

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
 :
UNITED NURSING HOME AND HOSPITAL :
EMPLOYEES' FEDERATION, LOCAL 222 :
 :
Involving Certain Employees of :
 :
MANITOWOC COUNTY (PARK LAWN HOME) :
 :

Case XIX
No. 15234 ME-743
Decision No. 10899

Appearances:

Mr. Roger Jacobson, Representative, appearing on behalf of the
Petitioner.
Mr. Richard E. Garrow, Corporation Counsel, appearing on behalf
of the Municipal Employer.
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Kenneth
R. Loebel, appearing on behalf of the Intervenor.

DIRECTION OF ELECTION

United Nursing Home and Hospital Employees' Federation, Local 222, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to the Municipal Employment Relations Act among certain employees of Manitowoc County employed in its Park Lawn Home, Manitowoc, Wisconsin; and a hearing on said petition having been conducted at Manitowoc, Wisconsin, on February 14, 1972, before George K. Fleischli, Hearing Officer; and during the course of the hearing Service Employees International Union, Local 150, AFL-CIO, having been permitted to intervene in the matter on the claim that it is the currently certified bargaining representative of the employees involved; and the Commission, having considered the evidence and arguments of the parties and being satisfied that a question has arisen concerning the appropriate collective bargaining unit and concerning representation for certain employees of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in a collective bargaining unit consisting of all regular full time and regular part time employees of Manitowoc County employees at its Park Lawn Home, Manitowoc, Wisconsin, but excluding supervisors, professional employees, registered nurses, office employees and confidential employees, who were employed on March 29, 1972, except such employees as may prior to the election quit their employment or be discharged for cause, for the

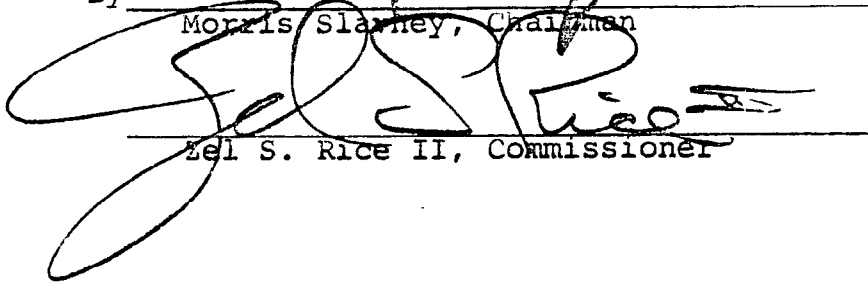
purpose of determining whether a majority of such employees desire to be represented by United Nursing Home and Hospital Employees' Federation, Local 222, or by Service Employees International Union, Local 150, AFL-CIO, or by neither of said organizations for the purposes of collective bargaining on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 29th
day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slattery, Chairman


Zel S. Rice II, Commissioner

MANITOWOC COUNTY (PARK LAWN HOME), XIX
Decision No. 10899

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On January 5, 1972, United Nursing Home and Hospital Employees' Federation, Local 222, hereinafter referred to as the Petitioner, filed a petition with the Commission requesting that a representation election be conducted in a claimed appropriate bargaining unit consisting of all regular full-time and all regular part-time employees of Park Lawn Home, Manitowoc, excluding supervisors, confidential employees, licensed practical nurses, registered nurses, licensed and professional employees. The Petitioner, at the time of filing of its petition, also submitted a showing of interest in the forms of signatures of a number of employees, which signatures were affixed on various pages containing the following statement:

"I hereby apply for membership in the United Nursing Home and Hospital Employees' Federation, Local NO. 222 of Milwaukee, Wisconsin and authorize its representatives to represent me, and in my behalf to negotiate and conclude, upon ratification all agreements as to hours, wages and working conditions." 1/

On April 21, 1965, following an election conducted by it, the Commission certified Service Employees' International Union, Local 150, AFL-CIO, hereinafter referred to as the Intervenor, as the exclusive representative of the employees of the Employer employed in the following collective bargaining unit:

"All regular full time and regular part time employees of Manitowoc County employed at the Park Lawn Home, Manitowoc, Wisconsin, working 20 hours or more per week but excluding supervisors, professional employees, registered nurses, students, and confidential office employees." 2/

Following said certification the Employer and the Intervenor have executed successive collective bargaining agreements covering the wages, hours and working conditions of the employees in said unit, the last of such agreements having expired on December 31, 1971.

