

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

LOCAL 1849, WISCONSIN COUNCIL OF  
COUNTY AND MUNICIPAL EMPLOYEES,  
AFSCME, AFL-CIO

Involving Certain Employees of

CITY OF MENOMONIE (MEMORIAL  
HOSPITAL AND HOME)

Case XIV  
No. 15375 ME-762  
Decision No. 11023

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Appearances:

Mr. Guido Cecchini, Representative, appearing on behalf of the  
Petitioner.

Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law,  
by Mr. James Mallien, for the Municipal Employer.

DIRECTION OF ELECTION

Local 1849, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to the provisions of the Municipal Employment Relations Act among certain employees of the City of Menomonie employed in its Memorial Hospital and Home; and hearing on such petition having been conducted on March 17, 1972, at Menomonie, Wisconsin, Commissioner Zel S. Rice II being present; and the Commission having considered the evidence and being satisfied that a question has arisen concerning representation for certain employees of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees employed by the City of Menomonie in the Memorial Hospital and Home, excluding supervisors, confidential clerical employees and registered nurses, who were employed by the Municipal Employer on May 23, 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 Local 1849, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of bargaining collectively with the Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 23rd  
day of May, 1972

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
S. B. Kerkman, Commissioner

No. 11023

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The instant proceeding was initiated by a petition filed by the Union requesting that the Commission conduct an election among "all hospital and nursing home employees, excluding supervisors, confidential clerical employees and registered nurses," employed by the City of Menomonie. The history of the organizational attempts among such employees by the Union, as well as subsequent collective bargaining relationships are as follows:

1. Following a petition initiated by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and pursuant to a Direction issued by it, the Commission, in November 1967, conducted an election in a unit stipulated by the parties as consisting of "all regular full-time and regular part-time employees of Memorial Hospital and Nursing Home, excluding ward clerks, office and clerical employees, x-ray technicians, licensed practical nurses, lab technicians, occupational therapists, professional, supervisory, confidential and clerical employees, registered nurses and superintendent." In said election the employees in said stipulated unit rejected Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, as their bargaining representative. 1/

2. In July of 1968 Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, again petitioned the Commission to conduct an election, and following a hearing thereon, the Commission directed an election in a unit consisting of "all regular full-time and regular part-time employees of the City of Menomonie employed in the Memorial Hospital and Nursing Home, excluding supervisors, confidential and clerical employees, registered nurses, professional and superintendent." Prior to the conduct of the election the parties stipulated that the only clerical employees to be excluded from the unit were confidential clerical employees, and, as a result, the unit in which the election was to be conducted consisted of "all regular full-time and regular part-time employees of the City of Menomonie employed in the Memorial Hospital and Nursing Home, excluding supervisors, confidential clerical employees, registered nurses, professionals and superintendent." The results of such election indicated that the employees in said bargaining unit rejected the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, as their bargaining representative. 2/

3. In the spring of 1970, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, filed a petition requesting an election among the employees of the City of Menomonie employed only in the Memorial Hospital and at the opening of the hearing thereon, which was conducted on April 13, 1970, said organization and the Municipal Employer stipulated that the appropriate unit consisted of "all hospital employees of the City of Menomonie in the Memorial Hospital, excluding supervisors, confidential clericals, registered nurses and nursing home employees." The results of said election indicated that the employees selected the petitioning organization as their bargaining representative. 3/

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1/ Decision No. 8204, 11/20/67.

2/ Decision No. 8730-A, 12/2/68.

3/ Decision No. 9608, 5/21/70.

Subsequently on June 16, 1971, the certification was amended to reflect that the employees in said bargaining unit established themselves into Local 1849, affiliated with the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and the certification of representatives previously issued was amended.

4. In the fall of 1970, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, petitioned for an election among certain employees of the Municipal Employer and after hearing, wherein the parties agreed to the unit appropriate for collective bargaining, the Commission directed an election among "all employees employed by Memorial Hospital and Nursing Home, excluding supervisors, confidentials, clericals and registered nurses." Subsequently and prior to the election the Commission issued an Amended Direction of Election, wherein it described the appropriate unit as "all employees employed by Memorial Hospital and Nursing Home in its Nursing Home, excluding supervisors, confidentials, clericals and registered nurses." In said election the employees selected the petitioning labor organization as their bargaining representative and on December 29, 1971, the certification of representatives originally issued in the matter on March 8, 1971, was amended to reflect the bargaining representative to be Wisconsin Council of County and Municipal Employees, Local 1849, AFSCME, AFL-CIO. 4/

In its petition initiating the instant proceeding the Union seeks an election in a unit consisting of all hospital and nursing home employees employed in the Memorial Hospital and Home operated by the Municipal Employer, excluding supervisors, confidential clericals and registered nurses. The petition, in effect, would combine the existing separate units of "hospital" and "nursing home" employees. The employees in both units are presently represented by the Union for the purposes of collective bargaining. At the time of filing of the instant petition, a collective bargaining agreement existed between the Union and the Municipal Employer covering the wages, hours and working conditions of employees in the "hospital" unit. The parties have never entered into an agreement covering the "nursing home" employees. The agreement covering the hospital employees contains, among its provisions, the following:

#### "ARTICLE 21

##### Duration

Section 1. This Agreement shall be effective as of April 1, 1971 to April 1, 1972, except as provided in Section 2 of this Article.

Section 2. If the Hospital's Governing Board, prior to April 1, 1972 recommends adoption of the terms of this Agreement for the period from April 1, 1972 through October 31, 1972, and if said Board adopts a budget which recommends the financial terms of this Agreement for the period from April 1, 1972 through October 31, 1972, and if the Hospital pursuant thereto notifies the Union, in writing prior to April 1, 1972 of its desire to renew and continue the Agreement in full force and effect from April 1, 1972 through October 31, 1972, then this Agreement shall automatically renew and continue in full force and effect from April 1, 1972 through October 31, 1972."

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4/ Decision No. 10094-B.

The Municipal Employer objects to the unification of the two existing bargaining units and the conduct of a new election on basically three grounds:

1. That there presently exists no question of representation, since the Union represents all of the employees involved.
2. That the bargaining unit sought by the Union is inappropriate since the "hospital" and the "nursing home" are separate entities.
3. The collective bargaining agreement existing between the Union and the Municipal Employer covering the wages, hours and working conditions of the "hospital" unit constitutes a bar to a present election.

#### The Question of Representation

While the Union is presently the certified bargaining representative of the employees involved, such representation has been established in two separate units. It desires to combine said units. Issues as to the appropriateness of a unit constitutes a factor in determining whether there is a question of representation, and, therefore, the fact that the Union is presently the certified representative of the employees in the two units does not prevent it from seeking to combine said units into one collective bargaining unit.

#### The Impact of Separate Entities

Prior to the effective date of the amended Municipal Employment Relations Act, November 11, 1971, the establishment of an appropriate collective bargaining unit in municipal employment was more stringently statutorily regulated than is so now. Previously the appropriate bargaining unit of non-craft or non-professional municipal employees consisted of all employees of the Municipal Employer, except where employees employed in a separate department or division of the Municipal Employer desired to establish themselves as a separate unit, they were given the opportunity to do so. The units presently separately represented by the Union were agreed to by the parties prior to the elections in which the Union was selected as the bargaining representative for the employees involved in said separate units.

Section 111.70(4)(d)2a of the newly enacted Municipal Employment Relations Act provides:

"The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot."

We are satisfied that the "hospital" and the "nursing home" are separate departments. However, both the "hospital" and "nursing home" are engaged in patient care and treatment, and we believe that it would best effectuate the policies of the Act, and specifically Section 111.70(4)2a, to conclude that the employees in both of said departments constitute one appropriate bargaining unit. To establish separate units would cause an undesirable fragmentation which the recently adopted amendments to the municipal employment bargaining law cautions the Commission to avoid.

#### The Effect of the Existing Collective Bargaining Agreement

As indicated previously herein the Union and the Municipal Employer are parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees in the "hospital" unit. Said agreement became effective April 1, 1971, and was to continue in effect to April 1, 1972, subject to the right of the Municipal Employer to unilaterally extend the agreement through October 31, 1972. The agreement contained no reopening option running to the Petitioner.

The petition initiating the instant proceeding was executed on February 21, 1972, and filed with the Commission on February 24, 1972. On February 23, 1972, the Municipal Employer executed a letter directed to the Union indicating that the Municipal Employer desired to renew the collective bargaining agreement covering the "hospital" employees, through October 31, 1972. The Municipal Employer contends that said existing labor agreement constitutes a bar to a present election, and, therefore, the petition should be deemed untimely filed.

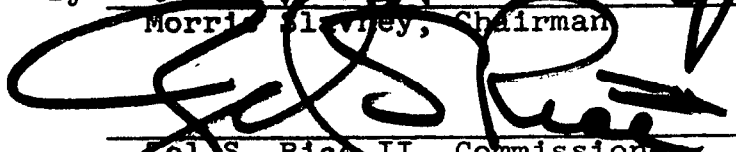
While the agreement contains a provision for the extension of the agreement upon timely notice by the Municipal Employer, it does not contain any reopening clause with respect to negotiations covering the wages, hours and working conditions of the "hospital" employees for any period following October 31, 1972. As previously noted there has never been a collective bargaining agreement executed between the parties covering the wages, hours and working conditions of "nursing home" employees. Under such circumstances we do not consider the existing collective bargaining agreement affecting the "hospital" employees as a bar to a present election in the "combined" unit, and the Commission has directed an election in said appropriate unit. The election results, however, shall have no affect on the continuation of the agreement covering the "hospital" employees, at least through October 31, 1972.

Dated at Madison, Wisconsin, this 23rd day of May, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawey, Chairman

  
Lel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner