

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

RUTH NORVILLE, ANNE ELLIS AND
CAROL ALLIE

Involving Certain Employees of

KENOSHA COUNTY (INSTITUTIONS)

Case X
No. 12131 ME-377
Decision No. 8637

Appearances:

Mrs. Ruth Norville, Mrs. Anne Ellis and Mrs. Carol Allie,
appearing on behalf of the Petitioning Employees.

Mr. Harry C. Metten, Administrator of Kenosha County
Institutions, appearing on behalf of the Employer.

Mr. Walter J. Klopp, Representative of Council #40, Wisconsin
Council of County and Municipal Employees, AFSCME; and
Mr. Louis Sacco, Representative of Local 1392, State,
County and Municipal Employees Union, appearing on behalf
of the Intervenor American Federation of State, County
and Municipal Employees.

ORDER OF DISMISSAL

Petition having been filed with the Wisconsin Employment Relations Commission by Ruth Norville, Carol Allie and Anne Ellis, employees of Kenosha County Institutions, Kenosha, Wisconsin, requesting that an election be conducted pursuant to Section 111.70, Wisconsin Statutes, among certain employees of Kenosha County Institutions; and a hearing on such petition having been conducted at Kenosha, Wisconsin, on June 17, 1968, before Robert B. Moberly, Hearing Officer; and at the outset of the hearing, Local 1392, American Federation of State, County and Municipal Employees, AFL-CIO, having been permitted to intervene on the basis that it is the present collective bargaining representative of the employees in the claimed unit; and the Commission having considered the evidence and being satisfied that no question of representation exists;

NOW, THEREFORE, it is

ORDERED

That the petition in the above-entitled matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 29th
day of July, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

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

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MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

The petitioners, Ruth Norville, Anne Ellis and Carol Allie, are employed as licensed practical nurses at Kenosha County Institutions, Kenosha, Wisconsin. At the present time Local 1392, American Federation of State, County and Municipal Employees, AFL-CIO, the Intervenor, is the exclusive bargaining representative for all employes at the two Kenosha County Institutions (Brookside and Willowbrook), including licensed practical nurses but excluding supervisory employes, superintendent, stenographer and registered nurses.

At the hearing the petitioners contended that licensed practical nurses are professional employes entitled to their own collective bargaining unit and requested the Commission to conduct an election to determine whether the employes in the unit of "all licensed practical nurses employed by Kenosha Institutions" desire to disaffiliate themselves from Local 1392.

The Union, on the other hand, has moved the Commission to dismiss the petition on the grounds that licensed practical nurses are not professional employes and therefore are not entitled to their own separate collective bargaining unit.

DISCUSSION

Under Section 111.70, Wisconsin Statutes, professional employes are included within the term "craft"^{1/} and must therefore be excluded from a unit consisting of other municipal employes.^{2/} The principal

^{1/} Milwaukee County, Dec. No. 7135, 5/65.

^{2/} Section 111.70(4)(d). See also Winnebago County Hospital, Dec. No. 6043, 7/62, and City of Green Bay, Dec. No. 6558.

issue argued at the hearing was whether the licensed practical nurses involved here are "professional" employees.

We find this issue to be controlled by a previous decision of the Commission directly on point, Marinette General Hospital, Dec. No. 7569, 4/66. In that case the union requested and the Employer objected to the inclusion of licensed practical nurses (hereinafter referred to as L.P.N.'s) in the bargaining unit of non-professionals. The Commission in a comprehensive decision discussed the statutes^{3/}

^{3/} "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. . . .

* * *

and administrative rules^{4/} relating to L.P.N.'s, and also thoroughly considered the duties of the L.P.N.'s. Such duties were essentially the same as the duties of the L.P.N.'s in the instant case. These include administering drugs, medication and treatment to patients under the direction or direct supervision of a physician or registered nurse; issuing and giving injections of narcotics; and providing certain routine patient care such as bathing patients and changing dressings. With the above factors in mind, the Commission in Marinette General Hospital came to the following conclusion:

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" employees 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.

The facts in this case with respect to the professional status of L.P.N.'s are indistinguishable from those in Marinette General

3/ (Continued)

"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 or 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."

4/ The Commission stated therein:


The Wisconsin Administrative Code, N3.306, 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,

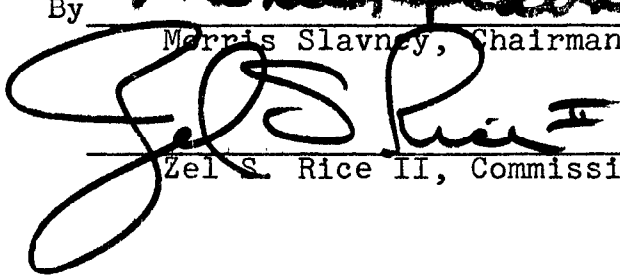
Hospital, and we see no reason to deviate from the underlying reasoning of that case. We therefore are compelled to find that the licensed practical nurses involved here are not professional employees entitled to their own separate bargaining unit. Accordingly, we are today issuing an order dismissing the petition.

Dated at Madison, Wisconsin, this 29th day of July, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

⁴/ (Continued)

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..."