

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
LAKEVIEW INPATIENT SERVICES	:	Case XXIV
ASSOCIATION	:	No. 18021 ME-1075
	:	Decision No. 12931
Involving Certain Employes of	:	
	:	
LA CROSSE COUNTY	:	
	:	

ORDER OF DISMISSAL

Lakeview Inpatient Services Association having, on May 30, 1974, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to the Municipal Employment Relations Act among certain employes of LaCrosse County; and a hearing on such petition having been held at LaCrosse, Wisconsin, on July 2, 1974, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments and being satisfied that the petition filed herein should be dismissed, since the petition was not timely filed, and that the unit claimed appropriate therein is not a unit appropriate for the purposes of collective bargaining;

NOW, THEREFORE, it is

ORDERED

That the petition for election filed in the above-entitled matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 12th day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
 Morris Slavney, Chairman

Zel S. Rice II
 Zel S. Rice II, Commissioner

Howard S. Bellman
 Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

LaCrosse County, referred to herein as the County, and LaCrosse County Institutional Employees Local 227-A, affiliated with the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, referred to herein as AFSCME, were parties to a collective bargaining agreement for the year 1973, wherein the County recognized AFSCME as the exclusive collective bargaining representative for all County institutional employes at Oak Forest and Lakeview, excluding supervisory, confidential and professional employes, and employes who normally work less than 50% of a regular work week. Oak Forest and Lakeview were two of the three health care institutions operated by LaCrosse County during the period of that agreement. The recognition statement contained in the agreement derives from certifications of representatives issued by the Commission in LaCrosse County (Lakeview), Case VII, Decision No. 8341-A (5/68) and LaCrosse County (Oak Forest), Case VIII, Decision No. 8454 (4/68); from an Order Clarifying Bargaining Unit issued by the Commission in LaCrosse County, Case XV, Decision No. 9841 (8/70); and from a bilateral agreement of the parties, in which they omitted part-time employes working less than 50% of a regular work week from the coverage of their collective bargaining agreement.

The County and AFSCME were unable to reach agreement on a successor agreement prior to the stated expiration date in the 1973 agreement, and their 1973 agreement was extended indefinitely pending the outcome of further negotiations. On January 16, 1974, AFSCME filed a petition with the Commission to initiate fact finding, and on January 31, 1974, the Commission issued an Order initiating fact finding and appointing a fact finder. On February 19, 1974, the Commission issued an Order substituting fact finder. A hearing was held before the fact finder on April 11, 1974, and briefs were filed with the fact finder on May 30, 1974. The Fact Finding Report was issued by the fact finder on July 19, 1974.

On May 30, 1974, the Lakeview Inpatient Services Association (L.I.S.A.) filed a petition requesting the Commission to conduct a representation election among "psychiatric L.P.N.s, psychiatric attendants and bookkeeper" employed by the County in its "Lakeview Inpatient Services" institution. Said petition was supported by a showing of interest, and following an administrative determination that the showing of interest was sufficient to warrant the conduct of a hearing in the matter, notice was issued setting July 2, 1974, as the hearing date. A copy of the petition and notice of hearing in the instant matter were served upon AFSCME and, at the outset of the hearing, AFSCME moved to intervene in this proceeding. That motion was granted, based upon AFSCME's status as the incumbent collective bargaining representative and its continuing claim that it represents employes in the bargaining unit affected by the petition.

Contract Bar

AFSCME offered evidence to show that the 1973 collective bargaining agreement between AFSCME and the County had been extended into 1974, and that grievances were processed routinely under that agreement during 1974. On the basis of that evidence, AFSCME asserts a contract bar to

The extension of the life of the 1973 collective bargaining agreement between the County and AFSCME was for an indefinite period. The lack of an established termination date has previously been included among the factors which might prevent a contract from being considered as a bar to a representation petition filed by a rival organization,^{1/} and we find that the indefinite extension of the 1973 agreement here cannot, in and of itself, constitute a bar to the instant petition.

Pendency of Fact Finding Proceedings

The fact finding proceedings initiated by AFSCME on January 16, 1974, were still pending before the fact finder both at the time the petition was filed and at the time the hearing was held in the matter. The issuance of the Fact Finding Report on July 19, 1974, marks the commencement of a further period to negotiations between the parties to the fact finding proceedings. The fact finding proceedings cannot be considered to be completed and closed until the parties have filed the notice of acceptance or rejection required by Statute, and Section 111.70(4)(c)3d of the Municipal Employment Relations Act (MERA) does not require the filing of such notices until 30 days following the date on which the party receives the fact finder's recommendations. In City of Milwaukee (9172) 7/69, and City of Milwaukee (9477) 1/70 the Commission announced a policy of refusing to process petitions for representation elections filed by a rival union during the pendency of fact finding proceedings involving the Municipal Employer and an incumbent union. Both the County and AFSCME assert the existence of such a bar in this case.

The petition filed herein clearly falls within the rule of the Milwaukee cases cited above, and might be dismissed on that basis alone. However, such a dismissal would not prevent the L.I.S.A. from filing a similar petition in the near future, should the County and AFSCME fail to reach an accord on a new agreement. That circumstance dictates that a determination should be made herein on the issue raised and the evidence already made a part of the record in this proceeding concerning the unit appropriate for the purposes of collective bargaining.

Fragmentation of Bargaining Units

The petition in the instant case resulted, at least in part, from a change in the organizational structure of the County's health care institutions which occurred during 1973. Prior to that change, the County operated three such institutions: Hillview, a general nursing home and geriatrics institution located in LaCrosse, Wisconsin, whose employes are represented for the purpose of collective bargaining by a union which is not a party to the instant case; Oak Forest, a general nursing home and geriatrics institution located in Onalaska, Wisconsin, whose employes are represented by AFSCME in the bargaining unit involved in the instant case; and Lakeview, a "traditional" county mental hospital located in West Salem, Wisconsin, whose employes are represented by AFSCME in the bargaining unit involved in the instant case. No changes occurred at Hillview or at Oak Forest. However, the statutes which created county mental hospitals have been repealed and new statutes have been enacted concerning community mental health, mental retardation, alcoholism and drug abuse services, requiring changes in the organizational structure at the County's Lakeview institution.

^{1/} Appleton School District No. 10 (9045) 5/69.

Lakeview is now two institutions under one roof. The Lakeview Public Medical Institution (PMI) is now considered to be a nursing home, but provides essentially the same service as was provided by the former Lakeview Hospital to a slightly smaller patient population, composed primarily of former patients of the former Lakeview Hospital. Lakeview Inpatient Services Treatment Center (LIS) is engaged in the provision of both initial and follow-up psychiatric services. LIS purchases space, meals, utilities and maintenance services from Lakeview PMI and leases a vehicle from Lakeview PMI. Some former employes of Lakeview Hospital transferred to the unit which is now known as LIS, retaining their former wage rates and benefits in the move. Subsequent discussions between the County and AFSCME have indicated that a common seniority list would be maintained for all employes working at the Lakeview location, with some rights of transfer between the PMI and LIS units. The general nature of the work performed by non-supervisory, non-professional employes in both units is that of nursing service and patient care.

Under the revised organizational structure, Hillview, Oak Forest and the Lakeview PMI unit are all under the jurisdiction of a Board of Trustees created pursuant to Section 46.19, Wisconsin Statutes, the members of which are designated by the County Board. LIS is under the jurisdiction of a community mental health, mental retardation, alcoholism and drug abuse board (known in LaCrosse County as the "Unified Board") created pursuant to Section 51.42, Wisconsin Statutes, the members of which are also designated by the County Board. In LaCrosse County, the appointments of members to these statutory boards have been made so that the same individual serves as the Chairman of both boards. Some exchange of employes between Lakeview PMI and LIS is contemplated, both in emergency and routine situations, on the basis that they are all employes of a common employer. All of the employes in both units are paid through the County's payroll system.

Relying on Section 111.70(4)(d)2a of MERA, both the County and AFSCME contend that the creation of a separate bargaining unit among the employes of LIS would constitute an undue fragmentation of units. The County contends that it is the common employer of all of the employes at Lakeview PMI and LIS, that the change of its organizational structure was made to conform to statutory changes made by the State of Wisconsin, and that the organizational separation of LIS relates to funding and finances rather than to employment relationships. AFSCME points to the similarity of work, wages, and fringe benefits as evidence of the existence of a single community of interest among all employes of the County at the Lakeview location. The L.I.S.A. contends that the LIS unit is organizationally, functionally and physically distinct from the other institutions operated by the County, and that the unique type of service provided and the different types of treatment used in the LIS unit warrant the creation of a separate bargaining unit among LIS employes.

This is not the first occasion on which the Commission has been called upon to make a determination concerning the unit or units appropriate for the purposes of collective bargaining in the wake of organizational changes made by a county in response to the 1973 amendments to the State Mental Health Act, Chapter 51, Wisconsin Statutes. In Brown County (12381) 1/74, the employer contended that separate bargaining units of nursing personnel should be established to reflect the same jurisdictional lines as are drawn by Statute for the two separate governing boards having authority over the county's institutions. We found those arguments to be persuasive, particularly in view of evidence in that record indicating that the two institutions were located in different parts of the county, that the employment relationships were separately determined and that no interchange of

employes was practiced or contemplated. The facts in evidence in the instant case indicate that a different result should obtain here, that the Brown County case must be limited to its facts, and that the Commission should continue to make unit determinations such as that involved here on a case-by-case basis.^{2/} Clearly, the organizational lines in LaCrosse County are less clearly drawn than those found in Brown County, at least insofar as they affect the employment relationships of the employes. We find that the creation of two separate bargaining units at the Lakeview site would constitute an undue fragmentation, and therefore a unit consisting of LIS employes only is inappropriate.

During the course of the hearing, the term "professional" was used in relation to the employes covered by the petition. A finding that some or all of the employes involved here were professional employes within the meaning of Section 111.70(1)(1) of MERA would require that special election procedures be followed under Section 111.70(4)(d)2a of MERA. However, none of the evidence actually indicates that any of the employes covered by the petition are in fact professional employes. The nursing supervisor (R.N.), Head Nurse (R.N.), Social Workers and O.T. Therapists are specifically excluded from the proposed unit description stated in the petition. The Commission has previously found that Licensed Practical Nurses are not "professional" employes within the meaning of the Act,^{3/} and nothing in the record herein indicates that we should conclude otherwise herein.

Dated at Madison, Wisconsin, this 12th day of August, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Howard S. Bellman
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^{2/} We are also mindful that "51.42 Boards" may be multi-county in nature.

^{3/} Marinette General Hospital (7569) 4/66; Kenosha County (8637) 7/68.