

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

ALGOMA MEMORIAL HOSPITAL AND
EXTENDED CARE FACILITY

Case I
No. 16589 ME-916
Decision No. 11801

Mr. Leonard D. Ferris, Administrator, on behalf of the
Municipal Employer.

Local 222, United Nursing Home & Hospital Employees' Federation having petitioned the Wisconsin Employment Relations Commission to conduct an election among certain employees of Algoma Memorial Hospital and Extended Care Facility; and hearing on such petition having been held at Algoma, Wisconsin, on April 11, 1973, Kay Hutchison, a member of the Commission's staff having been present; and Local 150, Service and Hospital Employees' International Union, AFL-CIO, having been permitted to intervene on the basis of its claim to represent said employees; and the Commission having considered the evidence and being satisfied that a question has arisen concerning representation for certain employees of the abovenamed Municipal Employer;

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 of Algoma Memorial Hospital and Extended Care Facility, at its Algoma, Wisconsin location, excluding supervisory, craft, professional (including registered nurses), managerial, casual and confidential employees, who were employed by the Municipal Employer on April 11, 1973, 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 222, United Nursing Home & Hospital Employees' Federation, or Local 150, Service and Hospital Employees' International Union, AFL-CIO, or by neither of said organizations.

Given under our hands and seal at the
City of Madison, Wisconsin, this 30th
day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

~~Morris Glawney, Chairman~~

Le S. Rice II, Commissioner

008. B. Kerkman, Commissioner

No. 11801

ALGOMA MEMORIAL HOSPITAL AND EXTENDED CARE FACILITY,
Case 1, Decision No. 11801

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The instant proceeding was initiated by a petition filed by Local 222, United Nursing Home & Hospital Employees' Federation, hereinafter referred to as Local 222, requesting the Commission to conduct an election among certain employees of Algoma Memorial Hospital and Extended Care Facility, hereinafter referred to as the Municipal Employer. Prior to the conduct of the hearing in the matter, Local 150, Service & Hospital Employees' International Union, AFL-CIO, hereinafter referred to as Local 150, also filed a petition with the Commission requesting an election among certain employees of the Municipal Employer. Based upon its petition, Local 150 was permitted to intervene in the matter.

Hearing was held on April 11, 1973, at Algoma, Wisconsin. Immediately prior to the opening of the proceeding, the Hearing Officer was telephonically informed that a representative of Local 222 would be unable to attend the hearing. 1/

During the course of the hearing and in subsequent communication to the Commission, the only issue raised herein, was Local 150's objection to the continuation of Local 222 as a party to the election in that a representative of Local 222 failed to appear at the hearing.

Local 150 argues that the absence of a representative of Local 222, resulted in a denial of the parties' right to question each other with regard to any outstanding issues. Specifically, Local 150 avers that Local 222's absence denied Local 150 an opportunity to examine Local 222 with regard to its failure to provide a showing of interest in the instant case. Therefore, Local 150 reasons, it is inappropriate for Local 222 to appear on the ballot of an election ordered in the instant proceeding.

ERS 10.13, Procedure in the Administration of Sub-chapter IV of Chapter 111, Wisconsin Statutes, sets forth, in relevant part, the following rules applicable to the conduct of all proceedings involving municipal employment relations before the Wisconsin Employment Relations Commission:

"Hearing transcripts. (1) PUBLIC HEARING. All hearings shall be public.

(2) RESCHEDULING OF HEARING. Upon its own motion or proper cause shown by any of the parties, the commission, may prior to the opening of the hearing reschedule the date of such hearing.

1/ Local 222 informed the Hearing Officer that a representative would not be at the hearing in that a heavy snowstorm on the preceding two days continued to render travel impractical in the representative's immediate area. Upon commencement of the hearing, such information was transmitted by the Hearing Officer to the representative of Local 150 and the Hospital Administrator who were present.

(3) RIGHTS OF PARTIES AT HEARING. Any party shall have the right to appear by counsel or by any other qualified representative to present his case by oral, documentary, or other evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. Any party shall be entitled, upon request, to a reasonable period for oral argument at an appropriate time during the hearing.

(4) EFFECT OF FAILURE TO APPEAR. Any party failing to appear and participate after due notice shall be deemed to have waived the rights set forth in subsection (2) above, to admit the accuracy of the uncontradicted evidence adduced by the parties present, and shall, unless good cause be shown, be precluded thereafter from introducing any evidence controverting any contentions or allegations. The commission or individual determining the matter may rely on the record as made.

. . . ."

By failing to appear at a proceeding, a party waives its right to request a postponement, admits the accuracy of the uncontradicted evidence adduced by the parties attending the hearing, and may have effectively waived its right to present evidence controverting any contentions or allegations. Whereas failure to appear may waive a party's right to participation in the hearing stage of a proceeding, it does not waive a party's interest in the matter.

It would be a serious abrogation of Section 111.70(4)(d)3 of MERA, wherein it is stated that:

"... Any ballot used in a representation proceeding shall include the names of all persons having an interest in representing or the results. . . ;"

if the Commission were to conclude that Local 222's justifiable failure to appear waived its interests, as originally evidenced by its petition, in representing the employees. Therefore, the name of Local 222 shall appear on the ballot pursuant to the Direction of Election ordered herein.

Although not determinative of the issue herein, we find Local 150's argument that Local 222's absence denied an on-the-record examination of Local 222's failure to provide a showing of interest to be without merit. The Commission has maintained a policy of not requiring a showing of interest by a labor organization seeking to represent employees where there exists no recognized or certified bargaining representative. 2/

Dated at Madison, Wisconsin, this 30th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavner, Chairman


Ze S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

2/ Bellin Memorial Hospital (8518) 4/68; Wausau Colonial Manor (8717) 10/68; Wauwatosa Board of Education (8300-A) 2/68; aff. Dane Co. Cir. Ct. 8/68; Dodge County (Clearview Home) (8734) 10/68; Holy Family Hospital (9682-9687) 5/70 and (11535) 1/73.