

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation of :
MONROE COUNTY INSTITUTIONS EMPLOYEES, :
LOCAL UNION 1947, WCCME, AFSCME, : Case XI
AFL-CIO : No. 16716 ME-919
and : Decision No. 8166-C
MONROE COUNTY : 11913
For Clarification of Bargaining Unit :

Appearances:

Mr. Walter J. Klopp, District Representative, Wisconsin Council
of County and Municipal Employees, AFSCME, AFL-CIO,
appearing on behalf of Local 1947.
Mr. Michael J. McAlpine, Assistant District Attorney, and Mr.
Ralph E. Osborne, District Attorney, appearing on behalf
of Monroe County.

ORDER CLARIFYING BARGAINING UNIT

Monroe County Institutions Employees, Local Union 1947, WCCME, AFSCME, AFL-CIO and Monroe County having on April 17, 1973 entered into a stipulation whereby said parties requested the Wisconsin Employment Relations Commission to issue an order clarifying a bargaining unit in which the Commission previously certified the Union as the exclusive representative; and a hearing having been held in the matter on April 17, 1973 at Sparta, Wisconsin, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following

ORDER

1. That the collective bargaining unit, previously certified by the Wisconsin Employment Relations Commission, consisting of all employees employed by Monroe County in its hospital and infirmary (Rolling Hills), excluding the Superintendent, Assistant Superintendent, supervisory personnel, professional nurses, confidential and clerical employees, shall be, and the same hereby is, clarified to include the Food Service Supervisor of the Monroe County Hospital, the Laundry Supervisor and all Licensed Practical Nurses in the employ of the Municipal Employer.

2. That the Food Service Supervisor of Rolling Hills and the Housekeeping Supervisor of Rolling Hills are supervisors within the


meaning of Section 111.70(1)(o)1 of the MERA and are excluded from the foregoing collective bargaining unit.

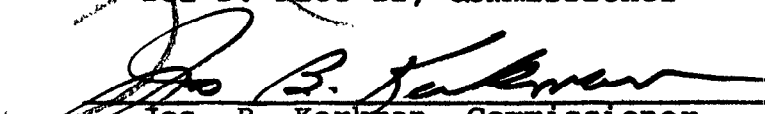
Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of June, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

The Commission previously certified the Union as the exclusive collective bargaining representative of all employees employed by Monroe County in its Hospital and Infirmary, excluding the Superintendent, Assistant Superintendent, supervisory personnel, professional nurses, confidential and clerical employees. ^{1/} On March 26, 1973 the Union filed a complaint with the Commission, ^{2/} wherein it alleged that the Municipal Employer had committed prohibited practices within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act, by refusing to bargain with the Union over the wages, hours and conditions of employment of Licensed Practical Nurses, Housekeeping Supervisors, Food Service Supervisors and a Laundry Supervisor, which positions the Union claimed were included in the previously certified bargaining unit. The Commission appointed an Examiner to hold a hearing and issue findings and order on said complaint, and the matter was set to be heard on April 17, 1973. Prior to the opening of the hearing on April 17, 1973, representatives of the parties met with the Examiner and reached a settlement, whereby the complaint of prohibited practices be dismissed and the parties requested the Commission to issue an order clarifying the bargaining unit with respect to the positions set forth above. By agreement of all parties, the period of notice provided in Rule ERB 11.05(1), Wis. Admin. Code, was waived and the hearing in the instant matter was held on April 17, 1973. At the outset of the hearing, the parties advised the Hearing Officer that the Municipal Employer conceded that the position of Housekeeping Supervisor in the Monroe County Hospital was within the bargaining unit.

PREVIOUS REPRESENTATION PROCEEDINGS

On July 18, 1967, the Union filed a petition with the Commission wherein it requested a representation election among employees in the Monroe County Hospital and the Monroe County Highway Department. A hearing was held on said petition on August 10, 1967. During the course of the hearing, the Union amended its petition to include employees of the Monroe County Infirmary. While the parties stipulated that the Highway Department was a separate departmental unit, they were unable to agree on the issue of whether the Hospital and Infirmary were a single department or two separate departments. During the testimony concerning the separateness of the Hospital and Infirmary, an additional issue arose concerning the inclusion of registered nurses in a unit with other employees of the Hospital or other employees of the Infirmary.

The Commission issued its Direction of Elections on September 1, 1967, wherein separate unit votes and representation elections were ordered in the Highway Department and in a combined Hospital and Infirmary unit. Elections were conducted in the Hospital and Infirmary unit on October 9, 1967, at which time the Union received the votes of a substantial majority of the employees eligible. The Commission certified

^{1/} Monroe County, Case I, No. 11591, ME-321

^{2/} Monroe County, Case X, No. 16647, MP-229

the Union as the exclusive representative on October 31, 1967. Thereafter, the parties requested the Commission to determine whether certain employees, whose ballots had been challenged as supervisors, were in fact supervisors, even though the challenged ballots did not affect the results of the elections. One of the employees so challenged was the Laundry Supervisor in the Hospital and Infirmary unit. On January 5, 1968, the Commission issued its Order Determining Scope of Bargaining Units, wherein it found that the Laundry Supervisor was properly included in the bargaining unit. The Monroe County Infirmary was subsequently renamed "Rolling Hills", and is hereinafter referred to by that name. The Monroe County Hospital is a mental institution. Rolling Hills is a nursing home occupied primarily by geriatrics patients.

FOOD SERVICE SUPERVISOR - HOSPITAL

Myrtle Smith holds the classification of Cook II at the Monroe County Hospital. She is also known as the "Head Cook" or as the "Cook Supervisor". Smith is the only Hospital employee holding the Cook II classification. She reports to the Assistant Superintendent of the Hospital. The Municipal Employer employs two other full time food service employees at the Hospital. The food service employees receive some help from patients.

Smith customarily works a day shift, beginning at 5:30 A.M., five days per week. One of the other full time employees is designated as a Cook I, and she works a later shift, beginning at 10:30 A.M., five days per week. The remaining full time employee is designated as the relief cook, and she covers the days off of Smith and the Cook I. The relief cook is scheduled on duty beginning at 8:00 A.M. on one day per week when both Smith and the Cook I are also scheduled on duty. The days off of these employees are not standard, and Smith takes part in the rotation of days off. Smith spends the majority of her time performing cooking work similar to the work performed by the Cook I and the Relief Cook. Assignments to work are largely routine, and are determined primarily by the shift schedule for the day and the menu for the day.

Smith has not been given authority by the Municipal Employer to discipline or discharge the employees working under her alleged supervision. On the contrary, Smith testified that she thought she could only sign a complaint slip, but has never done so. In the one instance where a cook was hired since Smith became Cook II, Smith was involved in the hiring process only to the extent of being asked whether she felt she could work with the candidate selected by the Hospital administration. The Commission is satisfied that Smith is merely a lead worker, and is not a supervisor within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act. She is therefore included in the bargaining unit.

FOOD SERVICE SUPERVISOR - ROLLING HILLS

Joyce Tucker holds the classification of Food Service Supervisor at Rolling Hills. She previously held the titles of "Cook II" and "Cook I". She reports to the Supervisor of Rolling Hills. The Municipal Employer employs twelve other full time and four part time food service employees at Rolling Hills. In addition, approximately four residents also work in food service at Rolling Hills.

Tucker has completed some specialized training in food service supervision. She makes recommendations on hiring, discipline and discharge of employees, she assigns employees to shifts and duties, and she oversees the entire food service operation. Tucker also orders food for Rolling Hills. Tucker does not spend any measurable portion of her time performing work similar to the work performed by the employees she supervises. The Commission finds that the Food Service Supervisor at Rolling Hills is a supervisor within the meaning of the statute, and that she is excluded from the bargaining unit.

HOUSEKEEPING SUPERVISOR - ROLLING HILLS

Ruby Peck has been the Housekeeping Supervisor at Rolling Hills for the past seven years. She was listed on the eligibility stipulation for the original representation election as being not eligible to vote. The Municipal Employer employs four other full time housekeepers and one part time housekeeper. Peck reports to the supervisor of Rolling Hills, and is in the direct line between the housekeeping employees and the Supervisor of Rolling Hills.

Peck schedules and assigns the housekeeping employees. Most of the employees are assigned to separate floors of the institution for routine daily housekeeping, and one of the employees is assigned as a "floater", filling in for absences and days off of other employees. Peck does not participate in the routine daily housekeeping, but she does spend a majority of her time engaged in manual work. She fills supply requisitions and orders supplies, prepares materials for other employees to enable them to proceed with their routines without interruption, strips floors, washes windows, and washes curtains. However, Peck has disciplined employees, she has made recommendations concerning discharge of an employee, and she has made recommendations on the hiring of employees. Peck works a straight Monday through Friday schedule, while the employees under her direction work a rotation shift. The present Housekeeping Supervisor at Rolling Hills occupied her present position for more than one year prior to the original representation election. There is nothing to indicate that her situation has changed significantly since the previous stipulation of the parties to exclude her from the bargaining unit. There is testimony of an increase in the size of the housekeeping staff since she assumed her present duties, and thus an increase in the number of employees under her supervision. The Commission finds that the position is supervisory, and is properly excluded from the bargaining unit.

LAUNDRY SUPERVISOR

In the Commission's previous ruling on the supervisory status of the Laundry Supervisor we stated:

"[The Laundry Supervisor] is responsible for the operation of the laundry, where, generally, no other employee is employed. The work in the laundry is performed by patients and [the Laundry Supervisor] supervises the patients in the performance of the duties therein. Since she supervises no other employees of the Municipal Employer, she cannot be a supervisor and, therefore, she is to be included in the bargaining unit."

The employee involved in the previous ruling has left the employment of the Municipal Employer and was replaced, approximately two years

ago, by Violet Thomas. The operation of the laundry has changed somewhat since the issuance of our previous determination. Whereas, at that time the Laundry Supervisor was the sole employee in the laundry and all other help in the laundry was provided by patients, the Municipal Employer now employs three full time and two part time employees in the laundry, in addition to the Laundry Supervisor. Twenty to twenty-five patients also work in the laundry.

Thomas has not been given authority by the Municipal Employer to hire, discipline or discharge employees, nor has she been clearly informed of her authority to make recommendations on such matters. She testified that she supposed that she could make a recommendation concerning the discipline of an employee, but has never done so. As new employees have been hired, Thomas has been the person charged with their training. However, Thomas otherwise spends her entire time performing work of the same nature as the other people working in the laundry. The assignment of work is largely routine, and the employees do not require frequent direction in this regard. When problems have arisen, meetings of the laundry employees have been held, sometimes with the intervention of the Assistant Superintendent of the Hospital, to work out a mutually agreeable solution. It appears that the Laundry Supervisor is now a lead worker, but we are not persuaded that the addition of some employees in the laundry necessitates a change of our previous ruling. The Laundry Supervisor is included in the bargaining unit.

LICENSED PRACTICAL NURSES

The Union contends that Licensed Practical Nurses are not within the meaning of the "professional nurses" language of its original certification, and are therefore within the collective bargaining unit. The Employer contends that the Licensed Practical Nurses in its employ were never included in the bargaining unit, that they did not vote in the election establishing the bargaining unit or the representation election, and that they should remain outside of the existing unit.

Upon review of the record made in the Monroe County I, the only reference in that record to practical nurses is found in testimony of Mr. Edwin G. Monick, Superintendent of the Monroe County Hospital and Rolling Hills. The testimony was elicited on examination by Commissioner Rice concerning the issue raised in that proceeding as to whether the Monroe County Hospital and the then-Monroe County Infirmary should be regarded as a single department of the Municipal Employer or two separate departments. The testimony is as follows:

"Q Is there any difference in employees' duties?

A Yes.

Q Would you tell me what they are?

A The nursing assistants at the hospital pass medications. The nursing assistants at the infirmary pass very few medications.

Q But they both do pass medications?

A Some times on occasion they do.

Q On the instructions of someone else?

A No. At the infirmary they do not pass medications. These are passed by registered nurses and practical nurses. At the hospital they are passed by nursing assistants."

As indicated previously, an issue arose during the hearing in Monroe County I concerning the inclusion of nurses in the bargaining unit. Following is another excerpt of the testimony of Mr. Monick, on examination by Commissioner Rice:

"Q Now, in the question of supervision. You say there's one over-all supervisor for all the county institutions?

A That's right. That's myself.

Q And that is you and your assistant is your wife?

A Yes.

Q And you are the only over-all supervisor?

A Yes.

Q Now, do you have any people in a supervisory capacity in the infirmary?

A Yes.

Q Who is that?

A Mr. and Mrs. Janzen are the over-all supervisors at the infirmary.

Q Do you have other supervisory people under them?

A Yes.

Q And do you have any other supervisory people in the hospital?

A Yes.

Q Who are the supervisory people over there?

A Well, we have a chain of command set up on supervisory personnel. There's nurses, nursing aid supervisors, who operate in the hospital the same as in the infirmary. We have the chain of command and we consider these people supervisory personnel.

Q Do you have R.N. supervisors?

A Yes.

Q Are you asking the for R.N.'s, too?

MR CHAPMAN: We are asking for all employees except those in supervisory positions, purely supervisory positions.

MR. RICE: So if an R.N. is in a supervisory position?

MR. CHAPMAN: Only in supervisory positions. Otherwise we ask for them."

The Commission resolved the issue raised in the foregoing testimony in its memorandum accompanying Direction of Elections, wherein it stated:

"The Union also desired to include non-supervisory professional nurses in its unit. Registered and graduate nurses are professional employees and can only be included in a unit consisting of their own "craft". . ."

The Commission has consistently held that Licensed Practical Nurses are not professional employees within the meaning of Section 111.70, Wisconsin Statutes. See: Winnebago County Hospital, 6043, 7/62; Marinette General Hospital, 7569, 4/66; Kenosha County, 8637, 7/68. No contrary ruling is indicated, or was intended, in Monroe County I. Subsequent to the issuance of the Direction of Elections in Monroe County I, and on or about September 22, 1967, a representative of the Municipal Employer and a representative of the Union entered into a stipulation concerning the eligibility of employees who had not been on the original eligibility list provided by Monroe County. Said stipulation contains no indication that the parties agreed to exclude Licensed Practical Nurses as a class. The Commission subsequently prepared the eligibility list for the unit vote and representation election on the basis of the stipulation of the parties. Superintendent Monick testified in the instant proceeding that none of the people on the eligibility list for the elections conducted on October 9, 1967 were Licensed Practical Nurses at that time. It appears that Licensed Practical Nurses were excluded from participation in the unit vote and representation election through misinterpretation of the "professional nurses" terminology used by the Commission.

Like Licensed Practical Nurses involved in the cases cited above, the Licensed Practical Nurses employed by Monroe County received one year of training in an accredited school and passed certain state examination requirements for their license. Licensed Practical Nurses and Registered Nurses are used somewhat interchangeably in certain aspects of the nursing function in the Monroe County Hospital and Rolling Hills. Licensed Practical Nurses pass medications and have access to the medication room. They transfer physician orders from original documents to patient records. They take blood pressures, pulse and interpret vital signs. They determine the need for enema and certain other treatments and they administer oxygen in emergencies. Some or all of these functions are above and beyond functions performed by nursing assistants employed by the Municipal Employer. However the distinction between Licensed Practical Nurses and Registered Nurses has not been completely obscured by this Employer. State regulations require that a Registered Nurse be on duty or on call at all times. Accordingly the Director of Nursing who is a Registered Nurse makes herself available on call. Further the normal scheduling of employees is as follows: One or two Registered Nurses are scheduled on duty on the day shift along with two to three Licensed Practical Nurses. One Registered Nurse and two Licensed Practical Nurses are normally assigned to the afternoon shift and one Registered Nurse is normally assigned on the night shift. The Licensed Practical Nurses do not start intra-

venous solutions and they are also not qualified to draw blood. The Director of Nursing testified that by preference she assigns a Registered Nurse on the first floor of Rolling Hills where piped oxygen and suction machines are available. Monroe County employs nine Registered Nurses some of whom work part time, and six Licensed Practical Nurses. While the two categories are apparently equated for the purposes of meeting certain requirements concerning the proportion of care to be performed by "nursing personnel", it is clear from the foregoing that Registered Nurses and Licensed Practical Nurses are not, and cannot be, fully equated. The Commission concludes that the Licensed Practical Nurses in the employ of Monroe County cannot be segregated from the existing bargaining unit on the claim of being professional employees, since they are not professional employees.

The Municipal Employer also alleges that the Licensed Practical Nurses are supervisors within the meaning of the Act and should be excluded from the bargaining unit as such. The Monroe County Hospital and Rolling Hills are not acute care facilities, but comparisons were made during testimony between the situation existing in the facilities in question and the situation which would normally exist in a general hospital. That testimony equates Licensed Practical Nurses with team leaders in a general hospital while equating the Director of Nursing at Rolling Hills with the head nurse in a general hospital. The Licensed Practical Nurses are assigned to one of the four floors of Rolling Hills on the day shift. Only infrequently does the situation exist where more than one Licensed Practical Nurse or a Licensed Practical Nurse and a Registered Nurse would be on duty on the same floor at the same time. Each floor is also staffed by five or six nursing assistants. The record indicates that a substantial portion of the daily patient care is carried out on a routine basis. The Licensed Practical Nurses are leaders in the patient care function, but spend 100% of their own time performing patient care. The Licensed Practical Nurses have no participation in the hiring of employees or discipline of employees and do not make recommendations concerning such matters according to any regular plan. Licensed Practical Nurses make recommendations concerning employees if asked by the Director of Nursing or other supervisors and in some cases have volunteered recommendations. However it is not clear that even such recommendations when made have been effective. The Commission finds this record insufficient to base a finding that Licensed Practical Nurses in the employ of Monroe County are supervisors. They are therefore included in the bargaining unit.

EFFECT OF INCLUSION OF POSITIONS IN BARGAINING UNIT

The collective bargaining agreement between the parties contains no provision for the wages, hours or conditions of employment of the Food Service Supervisor, the Laundry Supervisor and the Licensed Practical Nurses. The results of the election conducted by the Commission in 1967 indicate overwhelmingly that the employees involved selected the Union as their bargaining unit and the inclusion of the foregoing positions in the unit does not, and will not, affect the representative status of the Union. The Commission will not permit the employees in a portion of an appropriate unit to vote separately on a question of representation. 3/ We have therefore issued an order clarifying the bargaining unit to include the positions of Licensed Practical Nurses in the unit presently represented by the Union. Our determination herein is not intended to extend the coverage

3/ City of Cudahy, 11126-A, 4/73.

of the 1973 collective bargaining agreement to the positions of the Food Service Supervisor at Monroe County Hospital, Laundry Supervisor and the Licensed Practical Nurses. 4/ Their inclusion in the unit will have its impact on the bargaining for the 1974 collective bargaining agreement. However there is nothing to prevent the Municipal Employer and the Union from voluntarily agreeing to extend all or any provisions of the existing agreement to the Food Service Supervisor, Laundry Supervisor and the Licensed Practical Nurses.

Dated at Madison, Wisconsin, this 6th day of June, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

4/ City of Fond du Lac, 11830, 5/73.