the Wisconsin Employment Peace Act, herein WEPA. Rather, each group of employees performs an essential function in connection with an integrated and indivisible operation.

The intent of WEPA is to promote labor peace and stability, which in the public sector is fostered by a policy discouraging the fragmentation of bargaining units. Commission and court decisions support such a policy. WEPA expressly states that the interests of the employer, the employees and the public must be balanced. Where, as here, a successful operation requires that all employees work together, only one bargaining unit is appropriate. Fragmentation would prevent the Employer from making the most effective use of its workforce through cross-training and transfers of employees. Although groups of employees may have different duties, such is not sufficient to overcome the community of interest shared by the employees herein. The instant situation involves an integrated operation which differs from the straight forward factual situations in prior Commission cases where clearly definable departments existed, which are more typical in industrial or office settings. Finally, if the Commission were to find that the food/beverage and mutuels operations constituted separate departments, then employees in other operations, such as racing, parking, maintenance, admissions/programs and office, should also be found to be departments. Further, there may be divisions within certain departments which would constitute appropriate bargaining units as opposed to a departmental unit. For example, money room and mutuels may be appropriate divisions within the mutuels department. In fact, further hearing may be necessary to fully develop the record concerning possible divisions within a department, if departments are found to exist.

DISCUSSION

The Commission has consistently held that it has no discretion as to

establishment of appropriate bargaining units in private employment, since Sec. 111.02(3), Stats., defines a collective bargaining unit as "all of the employes of one employer (employed within the state), except that where a majority of the employes engaged in a single craft, division, department or plant have voted by secret ballot as provided in s. 111.05(2) to constitute such group a separate bargaining unit they shall be so considered, . . .". Thus, when a petition requests an election among a group of employes who do not constitute all the employes of the employer, the Commission is limited to a determination of whether the group of employes does in fact constitute a separate craft, division, department or plant. 1/ If a separate craft, division, department or plant is found to exist, then the statute gives the employes within same the opportunity to decide whether they want a separate unit.

In determining whether employes are engaged in a separate division or department, the Commission examines their working conditions, work locations, duties and functions, and supervision, 2/ in addition to the interchangeability of employes, the use of different uniforms by employes, and the application of personnel policies to employes in various units by the employer. 3/

Many of the employes herein do share some common working conditions: the lack of prior experience requirements; on-the-job training; general orientation; an absence of fringe benefits; licensing procedures; WRB regulation; hiring procedures; certain personnel policies, such as reporting of absences and discipline; parking areas; an employe lounge; the wearing of color-coded badges; and, the wearing of uniforms. Although these working conditions are shared by some employes in both the Mutuels and Food/Beverage operations there are also some basic differences between most employes in these operations with respect to other working conditions, such as hours of work, method of payment (hourly versus performance), the use of time clocks, locker rooms, and working in a locked area.

Further, while all employes who handle cash are responsible for shortages, the record shows that the mutuels clerks have experienced shortages of much larger amounts than any other employes. Also, the mutuels clerks are not allowed a variance as are the food and beverage employes. Although employes in several areas experience time pressures due to rush periods, the pressure on the mutuel clerks to process wagers quickly and accurately and to handle large sums of money would appear to be different from the pressure experienced by other employes.

On balance, we are satisfied that the working conditions and work locations of the Mutuels and Food/Beverage employes are supportive of the existence of Mutuels and Food/Beverage departments.

The Employer's organizational and supervisory structure also recognizes the existence of the two departments at issue. Each of the departments has a separate director each of whom exercises substantial independent authority over the daily operations of their respective department. Each of the departments have separate and distinct functions to perform, which functions are not performed regularly by employes. There has been some interchange of employes between departments, but the interchange has been on a sporadic basis and limited in scope.

Given the foregoing, the Commission is satisfied that both Mutuels and Food/Beverage are separate departments within the meaning of WEPA and that it is appropriate to permit the employes in each of those departments to vote on whether said employes desire to constitute separate bargaining units. While the Employer accurately contends that all of its employes share a common goal of creating a successful entertainment environment, most operations have such a common purpose toward which all employes are ultimately striving. The Commission believes the following statement from an earlier decision is still accurate and is relevant herein:

If the Commission refused to recognize divisions or departments in institutions where employes work for one ultimate purpose, we would be unduly diluting the

1/ St. Michael's Hospital, Dec. No. 12139 (WERC, 9/73); Gimbel Brothers Department Store, Dec. No. 251 (WERC, 6/41).

2/ St. Vincent's Hospital, Dec. No. 9023-A (WERC, 8/69).

3/ St. Michael's Hospital, *supra*.

legislative mandate requiring, under certain circumstances, employe freedom of choice in the determination of bargaining units. 4/

The Commission is also persuaded that within either the Mutuels Department or the Food/Beverage Department there are no groups of employes which would constitute smaller separate appropriate bargaining units.

In the Mutuels Department, the line supervisors work closely with the mutuels clerks and frequently work on the lines as clerks. The money room employes do handle money from areas other than Mutuels. However, the money room employes have been, or will be, trained to work as mutuel clerks. The Food/Beverage Department employes are all engaged in the provision of food and beverages to the customers. The differences in duties between the groups of employes within these departments do not constitute a sufficient basis for finding those groups to be divisions within the meaning of Sec. 111.02(3), Stats. Rather, it is appropriate for all of the employes in each of the two departments to be in separate departmental units based on their common functions and organizational structure.

Based on the current petitions, the Commission has directed that the Food/ Beverage Department employes and the Mutuels Department employes be given separate votes to determine whether a majority of the employes in either department wish to constitute a separate bargaining unit and which, if any, labor organization they want to represent them.

The Commission is aware that in light of its conclusion that Mutuels and Food/Beverage are departments, there may be requests for votes in additional departmental units within what we have identified as Voting Group 3. 5/ Any such requests must be received within 10 days of the date of this Direction. The parties will be given an opportunity to state their positions as to any such requests and the conduct of the election in Voting Group 3 will, if necessary, be held in abeyance during resolution of any such requests.

Dated at Madison, Wisconsin this 29th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

4/ Methodist Hospital, Dec. Nos. 8506-A, 8507-A and 8508-A (WERC, 7/68).

5/ All unions who expressed an interest in representing a unit consisting of all employes will be placed on the ballot for Voting Group 3. Any union wishing to remove its name from the ballot must file said request within 10 days of this Direction.