

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case I
No. 16891 E-2801
Decision No. 12228

Case II
No. 16892 E-2802
Decision No. 12229

Mr. Richard C. Erickson, Representative, appearing on behalf of the Petitioner.

Mr. Richard Wartman, Attorney at Law, appearing on behalf of the Employer.

Ms. June Watke, appearing on behalf of the Intervenor, Wisconsin Nurses Association.

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having filed two separate petitions requesting the Wisconsin Employment Relations Commission to conduct separate elections in two separate alleged appropriate bargaining units, pursuant to Section 111.05 of the Wisconsin Employment Peace Act, among certain employees of Ashland Memorial Medical Center, Ashland, Wisconsin; and hearing on said petitions having been held on July 24, 1973, at Ashland, Wisconsin, before Sherwood Malamud, Hearing Officer; and at the outset of the hearing the Wisconsin Nurses Association having been permitted to intervene in the matters involved; and the Commission having considered the petitions, evidence and arguments of counsel, and being satisfied that questions have arisen concerning appropriate collective bargaining units and concerning representation of certain employees of said Employer;

DIRECTED

No. 12228
No. 12229

Voting Group I

All regular full-time and regular part-time employees of Ashland Memorial Medical Center, including nurses aides, licensed practical nurses (LPN's), housekeeping, cooks and kitchen help, maintenance, engineers, custodial, office employees, laboratory and x-ray technicians, conditionally excluding registered nurses, and excluding supervisors and confidential employees, who were employed by the Employer on October 22, 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 voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with the above named Employer on questions of wages, hours and conditions of employment.

Voting Group II

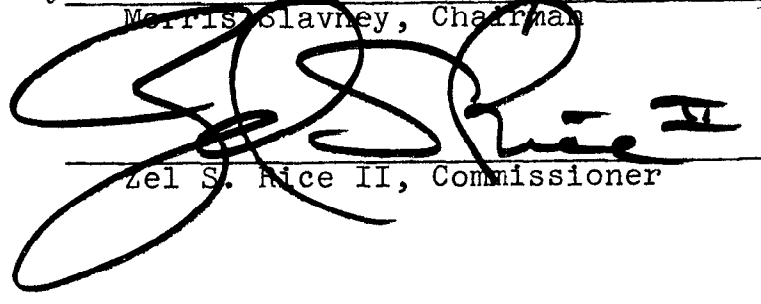
All regular full-time and all regular part-time registered nurses of Ashland Memorial Medical Center, excluding all other employees, supervisors and confidential personnel, who were employed by the Employer on October 22, 1973, except such employees as may prior to the elections quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of such employees eligible desire to constitute themselves a separate collective bargaining unit; and, (2) whether a majority of such employees voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or by the Wisconsin Nurses Association, or by neither organization, for the purposes of collective bargaining with the above named Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 25th
day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

ASHLAND MEMORIAL MEDICAL CENTER, I and II,
Decision Nos. 12228 and 12229

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

The Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, filed two separate petitions requesting the Commission to conduct representation elections in two alleged appropriate bargaining units described as follows:

Case I: All regular full-time and regular part-time employees of the Employer, including nurses aides, LPN's, housekeeping, cooks and kitchen help, maintenance, engineers, custodial, and office employees, but excluding supervisors, professionals and confidential employees.

Case II: All regular full-time and regular part-time professional employees of the Employer, including RN's, Lab and X-Ray Technicians, but excluding supervisors, confidential employees and all other employees of the Employer.

ISSUE ON UNITS:

During the course of the hearing, AFSCME amended its petition to delete the technicians from the unit desired in Case II and to place said classifications in the unit desired in Case I. There was no objection from either the Employer or the Wisconsin Nurses Association with respect to such amendment. Section 111.02(6) of the Wisconsin Employment Peace Act defines the term "collective bargaining unit" as ". . . all of the employees of one employer . . . except that where a majority of such employees engaged in a single craft, division, department or plant shall have voted by secret ballot . . . to constitute such group a separate bargaining unit they shall be so considered . . ." The desired unit in Case II consists of professional employees engaged in the nursing profession. Professional employees are deemed to be "craft" employees within the meaning of Section 111.02(6) of the Act. 1/ The nurses in the employ of the Employer are professional employees, and, therefore, under the above noted provision of the Act, are entitled to determine for themselves whether they desire to constitute a separate collective bargaining unit. Therefore, the Commission, in addition to directing a representation vote in Case I, has directed a unit determination election as well as a representation election in Case II.

In the conduct of the elections the Commission will utilize two ballot boxes, one to be utilized for the representation election among the non-professional employees, and the second ballot box to be utilized for the unit determination election and the representation election for the nurses. The sequence of counting the ballots will be as follows:

1. The ballots cast by the professional nurses as to their desire to constitute a separate unit will be tallied first.

2. If the professional nurses vote in favor of constituting a separate unit, the representation ballots cast by the professional nurses will be counted separate and apart from the representation ballots cast by the non-professional employees.

