

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of :

EAU CLAIRE COUNTY HOME FOR THE AGED :
 LOCAL 254, AFSCME, AFL-CIO :

Involving Employees of : Case I
 No. 5609 ME-61
 Decision No. 6183

EAU CLAIRE COUNTY, WISCONSIN, Employed :
 in the EAU CLAIRE COUNTY HOME and :
 MOUNT WASHINGTON SANITORIUM :

Appearances:

Mr. Robert J. Oberbeck, Representative, for the Union.

Mr. Edmund A. Nix, Attorney at Law, for the Municipal Employer.

DIRECTION OF ELECTION

The above named Petitioner having petitioned the Wisconsin Employment Relations Board to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of the above named Municipal Employer; and a hearing on such petition having been conducted at Eau Claire, Wisconsin, on August 29, 1962, by James L. Greenwald, Examiner; and the Board having considered the evidence and being satisfied that questions have arisen concerning a collective bargaining unit and representation for certain employees of the Municipal Employer named above;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all employees of the Eau Claire County Home and Mount Washington Sanitorium, except the administrators, supervisory personnel and confidential office employees, who were employed by the Municipal Employer on December 3, 1962, except such employees as may prior to the election quit their employment or be discharged for cause for the

purposes of determining whether or not a majority of such employes desire to constitute themselves a separate collective bargaining unit and whether or not a majority of such employes desire to be represented by the Eau Claire County Home for the Aged, Local 254, AFSCME, AFL-CIO, for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of December, 1962.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

(SEAL)

J. E. Fitzgibbon /s/
J. E. Fitzgibbon, Commissioner

Arvid Anderson /s/
Arvid Anderson, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

 In the Matter of the Petition of :
 EAU CLAIRE COUNTY HOME FOR THE AGED :
 LOCAL 254, AFSCME, AFL-CIO :
 Involving Employees of :
 EAU CLAIRE COUNTY, WISCONSIN, Employed :
 in the EAU CLAIRE COUNTY HOME and :
 MOUNT WASHINGTON SANITORIUM :

Case I
 No. 8609 ME-61
 Decision No. 6183

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

At the hearing, issues arose with respect to whether the Petitioner must demonstrate a showing of interest in support of its petition, whether the unit petitioned for is a separate craft, division, department or plant of the Municipal Employer, and the eligibility of certain employees.

The Municipal Employer moved to dismiss the proceedings on the grounds that the Petitioner had not demonstrated a showing of interest. Section 111.70 (4) (d), Wisconsin Statutes, provides: "Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employees of the employer, either the union or the municipality may petition the Board to conduct an election among said employees to determine whether they desire to be represented by a labor organization." The Board in the past in cases involving private employment, where Section 111.05 (4), which is similarly worded, applies, has consistently held that the petitioner, on its initial petition, need not demonstrate any substantial interest among employees in its selection as a bargaining agent, but rather that the outcome of the election will resolve the issue conclusively. ^{1/} The same general principle is applicable to representation proceedings in public employment. The Board denies the Employer's motion to dismiss on the grounds

^{1/} Kiekhaefer Aero Marine Corp., Dec. No. 1364, 6/47

the Petitioner need not demonstrate a showing of interest.

The Petitioner has requested the Board to conduct an election among employes of the Eau Claire County Home. The Municipal Employer takes the position that the proper collective bargaining unit consists of the Eau Claire County Home, the Eau Claire County Hospital, and the Mount Washington Sanitorium.

The evidence indicates that all three institutions have individual administrators, separate budgets and payrolls and, except in one instance, personnel assigned specifically to one or the other institution. The Eau Claire County Hospital is located about two and one-half miles from the Home and Sanitorium and is entirely physically separated from the latter two institutions. The Home and the Sanitorium occupy contiguous facilities. The Home's kitchen is located in the building housing the Sanitorium, and Home kitchen personnel and the administrator of the Home must enter the Sanitorium and perform their duties there in this connection. The Home and the Sanitorium are integrated in other respects. Maintenance employes, although nominally assigned to either the payroll of the Home or the Sanitorium, perform their duties throughout the two adjoining buildings. One such employe is not regularly assigned to the payroll of either the Home or the Sanitorium, but is paid by that institution for whom he does the major portion of his work in a given month. The administrator of the Home purchases food and drugs for the Sanitorium. She has the authority to purchase the Sanitorium's furniture, although she has not had occasion to do so. She supervises the activities of two employes who are assigned to the Sanitorium. They are the x-ray technician, who performs work for patients in all county institutions, and the secretary of Dr. E. Z. Nozworski, administrator and medical doctor, of the Sanitorium.

The functions of the three institutions are, by and large, quite similar. The Home cares for the aged. The Hospital cares for the

aged and mentally infirm. The Sanitorium cares for tubercular patients. The composition of the staffs of each institution and the work performed in each instance is similar. The Board of Trustees, which governs all three institutions, has regarded employes in all of the institutions uniformly with respect to wages and other conditions of employment. Fringe benefits have been introduced uniformly throughout all of the institutions. Adjustments in the number of hours worked have been put into effect uniformly in all institutions.

The Board concludes that the Eau Claire County Home and the Mount Washington Sanitorium constitute a single division of the Employer. The facilities of the two institutions overlap, the operations are similar and integrated to the extent that the Home performs food and laundry services for the Sanitorium; maintenance is performed on a joint basis. The administrator of the Home makes many purchases on behalf of the Sanitorium and supervises certain of its personnel. On the other hand, certain aspects of their operation are separate. Each has separate administrators and separate payrolls. However, the Board concludes that the operations are sufficiently integrated and sufficiently similar in nature so that the employes have substantially similar conditions of employment and constitute a single division of the Employer. The Board concludes that the Eau Claire County Hospital by reason of its physical separation from the other two institutions, its completely separate supervision, and the absence of substantial integration in the operation of the other two institutions, is not a part of such division.

The Municipal Employer took the position that all employes in its institutions who were either graduate or registered nurses should be included in any election held by the Board. The Union sought to exclude these employes. The record indicates that all registered and graduate nurses have accomplished three years of training in an accredited hospital and in those cases where they are registered, which is every

case except one, they have passed a state-administered examination. Their duties consist of dispensing medications and performing all nursing services required by the patients.

The Board concludes that all registered and graduate nurses assigned to the Home and Sanitorium shall be ineligible to vote in this election. Registered and graduate nurses are engaged in a recognized profession, requiring at least three years of training in an accredited hospital, and perform duties in the care and treatment of patients which require the exercise of independent judgement, the performance of skill, and the application of technical knowledge, unlike the work performed by other non-professional employees in such institutions. The Board, therefore, concludes that the graduate and registered nurses are professional employees and hence excluded as craft employees under Section 111.70 (4) (d). ^{2/} This does not mean that such employees do not have any rights under Section 111.70. They may petition for an election as a separate unit, if they so choose.

The Board is directing an election to be held among the eligible employees of the Employer, with leave to the Petitioner to withdraw his petition, if he so chooses, since the unit found to constitute a separate division of the Employer is different than that sought by the Petitioner.

We have found that the Home and Sanitorium employees constitute a separate division. In accordance with the Board's policy of providing a single ballot on both the unit and the representation questions, ^{3/} if a majority of the employees of the Home and Sanitorium select the

^{2/} Winnebago County Hospital & Pleasant Acres Home, Dec. No. 6043, 7/62.

^{3/} Appleton Water Commission, Dec. No. 6075, 8/62.

Petitioner as their bargaining representative, Home and Sanitorium employees shall constitute a separate collective bargaining unit. If a majority of employees fail to vote in favor of such organization, then they will also be deemed to have rejected the separate collective bargaining unit.

Dated at Madison, Wisconsin, this 3rd day of December, 1962.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

J. E. Fitzgibbon /s/
J. E. Fitzgibbon, Commissioner

Arvid Anderson /s/
Arvid Anderson, Commissioner

