

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LAWRENCE EUGENE ZIPP
Involving Certain Employees of
MARINETTE GENERAL HOSPITAL

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: Case III
: No. 13812 ME-562
: Decision No. 9926
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Appearances:

Mr. Lawrence E. Zipp, Chief Radiologic Technologist, appearing on behalf of the Petitioner.
Mr. Michael Miller, Administrator, appearing on behalf of the Employer.
Mr. James Miller, Business Representative, Wisconsin Council of County and Municipal Employees, AFSCME, appearing on behalf of the Intervenor.

ORDER OF DISMISSAL

Lawrence Eugene Zipp, having filed a petition on behalf of the Registered Radiologic Technologists in the employ of Marinette General Hospital, Marinette, Wisconsin, requesting that the Wisconsin Employment Relations Commission conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among the Registered Radiologic Technologists in the employ of Marinette General Hospital, to determine whether said employees desire to be represented for purpose of collective bargaining by said Petitioner; and a hearing on said petition having been conducted at Marinette, Wisconsin on June 11, 1970, by George R. Fleischli, a member of the Commission's staff, having been present; and Marinette General Hospital Employees Local 1759, AFSCME, AFL-CIO, having been permitted to intervene, on its claim that it currently represents certain employees of the Employer, including the Registered Radiologic Technologists, and the Commission having considered the evidence and arguments of the parties, and being satisfied that no question of representation presently exists.

NOW, THEREFORE, it is

ORDERED

That the petition filed herein be, and the same is hereby dismissed.

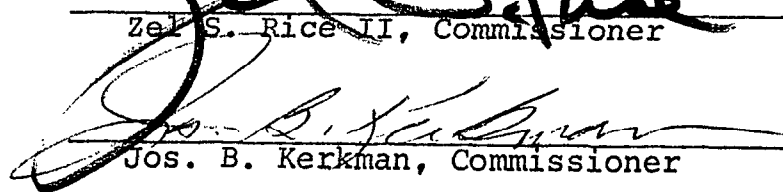
Given under our hands and seal at the
City of Madison, Wisconsin, this 30th
day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavner, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

On May 13, 1970, the Commission received a written request from Lawrence Eugene Zipp and James W. Burmeister, asking the Commission to classify Registered Radiologic Technologists in the employ of the Municipal Employer as professional employees. The Commission, in writing, informed them that the proper procedure to initiate a Commission ruling in the matter was the filing of a petition with the Commission, in accordance with Section 111.70 of the Wisconsin Statutes and the rules of the Commission. On May 19, 1970, Lawrence Eugene Zipp, hereinafter referred to as the Petitioner, filed a petition with the Commission requesting that a separate bargaining unit be established for the Registered Radiologic Technologists on the basis (1) that they constitute a separate department or division for purposes of collective bargaining and (2) that they are professional or craft employees. Hearing on the petition was held on June 11, 1970.

At the hearing Marinette General Hospital Employees Local 1759, AFSCME, AFL-CIO, hereinafter referred to as the Union, was permitted to intervene on its claim that it presently represents certain employees of the Municipal Employer, including such technologists. The Union moved to dismiss the petition contending that it was not timely filed and that there is an existing collective bargaining agreement which constitutes a bar to an election involving the employees involved. It also contested the Petitioner's claim that the employees involved are professional or craft

employees.

The contract between the Union and the Employer for the year 1969 expired on December 31, 1969. Substantial negotiations took place before and after that date and an oral agreement was finally reached on May 23, 1970. At the time of the hearing the agreement had been approved by the Union membership, but was subject to being reduced to writing and approved by the County Board. The agreement is retroactive to January 1, 1970 and is to continue in effect until December 31, 1972.

The bargaining unit which was certified by the Commission in June of 1966, consists 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." 1/

There was no issue raised in that case concerning the alleged professional or craft status of Radiologic Technologists and their conditions of employment have been covered in previous collective bargaining agreements, and thus have been included in the certified unit.

The primary issue to be determined by the Commission is whether the Radiologic Technologists are craft or professional employees within the meaning of Section 111.70, Wisconsin Statutes. If the Commission should find that said employees are either craft or professional, they cannot be lawfully included in a unit consisting of non-craft or non-professional employees, or included in a unit of employees of a different craft or profession. 2/

If the Commission should determine that the positions involved are neither craft nor professional, then it must determine whether the petition, seeking the establishment of a separate unit, based on being a separate division or department, was timely filed.

1/ Marinette General Hospital (7569) 6/66.

2/ City of Milwaukee (Fire Department) (7885) 1/67; Sheboygan County (Courthouse) (9256-E), 4/70.

Registered Radiologic Technologists obtain their training through a period of instruction and experience lasting approximately 24 months. The instruction is received at a School of Radiologic Technology which has been registered by the American College of Radiology. Such schools are run in conjunction with hospital operations and include both classroom and practical instruction. After the two years of training, Radiologic Technologists must pass a written examination administered by the American College of Radiology. If the individual passes the written examination he is allowed to do either diagnostic or therapeutic X-ray work in the Radiology Department of a certified hospital. Certified hospitals are hospitals which have been certified by the Joint Commission on Accreditation of Hospitals. Radiologic Technologists are not licensed by the State of Wisconsin and do not have an apprenticeship program as do recognized crafts. Once an individual becomes a radiologic technologist there is no differentiation as to skill level such as Apprentice, Journeymen or Master.

There are two Radiologic Technologists in the employ of the Employer. They perform all of their work in the Radiology Department which is physically separated from the other departments of the hospital. They do not perform any work outside of the Radiology Department except to give electrocardiograms. The work consists of taking X-rays to be used for diagnostic purposes. No work is done without the specific order of a physician but the physician need not be present while the work is performed. They also assist the Radiologist when he makes injections of contrast medias and are often present in surgery when their services might be needed. They do not interpret the results nor do they treat or advise patients as to X-ray treatment or diagnosis. Some discretion is exercised by the Technologists in the manner in which the X-ray is taken. They follow the accepted procedures in complying with the orders from physicians which are usually very specific.

On the evidence presented, it is clear that the employees in question are not craft employees as that term is used in the field of labor relations. They do not serve a substantial period of apprenticeship and they do not have that clearly identifiable skill and homogenous grouping which is associated with crafts. Even so, the Technologists could be treated as "craft" employees if they are found to be professionals. 3/

It is also clear that Radiologic Technologists are not professional employees. While it is true that they exercise some special skills, their work consists primarily of following the accepted procedures in operating X-ray equipment according to the specific orders of doctors and does not require creative thought or judgement or the exercise of wide discretion. It is also true that they possess some special training but that training is not so substantial or of such an academic nature as to qualify them for professional status. The testimony of the Petitioner and the other evidence produced at the hearing indicates that it is possible for a Radiologic Technologist to complete a four-year college program leading to a Bachelor of Science degree in the field of Radiologic Technology for the purpose of teaching. An individual completing such a program might have a more persuasive claim to professional status. Neither of the Technologists in the petitioned for unit herein, have completed such a lengthy program of study and training or perform work of such a nature as to establish that they are professionals within the meaning of that term as it has been applied under Section 111.70 of the Wisconsin Statutes.

Since in the petition the Petitioner also alleges that they are employed in a separate division or department of the Employer and because they are presently lawfully included in the existing collective bargaining unit, an issue arises as to whether the petition filed herein was timely filed.

3/ Winnebago County Hospital and Pleasant Acres Home (6043) 7/62.

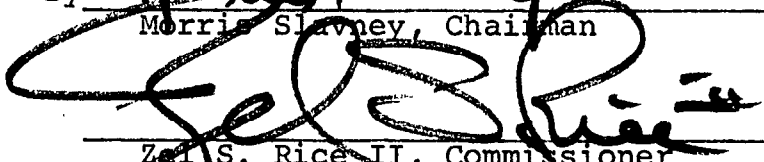
The general rule in this regard was established in Wauwatosa Board of Education. 4/ On the basis of that decision it is clear that the petition herein is untimely in that it was not filed within the 60 day period prior to the period provided in the old agreement for reopening of negotiations. In fact, it was filed after a lengthy period of negotiations in an effort to reach a new agreement. To raise a question of representation at such time would substantially interfere with the negotiating process and the stability of the bargaining relationship and therefore is considered untimely. 5/ Therefore, for the reasons stated herein we are dismissing the petition.

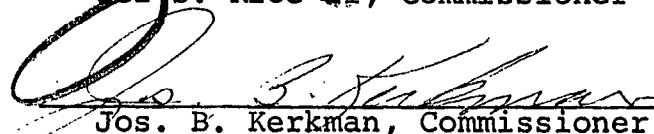
Dated at Madison, Wisconsin this 30th day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

4/ Wauwatosa Board of Education (8300-A) 2/68.

5/ Nothing in this memorandum is intended to imply that the Radiology Department is an appropriate unit for bargaining. Evidence was adduced at the hearing which indicated that there are at least two other employees in the Radiology Department other than the two Radiologic Technologists who would have to be included in any Departmental bargaining unit if such a unit were established as being appropriate.