3. If a majority of the eligible professional nurses do not vote

In the event that the professional nurses do not vote for the establishment of a separate bargaining unit, the appropriate bargaining unit shall consist of all regular full-time and regular part-time employees of Ashland Memorial Medical Center, including nurses aides, licensed practical nurses (LPN's), housekeeping, cooks and kitchen help, maintenance, engineers, custodial, office employees, laboratory and x-ray technicians, and registered nurses, excluding supervisors and confidential employees. Should the professional nurses vote to establish a separate unit, they shall be so constituted, and the remaining employees will also constitute a separate and distinct collective bargaining unit.

ISSUES ON ELIGIBLES:

During the course of the hearing the Employer sought to exclude a number of employees on the basis that they were supervisory personnel. 2/

At issue between the parties was the eligibility of the following employees: Myrtle Bernier, Head of Medical Records Library; Margorie Mateofsky, Chief X-Ray Technician; Linda Johnsen and Helen Olson, Nursing Supervisors. 3/ The Employer maintained that these individuals were supervisors within the meaning of the Act.

The Commission, in determining whether an employee is a supervisor, considers the following factors:

- "1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.
3. The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees." 4/

2/ The parties stipulated to the exclusion of the following employees: Clarence Jouppi, Hospital Administrator; Leslie Whitelaker, the Comptroller; Debra Muska, Secretary to the Administrator; Laura Anderson, Secretary to the Director of Nursing; Charlotte Wroblewski, Dietician and Head of Dietetics Department, Food Handling Department; Patty Skoraczewski, Head Housekeeper; Gwendolyn Jernstedt, Director of Nursing Services; Marilyn Harnois, Evening Supervisor; Frances Mitchell, Night Supervisor; Gerald Huhn, Pharmacist.

3/ It is unclear from the record whether the parties agreed to include or exclude the Chief Laboratory Technician, Brian Nagro. If the parties are unable to agree on his eligibility, his ballot will be received under challenge.

4/ Racine County (Institutions) (8330) 12/67

Linda Johnsen and Helen Olson work approximately 32 hours per week and on two nights of the week they replace Marilyn Harnois and Frances Mitchell the evening and night supervisors, respectively. During the remainder of the week they are "charge nurses". In the absence of the head nurse, the charge nurse is responsible for a particular station, such as the Obstetrics. Mrs. Johnsen and Mrs. Olson have very little input into hiring, firing or evaluating employees. Even while they are replacing the evening and night supervisor, they work in the emergency room. It is clear, that Mrs. Johnsen and Mrs. Olson, for the most part, perform the work of the unit and are "working foremen", and therefore, eligible to vote in the election. 5/

Mrs. Margorie Mateofsky is the Chief X-Ray Technician. She orders the supplies for that unit and sets the schedules of the other two employees in the x-ray unit. The Radiologist, who is not an employee of the hospital, participates in the setting of schedules and supervises the work of the employees in this unit of the hospital. At least half of Mrs. Mateofsky's time is spent doing the regular x-ray work of the unit. It is clear that Mrs. Mateofsky is a "working foreman", and therefore, should be included in the unit and she is eligible to participate in the vote. 6/

Laura Halker is the Food Service Supervisor. She is in charge of the food service handling department in the absence of the Dietician, Charlotte Wroblewski. One of the reasons Mrs. Halker substitutes for the Dietician is to enable the Dietician to have a two-day weekend. Mrs. Halker works under the direct supervision of the Dietician, and her primary responsibilities are concerned with checking the food line and making sure that the diet of the patient has been properly filled. The Dietician receives a fixed salary, whereas, Mrs. Halker receives an hourly wage. Mrs. Halker's responsibilities and activities are concerned primarily with activities within the unit, and she should be included in the unit; therefore, she is eligible to participate in the election.

Myrtle Bernier is a Registered Medical Records Librarian and is the Head Medical Records Librarian for the Employer. There are four employees in the Medical Records unit; she establishes the work schedules and hours of the employees in that unit. Mrs. Bernier has the right to hire and fire. She spends most of her time compiling the statistical data for the hospital. She reviews the work product and corrects the work product of the other employees in the unit. The fact that Mrs. Bernier has the right to hire and fire and is engaged in her supervisory function in excess of 50% of the time mandates that she be excluded from the unit and therefore she is not eligible to participate in the election.

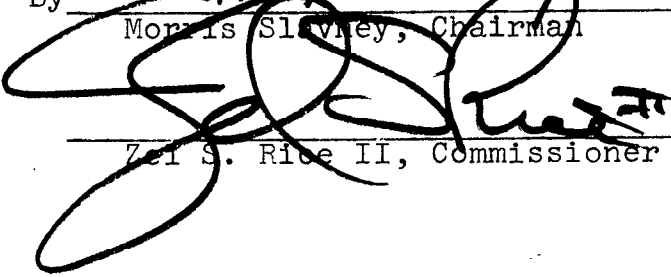
Landford Flannery is the Chief Engineer and has seven other employees within his department. He sets their schedule and has the right to hire and fire. The degree of control and supervision which Mr. Flannery exercises over the personnel within his unit mandates that he be excluded from the unit and therefore not participate in the election.

Dated at Madison, Wisconsin, this 25th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

5/ Ibid.

6/ Ibid.