

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
WAUSAU HOSPITALS, INC. (WAUSAU : Case III
HOSPITAL - NORTH) : No. 15985 E-2749
: Decision No. 11343
Involving Certain Employees of :
WAUSAU HOSPITALS, INC. (WAUSAU :
HOSPITAL - NORTH) :

Appearances:

Tinkham, Smith, Bliss & Patterson, Attorneys at Law, by
Mr. Richard P. Tinkham, appearing on behalf of the
Employer-Petitioner.
Mr. Donald Beatty, President, appearing on behalf of the Union.

DIRECTION OF ELECTION

Wausau Hospitals, Inc. (Wausau Hospital - North), by its Attorney, having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.05(3) of the Wisconsin Statutes, among certain employees of Wausau Hospitals, Inc. to determine whether said employees desired to be represented by Local 150, Service and Hospital Employees International Union, AFL-CIO, for purposes of collective bargaining on questions of wages, hours and conditions of employment; and hearing on such petition having been conducted on October 16, 1972, at Wausau, Wisconsin, by George R. Fleischli, Hearing Officer; and the Commission having considered the evidence and arguments of the parties and being satisfied that a question has arisen concerning representation for certain employees of Wausau Hospitals, Inc.;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees of Wausau Hospitals, Inc., working twenty (20) hours or more per week at its Wausau Hospital - North Division, excluding supervisors, executives, confidential employees, registered nurses, professional employees, x-ray technicians, certified laboratory assistants, plumbers, electricians, operating room technicians, certified occupational therapy assistants and persons of a religious order, who were employed by Wausau Hospitals, Inc. on October 12, 1972, except such employees who quit their employment or are terminated for cause prior to the election, for the purpose of determining whether a majority of such employees

desire to be represented by Local 150, Service and Hospital Employees International Union, AFL-CIO, for 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 1st day of November, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Petitioner, Wausau Hospitals, Inc. seeks an election in a bargaining unit consisting of all regular full-time and regular part-time employees of Wausau Hospitals, Inc., working twenty hours or more per week at its Wausau Hospital - North Division, excluding supervisors, executives, confidential employees, registered nurses, professional employees, x-ray technicians, certified laboratory assistants, plumbers, electricians, operating room technicians, certified occupational therapy assistants and persons of a religious order. On May 18, 1967, the Commission conducted an election in a bargaining unit of employees of St. Mary's Hospital of Wausau, Inc., the predecessor of the Employer's Wausau Hospital - North Division. The bargaining unit in that case consisted of all regular full-time and regular part-time employees working twenty hours or more per week in the employ of St. Mary's Hospital of Wausau, Inc., Wausau, Wisconsin, but excluding supervisors, executives, confidential employees, registered nurses, professional employees and persons of a religious order. 1/ The discrepancy between the bargaining unit certified in 1967 and the bargaining unit petitioned for results from the fact that St. Mary's Hospital of Wausau, Inc. has been acquired by Wausau Hospital, Inc. and the parties have, in the course of their negotiations, amended the bargaining unit so as to exclude certain additional groups of employees.

The Union agrees that the present collective bargaining unit is correctly set out in the petition. However, the Union contends that the Wisconsin Employment Relations Commission may lack jurisdiction to direct an election and denies that there is a sufficient showing of a possible change of attitude to support the petition for an election. 2/

At the hearing the Employer asserted that it is a non-stock, not-for-profit corporation organized under Chapter 181 of the Wisconsin Statutes and that it enjoys tax exempt status. St. Mary's Hospital of Wausau, Inc., which was also a non-stock, not-for-profit corporation was acquired by the Employer, which also operates Wausau Memorial Hospital, now known as Wausau Hospital - South Division. The Union offered no evidence in support of its claim that the Commission lacks jurisdiction. It is quite clear from the record established, that the National Labor Relations Board lacks jurisdiction in this case because the Employer is not an employer within the meaning of Section 2(2) of the National Labor Relations Act, as amended. 3/

1/ St. Mary's Hospital of Wausau, Inc. (8021) 5/67.

2/ When there exists a presently certified bargaining representative, the Commission will not conduct a subsequent election on a petition filed by an employer unless it is shown by objective considerations that the employer has reasonable cause to believe that the incumbent organization has lost its majority status. Wauwatosa Board of Education, (8300-A) 2/68.

3/ "The term employer. . . shall not include. . . any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual. . ."

