

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXI  
No. 15008 DR(M)-27  
Decision No. 10579-A

Mr. Robert J. Mueller, Attorney at Law, and, Mr. Robert V. Fowler, Corporation Counsel, appearing on behalf of the Petitioner.

Mr. William Sandoval, Representative, appearing on behalf of the Union.

Fond du Lac County having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission issue a Declaratory Ruling to determine whether licensed practical nurses in the employ of its Rolling Meadows Home are supervisors and should therefore be excluded from the collective bargaining unit consisting of all regular full time and part time employees working 20 hours or more but excluding the Superintendent, Director of Nursing, manager, matron, professional employees, office clerical employees, seasonal and "on-call" employees and supervisors; and a hearing having been held in the matter on November 2, 1971, George R. Fleischli, Hearing Officer being present; and the Commission having considered the evidence and arguments, and being fully advised in the premises makes and files the following Findings of Fact and Declaratory Ruling.

1. That Fond du Lac County, hereinafter referred to as the Municipal Employer, is a municipal employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes and inter alia operates Rolling Meadows Home.

2. That Fond du Lac Institutions, Local 1366-A, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organi-

3. That on May 28, 1969 the Union was certified as the representative of all regular full time and regular part time employes working 20 hours or more employed in Rolling Meadows Home, but excluding the Superintendent, Director of Nursing, manager, matron, professional employes, office clerical employes, seasonal and "on-call" employes, and supervisors, for purposes of collective bargaining on questions of wages, hours and conditions of employment; that at the time of said certification eight licensed practical nurses were employed at Rolling Meadows Home and that all eight of said licensed practical nurses were included on the stipulated eligibility list and voted in the election preceding said certification; and that since said certification a question has arisen concerning the alleged supervisory status of said licensed practical nurses.

4. That the Municipal Employer currently employs nine registered nurses, seven licensed practical nurses and fifty-six nurses aides at its Rolling Meadows Home; that in the absence of the registered nurses, the seven licensed practical nurses have the responsibility of calling in additional nurses aides when there is a shortage on their floor and shift, and the responsibility of assigning work to nurses aides based on the patients' charts and existing patient assignments; that said licensed practical nurses do not have the authority to hire or fire any employes, nor do they have the authority to effectively recommend same; that said licensed practical nurses have in the past been called upon to make recommendations concerning the hiring of nurses aides who happen to be within their acquaintance; that said licensed practical nurses help train nurses aides and enforce certain standards of conduct by verbally correcting the conduct of nurses aides and by advising their superiors in cases of violations without making recommendations; that said licensed practical nurses spend a considerable portion of their time performing work directly associated with patient care, such as dispensing medicine, checking charts and administering to the needs of patients; and that the work performed by the licensed practical nurses is primarily associated with the delivery of nursing care and is not supervisory in nature.

On the basis of the above and foregoing Findings of Fact the Commission issues the following

#### DECLARATORY RULING


That the licensed practical nurses employed by the Municipal Employer in its Rolling Meadows Home are not supervisors within the meaning of Section 111.70(1)(o)1 of the Wisconsin Municipal Employment Act, and are, therefore, included in the existing collective bargaining unit consisting of all regular full time and part time employes working 20 hours or more but excluding the Superintendent, Director of Nursing, manager of

County Home, matron of County Home, professional employes,  
office clerical employes, seasonal and "on-call" employes and  
supervisors as defined in the Act.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 11<sup>th</sup>  
day of January, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Earl S. Rice II, Commissioner

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"...any individual who has authority in the interest of the municipal employer to hire, transfer, suspend, lay off, recall, promote, assign, reward or discipline other employees or to adjust their grievances or effectively to recommend such action if in connection with the foregoing have exercised such authority is not have a merely routine or clerical nature but requires the use of independent judgment."

The Commission has consistently looked for seven indicia of supervisory status in making judgments concerning whether individuals are supervisors. The decision as to whether an individual is a supervisor is based on the judgment of whether those indicia of supervisory status appear in sufficient combination and degree in a given case to warrant the conclusion that the individual in question is a supervisor. Said factors are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees. 1/

In defining the term supervisor, in its recent extensive amendment of Section 111.70, the legislature did not change the law regarding supervisors but merely defined the concept, by focusing attention on the most significant factors in the test previously applied by the Commission. The factors relied on by the Commission in making such determinations, which are not specifically mentioned in the statutory definition, relate to evidence of the presence or absence of the statutory factors and are consistent with the statutory definition. The essential question remains the same and that is, whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors.

The evidence is clear in this case that, in the absence of a registered nurse, the licensed practical nurses perform some functions normally performed by supervisors, such as calling in employees, assigning work, and helping to enforce work rules. In addition they have participated in the written evaluation of nurses

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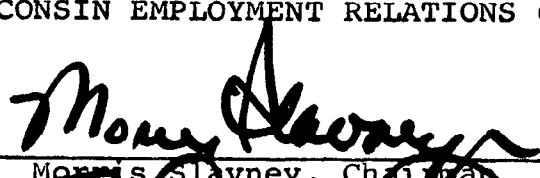
1/ Wauwatosa Board of Education (6219-D) 9/67.

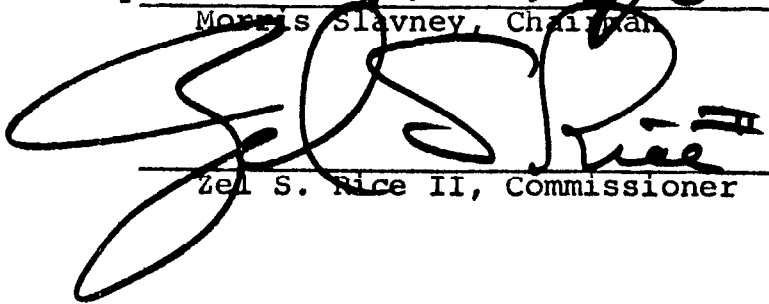
aides on the one occasion in the past where there was such an evaluation. On the other hand, the evidence is clear that none of the licensed practical nurses has the authority to hire or discharge employees or to effectively recommend such action. The only authority they have in the area of discipline is to either discuss the problem with the nurses aide or to report the infraction to their supervisor without recommendations. All disciplinary action of a more severe nature has been, and continues to be, administered by the Superintendent or Director of Nursing or both. All grievances arising under the agreement are settled by the Superintendent or the Director of Nursing. The licensed practical nurses exercise considerable authority and responsibility on questions concerning patient care because of their superior knowledge and training. However, that authority and responsibility does not make them supervisors, since they do not exercise sufficient concomitant supervisory authority over nurses aides to justify the conclusion that they are supervisors.

Dated at Madison, Wisconsin, this 11<sup>th</sup> day of January, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner