

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of
MARINETTE GENERAL HOSPITAL EMPLOYEES
LOCAL 1759, AFSCME, AFL-CIO
Involving Employees of
MARINETTE GENERAL HOSPITAL (COUNTY)

Case 1
No. 8611 ME-13
Decision No. 7569

APPEARANCES:

Mr. Robert J. Oberbeck and Mr. James W. Miller,
Representatives, for the Petitioner.
Charles, Herriott, Clemons, Attorneys at Law, by
Mr. James Mallen, and Mr. Daniel J. Niron,
District Attorney, for the Municipal Employer.

DIRECTION OF ELECTION

Marinette General Hospital Employees Local 1759, AFSCME, AFL-CIO having petitioned the Wisconsin Employment Relations Board to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of Marinette General Hospital, Marinette, Wisconsin; and a hearing on such petition having been conducted at Marinette, Wisconsin on January 11, 1966, by Robert M. McCormick, Examiner; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employees of said Municipal Employer:

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and all regular part-time employees of Marinette General Hospital, excluding Superintendent, Director of Nurses, Registered Nurses,

Office Manager, Supervisors and casual and craft employees, who were employed by the Municipal Employer on April 29, 1966, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether or not a majority of such employees desire to be represented by Marinette General Hospital Employees Local 1759, 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 29th day of April, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

Zel S. Rice II
Zel S. Rice II, Commissioner

STATE OF WISCONSIN
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The petition filed with the Wisconsin Employment Relations Board initiating this proceeding was filed by the Wisconsin Council, County and Municipal Employees, AFSCME, AFL-CIO. At the outset of the hearing, the Petitioner moved to amend the petition by naming the Petitioner as Marinette General Hospital Employees Local 1759, AFSCME, AFL-CIO. The Employer objected to the amendment, claiming that the amendment should reflect that the organization is a division of the "Wisconsin Council, County and Municipal Employees", as originally set forth in the petition. The Union representative advised that the organization involved, which seeks to represent the employees of the Municipal Employer, is to be chartered by its International as Marinette General Hospital Employees Local 1759, AFSCME, AFL-CIO. The Board is satisfied that the name of the Petitioner should be amended to properly reflect its identity and therefore the organization shall appear on the ballot as that name has been amended.

In its petition, the Petitioner desired an election in a unit consisting of all employees of the Municipal Employer "excluding Superintendent, Director of Nurses, Registered Nurses, Office Manager and Licensed Practical Nurses." At the outset of the hearing, the Petitioner moved to amend the unit claimed appropriate so as to include the licensed practical nurses in the appropriate collective bargaining unit. The parties agreed that whatever classifications of employees were included in the unit, all full-time employees and all regular part-time employees, if otherwise eligible, should be included in the unit. It was also stipulated that supervisors should be specifically excluded from the unit.

Two issues arose with respect to the unit. The Employer objected to the inclusion in the unit of licensed practical nurses and further contended that student employes who worked less than twenty hours per week should also be excluded from the unit. The Employer would exclude the licensed practical nurses, hereinafter referred to as L.P.N.'S, from the unit claiming that they are professional employes. The Union would include L.P.N.'S and regular part-time employes working on a regularly scheduled basis regardless of the number of hours employed.

Section 111.70 (4)(d), Wisconsin Statutes, requires the Board to exclude employes engaged in a single craft from a unit consisting of other employes.^{1/} In interpreting this section of the Statute the Board has equated professional employes with the term "craft".^{2/} It is obvious that the duties performed by the L.P.N.'S herein do not fall within the skills normally performed by "craft" employes, so if they are to be excluded they would be excluded as professional employes.

The record indicates that the L.P.N.'S perform many of the duties of registered nurses, including the administration of drugs, medication and treatment to patients under the direction or direct supervision of a physician in charge. The L.P.N.'S give injections and issue narcotics, again under the direction of physicians. The administrator testified that it would be difficult to identify those duties that a L.P.N. could only perform when under the direct supervision of a registered nurse. However, L.P.N.'S would be limited in administering certain treatments, otherwise administered by registered nurses, except where the L.P.N. had considerable experience performing certain tasks under supervision. The record indicates that there are always registered nurses on duty. The only duties that a L.P.N. occasionally performs which are normally performed by aides involve the giving patients baths. However, aides and attendants may not administer drugs or medication or perform any other duties of the L.P.N.

The Wisconsin Statutes contain the following provisions material herein with reference to L.P.N.'S:

- 1/Winnebago County Hospital, Dec. No. 6043, 7/62;
- City of Green Bay, Dec. No. 6558, 11/63
- 2/Milwaukee County, Dec. No. 7135, 5/65

"149.09. Trained practical nurses.

(2) PREREQUISITES FOR EXAMINATION AS TRAINED PRACTICAL NURSES.

A citizen or an alien who has legally declared her intention to become a citizen, who is at least 18 years of age, of good moral character, who has completed 2 years of high school or its equivalent as determined by the board, and who has completed the work prescribed by an accredited school for trained practical nurses approved by that board, which school shall be connected with an institution providing hospital facilities for the care of medical, surgical and obstetrical cases, may apply to the board for licensing as a trained practical nurse, and upon the payment of \$15 shall be entitled to take an examination for such purpose. Any school for trained practical nurses, in order to be accredited, must offer a course of not less than 9 months. The size or average daily census of an institution shall not be a determinative factor in qualifying a school for trained practical nurses. The board may, in its discretion, waive the requirement of attendance at such a school when it deems the applicant to have had comparable training.

(4) LICENSING. (a) On complying with this chapter relating to applicants for licensure as trained practical nurses, and passing a satisfactory examination, the applicant shall receive a license as a trained practical nurse, which license shall be issued by the president of the board and countersigned by the secretary of the committee of examiners for trained practical nurses. The holder of such license is a "licensed trained practical nurse", and may append the letters "T.P.N." to her name. The board may revoke the license of a licensed trained practical nurse pursuant to s. 149.07.

(c) No license is required for practical nursing, but no person without a license shall hold herself out as a trained practical nurse or licensed attendant, use the title or letters "Trained Practical Nurse" or "T.P.N.", "Licensed Practical Nurse" or "L.P.N.", "Licensed Attendant" or "L.A.", "Trained Attendant" or "T.A.", nor otherwise seek to indicate that she is a trained practical nurse or licensed attendant; nor shall a trained practical nurse or a licensed attendant use the title, or otherwise seek to act as a registered, trained, certified, graduate or professional nurse...

"149.10 Definitions.

(2) PRACTICE OF PRACTICAL NURSING. The practice of practical nursing under this chapter means the performance for compensation of any simple acts in the care of convalescent, subacutely or chronically ill, injured or infirm persons, or of any act or procedure in the care of the more acutely ill, injured or infirm under the specific direction of a nurse or physician. A simple act is one which does not require any substantial nursing skill, knowledge of training, or the application of nursing principles based on biological, physical or social sciences, or the understanding of cause and effect in such acts and is one which is of a nature of those approved by the board for the curriculum of schools for trained practical nurses.

The Wisconsin Administrative Code, N3.06, sets forth the curriculum requirements needed by candidates prior to taking the examination to secure a License as a L.P.N. Candidates must complete 384 hours of formal academic study in a one-year period, covering specialized areas of nursing practice, and 30 weeks of clinical practice in an approved institution. A further provision of N3.02, the Code sets forth the role of an L.P.N.:

"(1) A trained practical nurse is one who is prepared to

(a) Nurse patients in simple nursing situations under the immediate direction and general supervision of a qualified registered nurse and/or physician, with a minimum of on-the-spot supervision..."

This Board, in Winnebago County Hospital, established the criteria to be used in determining whether a given occupational position was a "craft" or "professional" within the meaning of 111.70 (4)(d):

"We shall consider professional employees falling within the definition of 'craft' if such employees have a substantial period of study and training to qualify for their professional status. Matters to be taken into consideration in determining whether or not an employee is a professional employee will be determined on a case to case basis. The nature of the profession, training, and duties performed by the individual employees will be considered, as well as the extent to which the skills performed by them differ from the duties performed by other employees of the employer."

The Board has held that registered nurses and graduate nurses completing academic and clinical training requirements under Chapter 149, Wis. Stats., but who have not taken and passed licensing examination for registered nurses, were professional and excluded as "craft" employees within the meaning of Section 111.70 (4)(d).^{3/} However, when confronted with a claimed professional status for two nursing positions in a county home, "Trained Practical Nurse - Junior Grade" and "Nurses Aide - Trained", the Board held they were not professional and included the positions in the over-all unit, because the positions did not require professional training of a nature so as to exclude them as "craft".^{4/} There were L.P.N. positions which were excluded as supervisory in the same case but nothing to indicate that L.P.N.'S would otherwise be included in the unit.

3/ Eau Claire County Home, Dec. No. 6183, 12/62;
City of Milwaukee (Health Dept.), Dec. No. 6252, 2/64

4/ Outagamie County Hospital, Dec. No. 6076, 8/62

However, in Winnebago County Hospital, the evidence indicated that the L.P.N.'S employed by the Municipal Employer therein largely performed many of the duties performed by aides. The record here indicates that the duties of the L.P.N.'S are more similar to those performed by the registered nurses than any other group of employes, and differ considerably from the duties of aides or attendants.

In Eau Claire County Hospital^{5/} we included graduate nurses not yet licensed as registered nurses as professionals because:

"they were required to take three (3) years of training in an accredited hospital perform duties in the care and treatment of patients which require the exercise of independent judgment, the performance of skill and the application of technical knowledge, unlike the work performed by other non-professional employes in such institutions."

In light of the statutory definition of the practice of practical nursing and the requirements for the licensing of L.P.N.'S, and due to the fact that the record establishes that only the more-experienced L.P.N.'S exercise somewhat more skills in the treatment of patients than do less experienced L.P.N.'S, all under the supervision and direction of registered nurses and physicians, we conclude that L.P.N.'S. while they do have some specialized training and do exercise some specialized skills, do not meet the educational or vocational requirements or exercise such skills as a result of their independent judgment to be considered professional or "craft" employes within the meaning of Section 111.70 (4)(d) of the Wisconsin Statutes, and therefore the L.P.N.'S who are not performing supervisory duties shall be included in the bargaining unit.

At the time of the hearing, eight high school and college students were employed by the Municipal Employer less than twenty hours per week. The Municipal Employer contended that such employes should be excluded from the eligibles since they were considered as "part-time temporary" employes. When the summer vacation period is over and at the beginning of the normal school year, the Municipal Employer determines its needs for part-time employes and then ascertains the availability of interested students to work during the afternoon, early evening and weekend hours. The working

^{5/} Ibid 3.

schedules of said employees are correlated with their availability and the needs of the hospital. Such employees generally work from ten to fifteen hours per week on a regular scheduled basis, which schedule is adjusted every two weeks. Such student employees who will not graduate or leave the community have an expectancy to return to such employment the following school year.

If an employee is regularly employed, although on a part-time basis, such an employee is deemed to have sufficient interest in the wages, hours and working conditions governing his employment.^{6/}

The Board is satisfied that the "part-time temporary" employees are employed in a regular part-time basis and generally have expectancy of seasonal employment. Therefore, this classification of employees shall be considered as included in the unit since they are regular part-time employees.^{7/}

During the course of the hearing the Municipal Employer presented a list of employees which was utilized for the purpose of determining eligibles. The Municipal Employer requested the Board not to furnish a copy of the list to the Petitioner indicating that the Employer would provide the Board with such a list after the receipt of the Direction of Election and at a time sufficiently prior to the date of the conduct of the election so as to enable the Board to prepare its official list. The Petitioner requested the Hearing Examiner to permit it to retain a copy of the list on the basis that said list was a public record through the offices of the County Clerk. The Hearing Examiner denied the Petitioner's request and returned the list to the Municipal Employer. While in private employment the Board has permitted the practice of furnishing the list of eligibles until after the Direction of Election, it would have been proper for the Hearing Examiner to provide the Union with a copy of the list since it is a matter of public record. We therefore expect the Municipal Employer to furnish the list of employees in the unit to the Board within five days after the receipt of the Direction of Election herein and at the same time serve a copy thereof upon the representative of the Petitioner. In future cases, however, the Board shall expect municipal employers, in the absence

^{6/} Portage Stop-N-Shop, Dec. No. 6803, 7/64;
Luther Hospital Association, Dec. No. 4582, 8/57;
City of South Milwaukee, Dec. No. 7202, 7/65.
^{7/} Holy Family Hospital, Dec. No. 7119, 4/65.

WISCONSIN EMPLOYMENT RELATIONS BOARD

are employed in the classification in the proposed unit,
 of good cause, to have copies of the names of employees who
 available to the Board and the parties at the time of the hearing.
 Dated at Madison, Wisconsin, this 29th day of April, 1966.

By

Morris Slavney
 Morris Slavney, Chairman

Arvid Anderson
 Arvid Anderson, Commissioner

Zel S. Rice II
 Zel S. Rice II, Commissioner