During the hearing the Intervenor objected to placing the Petitioner's name on the ballot contending that the Petitioner is not a labor organization within the meaning of the Municipal Employment Relations Act. In addition, the Intervenor provided that an election is directed, contends that the bargaining unit should not exclude students or regular part time employees who work less than 20 hours. However, the parties agreed that otherwise the unit should be identical to the original unit, with the exception that office employees as well as confidential employees should be excluded from the unit. 3/

1/ After making an administrative determination that the Petitioner's showing of interest was adequate the matter was set for hearing.

2/ Manitowoc County (Park Lawn Home) (7066) 4/65.

3/ The exclusion of confidential employees is required by Sec. 111.70(1)(b) of MERA. The exclusion of office employees is consistent with the Commission's decision in Dane County (10492-A) 3/72, wherein it established a county-wide unit of office and clerical employees pursuant to Sec. 111.70(4)(d) of the Act.

Petitioner's Status as a Labor Organization

The question of whether the Petition is a labor organization had been raised by the Intervenor in two other proceedings prior to its being raised in this proceeding. 4/ By agreement between the parties, the records in those other two proceedings have been considered along with the evidence adduced in this proceeding in making the determination herein.

A person 5/ seeking to become a representative of employees need not be a labor organization. So long as the person that seeks to represent employees has as its purpose the intent to represent employees in collective bargaining, it is qualified to represent employees. 6/ The statement signed by the employees in the showing of interest supporting the Petitioner indicates that the employees affixing their signatures thereto "apply for membership" to the Petitioner, and further "authorize its representatives to represent me, and in my behalf to negotiate and conclusion, upon ratification all agreements as to hours, wages and working consitions". The rights granted employees in private employment by Section 111.04 of the Employment Peace Act and the rights granted municipal employees by Section 111.70(2) of the Municipal Employment Relations Act clearly include the right of employees to be represented by a representative of their own choosing without regard as to whether their chosen representative is a labor organization.

The term labor organization, which is not defined in the Employment Peace Act, is defined in the Municipal Employment Relations Act and reads as follows:

"'Labor organization' means any employe organization in which employes participate and which exists for the purpose in whole or in part of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment." 7/

It is significant to note that the Legislature did not see fit to impose any formal requirements on a labor organization, such as a requirement that it have a constitution or by-laws, or that it admit employees to formal membership, or that it charge employees dues. The only requirement set out, other than the requirement that the organization have the appropriate intent, is that employees participate; there is no requirement that the nature of the participation be any more formal than that desired by the employees themselves.

4/ The Dorchester (10795) 2/72 and Appleton Memorial Hospital Case VII. The question was not expressly decided in The Dorchester and the decision in Appleton has not yet been issued.

5/ The term "person" is used herein as broadly defined in Section 111.02(1) and Section 111.70(1)(k) of the Wisconsin Statutes.

6/ Mt. Nebo Fur Farm (6898) 10/64; The Dorchester (10795) 2/72.

7/ 111.70(1)(j).

The evidence is clear that employees participate in the activities of the Petitioner, primarily through informal meetings held at the various locations in the State wherein the Petitioner seeks to become the bargaining representative of employees. The fact that the Petitioner does not see fit to characterize those employees as "members", since they do not currently pay dues, is not controlling. The proposed constitution and by-laws would confer "membership" status on employees who apply for such and those members would be required to pay dues and would be given the opportunity to ratify the constitution and by-laws and elect officers. To say that the Petitioner does not yet exist as a labor organization because it has not yet formalized its operations would impose a requirement not contemplated by the statute. 8/

Appropriate Bargaining Unit

At the hearing held prior to the election conducted by the Commission in 1965 the parties stipulated that all regular part time employees working 20 hours or less and all "students" should be excluded from the bargaining unit. Because that stipulation did not contravene any policy of the then existing Sec. 111.70, Wis. Stats., the Commission accepted said stipulation and conducted an election pursuant to that stipulation. In this proceeding the Intervenor objects to the elimination of part time employees who happen to work 20 hours or less per week and "students" from the bargaining unit; the Municipal Employer objects to the proposed changes in the bargaining unit description; and the Petitioner takes no position with regard to the proposed changes.

Since the parties to this proceeding are unable to stipulate as to whether or not regular part time employees working 20 hours or less and "students" should be excluded, the Commission must determine the appropriateness of such proposed exclusions pursuant to its obligations under Section 111.70(4)(d)2a. Regular part time employees are employees under the Act and have a right to be represented. 9/ Even though the Municipal Employer may desire to maintain a separate system of fringe benefits for such employees, their rights as employees cannot be ignored. If the Commission were to continue to allow the exclusion of regular part time employees working 20 hours or less, in the face of a claim by the Intervenor that it seeks to represent those employees it would be depriving said employees of their right to representation unless the Commission were willing to establish a separate collective bargaining unit for such employees. In view of the fact that the Commission has been mandated by the Municipal Employment Relations Act to "whenever possible avoid fragmentation by maintaining as few units as practicable

8/ Our concession in this regard is not meant to imply that only labor organizations can represent employees. Sec. 111.70(2) grants municipal employees the "right of self-organization", and the right "to bargain collectively through representatives of their own choosing...". Should employees designate an individual as their representative said individual would be a proper party petitioner under the Act.

9/ Marinette General Hospital (7569) 4/66; Eau Claire County (7649) 7/66.

in keeping with the size of the total municipal work force" 10/ the Commission deems it inappropriate to exclude such employees from the bargaining unit involved. The evidence discloses that such employees receive the same wage rate as full time employees and perform the same work as full time employees. Their vacation benefits are prorated and they receive no other fringe benefits. There is no reason why the Municipal Employer and the selected bargaining representative could not make appropriate distinctions in the fringe benefits available to the employees who work 20 hours or less. However, as regular part time employees they have a sufficient interest in the wages, hours and other conditions of employment to be included in the bargaining unit and therefore may participate in the election.

It is difficult for the Commission to understand why the Municipal Employer persists in requesting that "students" be excluded from the bargaining unit in view of the fact that of the seven students currently employed to perform bargaining unit work by the Municipal Employer, five work regular hours of more than 20 hours per week and have been given all the benefits provided under previous collective bargaining agreements. Although the evidence indicates that several of these students may at some time in the future see fit to terminate their employment in order to continue their schooling elsewhere or pursue a different occupation, they are employees and if they are either full time or regular part time they have a sufficient present interest in the wages, hours and working conditions under which they work to require that they be included in the collective bargaining unit and eligible to vote in the election. 11/

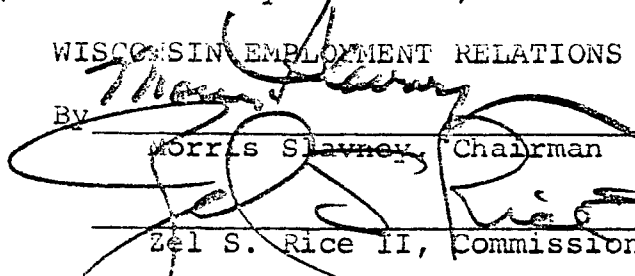
Other Questions of Eligibility

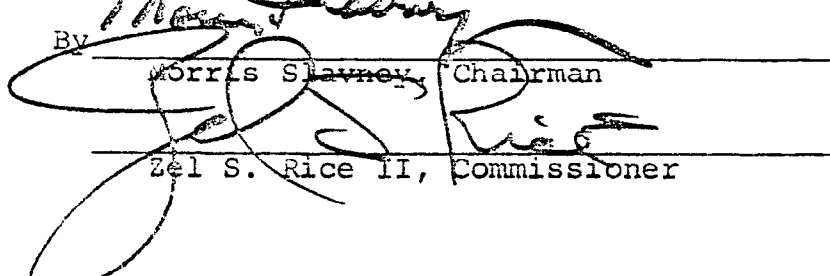
The parties stipulated that Vera Tesnow, Head Cook, Lucyle Raby, Head Housekeeper, and Paul Gerisch, Chief Engineer, should be excluded as supervisors and their names should be stricken from the vote eligibility list. 12/ As previously noted, the two office clerical employees have been excluded by stipulation because of their office employee status. It is therefore unnecessary to decide whether or not either of said employees is a confidential employee as alleged by the Municipal Employer. Similarly two student employees who answer the telephone are also excluded as office employees and it is therefore unnecessary to determine whether they are casual or irregular employees having an insufficient interest to be eligible to vote.

Dated at Madison, Wisconsin, this 29th day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

10/ Section 111.70(4)(d)2a of the Wisconsin Statutes.

11/ Marinette General Hospital (7569) 4/66.

12/ Said stipulation does not conflict with the Commission's policy regard to units of clerical employees. See Dane County (10492-A) 3/72.