The Petitioner submits the following reasons as providing a basis for its position that it has reasonable cause for doubt with regard to the current representative status of the Union:

- "1) Since the original certification election of May 18, 1967, in which Local 150 received only 56 percent of the votes cast there has been a merger of St. Mary's Hospital (n/k/a Wausau Hospital - North) and Wausau Memorial Hospital (n/k/a Wausau Hospital - South).
- 2) There has been a substantial turnover of employees in the bargaining unit of at least 65 percent since the election of May 18, 1967.
- 3) An all-union referendum was conducted on August 11, 1972 in which Local 150 received a "yes" vote from only 35 percent of the eligible employees in the bargaining unit and lost that referendum election.
- 4) The present contract between petitioner and Local 150 expires on December 4, 1972."

The Union does not deny that St. Mary's Hospital of Wausau, Inc. was acquired by the Employer subsequent to the election of May 18, 1967, but denies that this evidences a possible change of attitude sufficient to overcome the presumption of continuing majority status. The Commission agrees that the mere fact of the merger is not sufficient to overcome the presumption of continuing majority status where there was a wholesale transfer of employees and an uninterrupted continuation of the hospital operation in the same physical plant.

With regard to the Employer's second stated reason, the parties agreed that the question of turnover could best be established by comparing the list of eligible employees utilized in the original representation election conducted in May, 1967, with a list of eligible employees as of October 12, 1972. ^{4/} A comparison of those two lists indicates that there has been a substantial replacement of employees and increase in their numbers. Approximately 73% of the employees currently employed did not appear on the original list. Even though there has been a substantial turnover of employees, the Union argues that a high turnover of employees is common in hospitals, and that the mere fact of turnover is not sufficient to overcome the presumption of continuing majority status.

The parties agreed that the records of the Commission with regard to the results of the two referenda conducted by it on September 24, 1970, and on August 11, 1972, should be utilized for the purpose of determining if there is any merit to the Petitioner's third stated reason. An analysis of the results of those two referenda establishes that 81% of the eligible employees voted in the first referendum whereas only 68% of the eligible employees voted in the second referendum. Of the valid ballots counted in those referenda the Union obtained 63% "yes" votes in the first referendum, whereas it obtained only 52% "yes" votes in the second referendum. Those voting "yes" in the two referenda represented 50% and 35% of the eligible employees respectively.

^{4/} Supra note 1. It was further agreed that the list of eligible employees as of October 12, 1972 would be submitted by the Employer subsequent to the hearing and that the Union would have one week after receipt in which to raise any objections to the list submitted. The Union raised no objection to the list submitted within the time agreed.

The Employer argues that the fact that the Union obtained a "yes" vote from slightly less than 35% of the eligible employees in the most recent referendum, combined with the fact that a greater percentage of the employees voted "yes" in the prior referendum indicates a declining interest on the part of the employees in being represented by the Union.

With regard to the Employer's last stated reason, the Union does not deny that the present contract expires on December 4, 1972, and that the petition is therefore timely. However, the Union points out that on August 10, 1972, prior to the Employer's initiation of the petition herein, it notified the Employer of its intent to discuss changes in the agreement for the purpose of entering into a new agreement. The Union argues that the mere fact that the collective bargaining agreement will, by its terms, expire on December 4, 1972, is no evidence that the employees have lost interest in being represented by the Union.

At the hearing the Employer introduced evidence with regard to the statements of certain employees in three job classifications which had been brought to its attention in recent months. A number of Ward Unit Clerks, who perform clerical duties in the various nursing units, notified the Employer in writing that the Ward Unit Clerks had voted "19 to 1" in favor of "leaving the collective bargaining unit". In addition certain Licensed Practical Nurses verbally advised the Employer that the LPN's "all wanted out". There are a total of about 12 LPN's. Finally one employee in the Painter classification advised the Employer both verbally and in writing that he "wanted out".

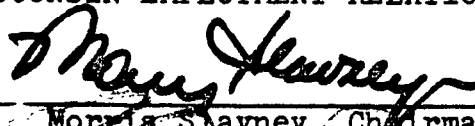
The Commission is satisfied that the Employer has made a sufficient showing by objective considerations, that it has reasonable cause to believe that the incumbent organization may have lost its majority status. The extremely high turnover rate combined with the evidence that the employees have expressed declining interest in authorizing the Employer and Union to enter into some form of all-union agreement and the evidence that a number of employees have made unsolicited statements that they no longer desire to be represented by the Union, taken together, indicate that there presently exists a question concerning representation, which is timely presented by the Employer's petition.

For the above and foregoing reasons the Commission has directed an election in the currently recognized bargaining unit for the purpose of determining if a majority of the employees desire to continue to be represented by the Union for the purposes of collective bargaining on questions of wages, hours and working conditions.

Dated at Madison, Wisconsin, this 1st day of November, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner