

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
GENERAL DRIVERS AND HELPERS UNION	:	
LOCAL NO. 354, AFFILIATED WITH THE	:	
INTERNATIONAL BROTHERHOOD OF	:	
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN	:	Case III
& HELPERS OF AMERICA	:	No. 16471 E-2772
	:	Decision No. 12139
For Determination of Bargaining	:	
Representatives for Employes of	:	
	:	
ST. MICHAEL'S HOSPITAL	:	
	:	

INTERIM ORDER

General Drivers and Helpers Union Local No. 354, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, hereinafter referred to as the Petitioner, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to the Wisconsin Employment Peace Act, among certain non-represented employes of St. Michael's Hospital, Stevens Point, Wisconsin; and hearing on said petition having been held on May 4, 1973, at the Portage County Courthouse, Stevens Point, Wisconsin, before Commissioner Zel S. Rice II; and during the course of the hearing the Petitioner having amended its petition, requesting the Commission to conduct an election among employes in two alleged separate collective bargaining units, namely, (1) all employes employed in the Emergency Out-Patient Department, but excluding supervisory personnel, and (2) all employes employed in the Surgical Department, excluding supervisory personnel; and further, during the course of the hearing the Wisconsin Nurses Association having been permitted to intervene in the matter on the basis of its claim that it represented professional nurses employed in said alleged appropriate units; and further, Ardell Steines, an Anesthetist, was permitted to intervene on the basis of his claim that he represented anesthetists in the employ of the Employer; and prior to the close of the hearing, the Petitioner having advised that, should the Commission find that the units alleged by it were not appropriate within the meaning of the Wisconsin Employment Peace Act, the Petitioner would notify the Commission as to whether it desired to proceed with an election in the unit which the Commission would find appropriate; and the Commission having reviewed the evidence, the arguments and briefs of Counsel, and being fully advised in the premises, and being satisfied that the Emergency Out-Patient and Surgical Departments of the Nursing Services Department of St. Michael's Hospital, do not constitute separate departments or divisions within the meaning of Section 111.02(6) of the Wisconsin Employment Peace Act, but that, however, all employes in the Nursing Services Department, excluding confidential and supervisory employes are employed in a separate department of the Employer and therefore may constitute an appropriate collective bargaining unit within the meaning of the above statutory provision;

NOW, THEREFORE, the Commission enters the following

INTERIM ORDER

IT IS ORDERED that should the Petitioner herein desire the Commission to conduct an election among employes in the Nursing Services Department of St. Michael's Hospital, Stevens Point, Wisconsin, it should so notify the Commission within fourteen (14) days of the receipt of a copy of this Order and if so, the Commission will issue an appropriate direction taking into consideration the requests of Wisconsin Nurses Association and the anesthetists; and should the Petitioner fail to advise the Commission, within the time limits set forth above, that it desires the Commission to proceed to an election as indicated above, or fails in any way to correspond with the Commission as to its intent following the expiration of said time limit, the Commission shall dismiss the petition filed herein.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slayney, Chairman



Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING INTERIM ORDER

Teamsters Local 354, hereinafter referred to as Local 354, petitioned the Commission to conduct an election in unit consisting of all hospital nursing department employes, including surgical technicians, orderlies, aides, excluding professional employes, clerical workers, supervisors and guards. At the hearing, Local 354 amended its petition and requested the Commission to conduct representation elections in the following two alleged appropriate units: (1) all employes employed in the Emergency Out-Patient Department, but excluding supervisory personnel; and (2) all employes employed in the Surgical Department, excluding supervisory personnel. The Employer took the position that the appropriate unit constituted all employes of the Nursing Services Department.

The Employer operates a general hospital facility, and that in said operation its functions are performed by various professional and non-professional, as well as technical, clerical and blue collar employes, employed in a number of separate and distinct departments, such as Nursing Services, Housekeeping, Dietary, Building and Grounds, Purchasing, Central Storage, Central Supply, Admitting, Credits and Collections, Personnel, Laundry, Inhalation Therapy, Laboratory, X-Ray, and Pharmacy.

Within Nursing Services are eleven sub-units. One unit is the Surgery Department; another is the Emergency Out-Patient Department. Registered Nurses, Nurses Aides I, II, III, Surgical Technicians and Licensed Practical Nurses, with the addition of clerical and maintenance personnel, constitute the employes employed within the two petitioned units, Surgical and Emergency Out-Patient. With the exception of the surgical technician, the job classifications enumerated above exist in other units in the Nursing Services Department, and the training and experience of employes in these other units are similar to the training and experience of the employes in the petitioned units.

The immediate supervisor for each unit in Nursing Services is the Head Nurse. She is cloaked with the authority to recommend discipline, participate in the hiring process, and to order supplies for her unit. The Head Nurse reports to the Acting Director of Nursing Services. While it is the Head Nurse who is engaged in the day-to-day supervision of the employes within her unit, it is the Acting Director of Nursing Services who participates in meetings of department heads concerning planning and coordination of hospital functions and is the person to whom the Head Nurses report.

The record reveals that there is very little interchange of employes among several units of the Nursing Services Department. Each unit has a separate location within the hospital.

The issue before the Commission is whether surgical and emergency out-patient departments are separate departments, within the meaning of the Wisconsin Employment Peace Act. If so, then the Act grants these employes the opportunity to determine for themselves whether they desire to constitute separate collective bargaining units. 1/

In order to determine if a particular group of employes are employed in a separate department, the Commission must employ certain

1/ Door County Memorial Hospital (9073) 6/69.

criteria in arriving at its decision. The Employer argues quite extensively in its brief that the Commission should adopt the criteria employed by the National Labor Relations Board in Maenckrodt Chemical Works, Uranium Division. 2/ There are many parallels between the Wisconsin Employment Peace Act and the National Labor Relations Act, and naturally, there are many parallels in their interpretation of these respective acts by the Wisconsin Employment Relations Commission (Board) and the National Labor Relations Board. However, the provisions of the National Labor Relations Act and of the Wisconsin Employment Peace Act vary greatly on the standards which each act sets for the determination of a unit for matters of representation in collective bargaining. The NLRB is empowered under Sec. 9 of the NLRA 3/ to determine a unit "appropriate" for purposes of collective bargaining. On the other hand the Commission has no discretion in establishing appropriate units in private employment since Sec. 111.02(6) defines a "collective bargaining unit" as "all employes of one employer, except that where a majority of such employes engaged in a single craft, division, department or plant shall have voted by secret ballotto constitute such group a separate bargaining unit they shall be so considered....". The fact that on occasion a separate department may result in separate bargaining unit as a result of the choice of the employes employed therein, pursuant to the above noted statutory provision, which unit may be identical or similar to a unit established by the NLRB among employes of an employer subject to the jurisdiction of the NLRB, should not mislead the parties into the belief that the standards used at arriving at such a conclusion are at all similar.

Local 354 would require the Commission to draw very fine distinctions in the application of the established criteria for the determination of the statutory independence of the unit. 4/ The thrust of Local 354's analysis is well illustrated in its discussion of the function variable.

It contends the petitioned units are distinguishable from the other units in Nursing Services, in that the function of the petitioned units, such as, in the Surgery Department, is to provide assistance to surgeons during an operation and in the Emergency-Out Patient Department it is the dispensing of care to Emergency-Out Patient clients. Whereas, the overriding functions of the units in Nursing Services is the immediate bedside care of the patient.

The Commission has determined that Nursing Services in certain hospital situations is a separate department which qualifies the employes to determine for themselves whether they desire to contribute

2/ 162 NLR 387 (1967).

3/ L. Wieman Company, Dec. No. 181 (3/41).

4/ Methodist Hospital, Dec. #8506 through 8508-A (7/68) which are as follows: A. Working conditions; B. Work location; C. Duty of employes; D. Function performed by employes; E. Overall supervision of employes; F. Interchangability of employes; G. Use of different uniforms by employes; H. The application of personnel policies to employes in various units by the Employer - St. Nicholas Hospital Dec. #8339 (1/68).

a separate unit. 5/ In numerous cases the Commission, over the years, has drawn broad distinctions between hospital departments such as housekeeping, 6/ Dietary, 7/ and Maintenance. 8/

Local 354 would have the Commission find that statutory departments exist within the narrow confines of the petitioned units. The thrust of this analysis again can best be appreciated by once again reviewing Local 354's analysis of the function variable. The employees in the Surgical or Emergency-Out Patient units may not perform the exact same duties as the employees on the second floor or third floor unit of the Nursing Services Department; however, both are concerned with the care of patients. Their primary responsibility is not for the maintenance of machinery or the preparation of food or the cleaning of floors. If the Commission were to further refine the concept of direct care of patients and distinguish between those employees who on a day-to-day basis come into direct contact with the patient and those employees who either service out-patients or assist surgeons in the care for patients, the Commission would then be forced to make artificial distinctions in other large departments. This is contrary to the Commission's interpretation of the legislative intent of 111.02(6). In Gimbel Brothers Department Store, Decision No. 251, (6/41) the Commission expressed this legislative intent as follows:

"The aim of the legislature, we feel was to enable employees having similar problems and working under similar conditions, which problems and conditions differed from other problems and conditions of the employees, to bargain together as a separate collective bargaining unit. There must, however, be something more than an arbitrary division -- either an actual physical separation or some different working condition that will divide the employees into natural groups. Gimbel Brothers, supra, at page 4."

The differences in the working conditions and problems of the petitioned units, vis-a-vis the working conditions and problems of other employees of the Employer must be substantial before the Commission can find that a group of employees are entitled to a unit determination election.

Counsel for the Employer in his brief raised various procedural objections to the petition. Counsel would have the Commission require Local 354 to make a showing of interest prior to processing an election petition. This contention of Counsel has been dismissed in numerous cases, and it is also dismissed in this case. 9/

At the hearing, Local 354 stated that if the Commission should find the petitioned units inappropriate, then it would notify the

5/ Holy Family Hospital, Dec. #9682 through 9687 (4/70).

6/ See Wausau Hospital South, Division of Wausau Hospitals, Inc., Dec. #10194 (3/71).

7/ See Holy Family Hospital, Dec. #9682 through 9687 (4/70).

8/ See St. Michael Hospital of Fransican Sisters, Dec. #11845 (4/73).

9/ St. Vincent's Hospital (2574) 8/69.


the Commission if it desired to proceed with an election in the employe group which could constitute an appropriate unit. In this case the Commission finds that the employes in Nursing Services Department have the right to a separation vote. The Wisconsin Nurses Association was permitted to intervene in this case to permit the Registered Nurses to participate in a separation vote. The Commission has long held that Registered Nurses are "craft" employes within the meaning of the Act and would be entitled to a separation vote. 10/

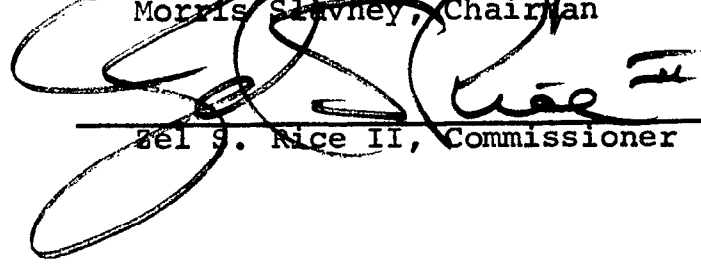
The anesthetists also sought to intervene in the within case for the purpose of participating in a separation vote. If the Local 354 seeks an election in the Nursing Services Department, and the Commission directs an election therein the anesthetists will be given the opportunity to vote by challenged ballot, and if necessary, the Commission thereafter will determine such challenged ballots.

We are therefore today issuing an interim order finding that the units sought by Local 354 cannot constitute appropriate units within the meaning of the Wisconsin Employment Peace Act. Should Local 354 desire an election among the employes in the Nursing Services Department, it should so notify the Commission within 14 days of the receipt of this Order, and thereupon the Commission will issue the appropriate direction, taking into consideration the requests of the Wisconsin Nurses Association and the anesthetists.

Dated at Madison, Wisconsin, this 13th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Del S. Rice II, Commissioner

10/ Mill-Way Nursing Home, Dec. #6355-A (11/63).