

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VII
No. 16644
E-2786 R-5473
Decision No. 12008

Goldberg, Previant & Uelman, Attorneys at Law, by Mr. Thomas J. Kennedy, appearing on behalf of the Petitioner.
Porter, Purtell, Purcell, Wilmot & Burroughs, S.C., Attorneys at Law, by Mr. Robert A. Wilmot, and Welsh, Trowbridge, Planert & Shaefer, Attorneys at Law, by Mr. Lloyd J. Planert, appearing on behalf of the Employer.

Drivers, Warehouse and Dairy Employees Local No. 75, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having filed a petition with the Wisconsin Employment Relations Commission requesting that an election and referendum be conducted pursuant to the Wisconsin Employment Peace Act among certain employees of St. Vincent Hospital at its Green Bay, Wisconsin location; and hearing in the matter having been conducted at Green Bay, Wisconsin, on April 18, 1973, before Douglas V. Knudson, Hearing Officer; and the Commission having considered the evidence and being satisfied that a question has arisen concerning the appropriate bargaining unit and representation for certain employees of said Employer;

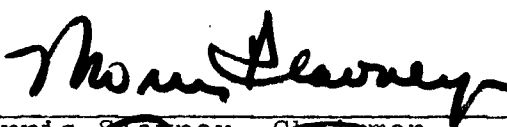
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the voting group consisting of all regular full-time and all regular part-time employees employed in the Housekeeping Department of St. Vincent Hospital, Green Bay, Wisconsin, but excluding supervisors and all other employees, who were employed by the Employer on July 17, 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 the eligible employees in such voting group desire to constitute a collective bargaining unit separate and apart from all other employees of St. Vincent Hospital. Should such a separate unit not be established, the petition filed herein shall be dismissed. Should the required number of eligible

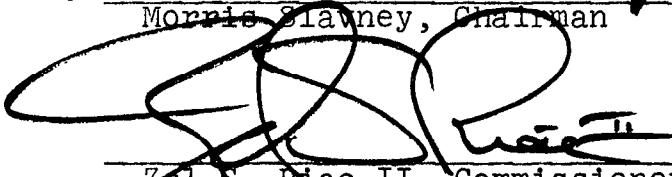
employees in the Housekeeping Department vote in favor of establishing themselves as a separate unit, then the Commission will direct a representation election to determine whether a majority of the employees voting desire to be represented for the purposes of collective bargaining by Drivers, Warehouse and Dairy Employees Local No. 75, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and a referendum to determine whether the required number of such employees favor an "All-Union Agreement" between Drivers, Warehouse and Dairy Employees Local No. 75, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and St. Vincent Hospital, Green Bay, Wisconsin.

Given under our hands and seal at the
City of Madison, Wisconsin, this 17th
day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION AND REFERENDUM

At the outset of the hearing, the Employer moved to dismiss the petition for insufficiency because it does not contain a statement setting forth the nature of the question that has arisen concerning representation, as required by Section ERB 3.02(e) of the Wisconsin Administrative Code. The Petitioner here has duly filed a petition on the form provided by the Commission for that purpose, thereby raising the question of representation and claiming that it represents a majority in the claimed unit. The Commission concludes that the question concerning representation is properly raised and the Employer's motion is denied. 1/

At the commencement of the hearing, the Petitioner moved to amend its petition by changing the approximate number of employees in the claimed unit from sixty-six to seventy-two. The Employer opposed the amendment on the basis that a legally inadequate petition constituting a nullity cannot be amended other than to make it sufficient, which said proposed amendment failed to do. The Commission has concluded above that the petition is sufficient and is satisfied that neither party suffered any substantial surprise or inconvenience in the requested amendment and will permit the amendment. 2/

The Employer contends that the failure of the Commission to require the Union to support its petition with a showing of interest where there exists no recognized or certified representative is inconsistent with Section 111.01 of the Wisconsin Employment Peace Act and exceeds the Commission's authority. It is apparent from the statutory provisions cited by the Employer that there is no reference to any requirement that a petitioner, when filing a petition for election, support the petition by a showing of interest. The Commission will remain with its established policy, as stated in numerous cases, of not requiring a showing of interest in cases where there exists no recognized or certified bargaining representative. 3/

The Employer objected to the simultaneous petition for election and referendum inasmuch as the bargaining unit has yet to be defined and constituted. The Employer further argues that, to avoid confusion of the issues involved, the unit determination vote must be conducted prior to the conduct of the representation vote. The Union argues that there are no unusual circumstances to prevent the conduct of the unit determination vote, the representation vote and the referendum on the same date. With respect to the simultaneous election and referendum petition, the Commission has defined the bargaining unit herein. The Commission's practice has been to conduct election and referendum proceedings simultaneously. 4/ Similarly, it has long been the practice of the Commission to conduct a unit determination vote and a representation vote simultaneously on two separate ballots. 5/

1/ Pavilion Nursing Home, Inc. (7932) 3/67.

2/ Joint School District No. 3 of the City of Oconomowoc, et al (10388) 6/71.

3/ Manitowoc Memorial Hospital (11952) 6/73; St. Michael Hospital of Franciscan Sisters (11845) 5/73.

4/ St. Mary's Hospital (6952) 11/64.

5/ Manitowoc Memorial Hospital (11952) 6/73.

However, with respect to the instant proceeding, the Commission believes that the simultaneous conduct of three separate ballots might confuse the employees. Accordingly, the unit determination vote will be conducted first. If the required number of employees vote in favor of establishing a separate bargaining unit, then the Commission will issue a Direction of Election and Referendum, and will conduct the representation vote and the referendum simultaneously on separate ballots.

While the parties were in agreement that the Housekeeping Department constituted a separate department within the meaning of Section 111.02(6) of the Wisconsin Statutes, the Petitioner contends that the following groups of employees should be excluded from said unit: the surgical housekeeping employees because they constitute a separate department; the lab housekeeping employees because of their different job duties; and the high school students because of their casual status, wage differential and failure to qualify for fringe benefits.

The Employer argues that it was unaware of these requested exclusions prior to the hearing and was without an opportunity to adequately prepare for those issues, and, therefore, another evidentiary hearing should be conducted before the Commission rules on said issues. The Commission is satisfied that the evidence produced at the hearing and the arguments submitted in the briefs are sufficient to enable it to rule on the issues.

In a previous proceeding involving the Employer, 6/ the Petitioner therein requested the exclusion of the surgical housekeeping employees from the Housekeeping Department for reasons virtually identical to those raised herein, and the Commission determined therein that the surgical housekeeping employees were to be included in the Housekeeping Department. Having reviewed the evidence produced in the instant proceeding, the Commission finds no basis for altering its previous determination to include the surgical housekeeping employees in the Housekeeping Department.

Similar to the surgical housekeeping employees, the lab housekeeping employees work in a separate physical area and have somewhat different duties, i.e., cleaning glassware rather than patient rooms, than do the other housekeeping employees, but they receive the same wages and fringe benefits and have the same ultimate supervisor as the other housekeeping employees. The Commission is satisfied that the lab housekeeping employees perform essentially the same type of work as, and share a substantial community of interest with, the other housekeeping employees, and, therefore, are included in the voting group, and are eligible to vote in the election. Most importantly, they are employed in the Housekeeping Department.

The high school students who are employed in the Housekeeping Department perform the same work as other housekeeping employees, but receive a lower wage rate and no fringe benefits, and are not required to attend certain inservice meetings. Some of the students have regular work schedules and work an average of 12 to 14 hours per week.

The fact that certain employees have historically received less favorable terms and conditions of employment than others does not, without more, conclusively establish that the students may not be combined with the rest of the otherwise eligible employees into a single bargaining unit or voting group. 7/ Because of the similarity

6/ St. Vincent's Hospital (10550) 10/71.

7/ Unified School District No. 1 of the City of Kenosha and Towns of Pleasant Prairie and Somers (11293) 9/72; Milwaukee County (9767) 6/70.

of work and the common uniform and supervision, the Commission is satisfied that those students employed in the Housekeeping Department on a regular schedule are regular part-time employees having a definite interest in the wages, hours and working conditions of their employment and possess a community of interest with the other housekeeping employees sufficient to warrant their inclusion in the same voting group.

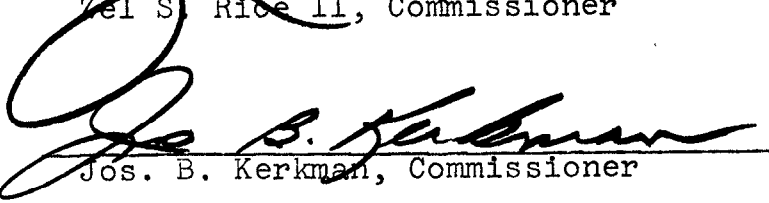
Dated at Madison, Wisconsin, this 17th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner