

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

LOCAL 1925-A, WISCONSIN COUNCIL
OF COUNTY AND MUNICIPAL
EMPLOYEES, AFSCME, AFL-CIO

For Clarification of a Bargaining
Unit Consisting of Certain
Employees of

WALWORTH COUNTY (HOSPITAL, FARM
& HOME)
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Case VI
No. 12813 ME-452
Decision No. 9041-B

ORDER CLARIFYING BARGAINING UNIT

Local 1925-A, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having requested the Wisconsin Employment Relations Commission to issue an Order clarifying the existing collective bargaining unit to determine whether the position of Licensed Practical Nurse should be included in, or excluded from, the certified collective bargaining unit consisting of all regular full-time and regular part-time employees, (regular part-time is defined as averaging twenty (20) hours per week or more) of Walworth County employees at the Walworth County Hospital and Home, excluding supervisors, clerical, professional or casual employees, and all other employees of Walworth County; and hearing having been held in the matter at Elkhorn, Wisconsin, Kay Hutchison, Hearing Officer, being present; and the Commission having considered the evidence and arguments of counsel, and being fully advised in the premises, makes and issues the following

ORDER

That the position of Licensed Practical Nurse shall be and the same hereby is, included in the collective bargaining unit consisting of all regular full-time and regular part-time employees (regular part-time is defined as averaging twenty (20) hours per week or more) of Walworth County employed at the Walworth County Hospital and Home, excluding supervisors, clerical, professional or casual employees and all other employees of Walworth County.

Given under our hands and seal at the
City of Madison, Wisconsin this 17th
day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER
CLARIFYING BARGAINING UNIT

On June 20, 1969, Local 1925-A, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, was certified by the Wisconsin Employment Relations Commission as the exclusive collective bargaining representative of "all regular full-time and all regular part-time employees (regular part-time is defined as averaging twenty (20) hours per week or more) of Walworth County Hospital and Home, excluding supervisors, clerical, professionals, casual employees and all other employees of Walworth County." At the time of the representation election there were no Licensed Practical Nurses (LPN's) employed at the Walworth County Hospital and Home among the 149 eligible employees. However, LPN's have been employed by the Municipal Employer for approximately the past two years. Presently there are nine incumbents.

The Municipal Employer argues that an election should be conducted among the LPN's in order to determine whether the incumbents desire to accrete to the existing unit represented by the Petitioner and thereby determine for themselves whether or not they wish to be represented for the purposes of collective bargaining. The Union contends that the LPN's are appropriately included in the existing bargaining unit and that the unit should be clarified accordingly without the conduct of an election among the LPN's.

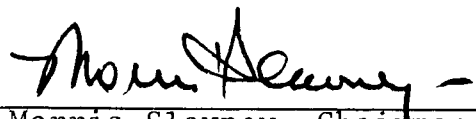
It is the Commission's continued policy that the appropriate inclusion or exclusion of positions, not in existence at the time a collective bargaining representative was certified or recognized in an appropriate collective bargaining unit, is to be determined through the process of unit clarification without the conduct of a vote among the incumbents. The Commission renders such determinations on the basis of whether the incumbents are "employees" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act; 1/ the presence or absence of a community of interest between the incumbents and the employees in the existing unit; 2/ and the potential effect of the inclusion upon the representative status of the Union involved. 3/ The rationale encompassed in such decisions acknowledges that, "given a vote to accrete the employees might vote against accretion, thereby 'stranding' themselves as an unrepresented group constituting an inappropriate fragmentation of an otherwise appropriate unit." 4/

The Commission has recently stated that where the parties have intentionally excluded positions from the unit which existed at the time the bargaining representative was originally voluntarily recognized, such previously excluded positions will not accrete to the existing unit except by the conduct of a vote in the overall unit, including the positions already constituting the recognized unit. The positions involved ~~herein were not in existence at the time the unit was established.~~ 5/

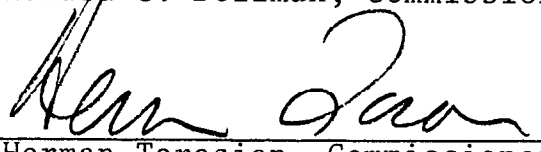
In the instant proceeding, the Municipal Employer contests neither the "employee" status of the Licensed Practical Nurses nor the community of interest between the LPN's and overall unit. Furthermore, the inclusion of the nine LPN's in the overall unit does not affect the representational status of the Petitioner in the unit. Therefore, we have clarified the existing collective bargaining unit to include the position of Licensed Practical Nurse without the necessity of an election.

Dated at Madison, Wisconsin, this 17th day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner