

WILLIAM RHODE, d/b/a
BEANSNAPPERS COUNTRY ROSE BAR,

Plaintiff,

vs.

LABOR AND INDUSTRY REVIEW COMMISSION, and
DEPARTMENT OF INDUSTRY, LABOR, AND HUMAN
RELATIONS,

Defendants.

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OCT 7 1996

ENFORCEMENTS
SECTION

DECISION
Case No. 96CV240


This Court has been asked to review a Decision of the Labor and Industry Review Commission (LIRC). The Court believes that the Findings of Fact and Decision of the LIRC is subject to the Great Weight Standard. The Court is satisfied that the Agency has met the criteria as outlined in Harnischfeger Corporation v. LIRC, 196 Wis. 2d 650, 660, 539 N.W.2d 98 (1995). Therefore, this Court will uphold any reasonable interpretation of the LIRC that is not contrary to the clear meaning of the statute. The LIRC found that the dancers who worked at the Beansnappers were employees and not independent contractors under the statute. Under Section 108.02(12), the Commission concluded that the burden of proof shifted to the employer to prove that the dancers were not employees. The Commission also cited several factors that supported the conclusion that the dancers were employees. Some of the factors included the employer's work rule that demonstrated the right to control the dancers. The failure to follow the work rules allowed the Beansnappers to terminate or fine the dancers for any violations. The Commission fairly evaluated these work rules and concluded that the dancers were not independent contractors. The Commission also considered whether the dancers were independently established businesses

and evaluated five factors in determining the entire relationship of the dancers to the Beansnappers. The Court finds that the Commission's findings were supported by credible and substantial evidence in concluding that the dancers were integrated into the employer's business. Furthermore, the Commission evaluated the issues of advertising, entrepreneurial risk, economic dependence, and propriety interest with the facts of the case and correctly concluded that the dancers were not an independently established business.

Therefore, the Decision of the Labor and Industry Review Commission is hereby affirmed.

Dated this 4 day of October, 1996.

BY THE COURT



John A. Des Jardins, Judge
Circuit Court Branch VII