

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN NURSES ASSOCIATION, INC.
Involving Certain Employees of
CITY OF WEST ALLIS (DEPARTMENT OF HEALTH):

Case XXVII
No. 10356 AE-1162
Decision No. 13779

Appearances:

Mrs. June Watke, Assistant Executive Administrator, for the
Petitioner.

Mr. Russ R. Mueller, Attorney at Law, for the Municipal Employer.

DIRECTION OF ELECTION

Wisconsin Nurses Association, Inc., having petitioned the Wisconsin Employment Relations Commission to conduct an election among certain employees of the City of West Allis; and hearing on that petition having been conducted on April 4, 1975 by Stanley H. Michelstetter II, Hearing Officer; and the Commission, having reviewed the record and having considered the evidence and positions of the parties, being satisfied that a question has arisen concerning representation for certain employees of said Municipal Employer;

NOW, THEREFORE, it is

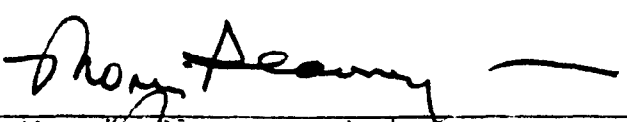
DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days of this Directive among all regular full-time and regular part-time professional Registered Nurses in the employ of the City of West Allis, excluding supervisory, managerial, executive, confidential and all other employees, who were employed by the City of West Allis on July 1, 1975, except such employees who quit their employment or are terminated for cause prior to the election, for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Nurses Association, Inc. for the purpose of collective bargaining with the City of West Allis concerning the wages, hours and conditions of employment of such employees or by no representative.

Given under our hands and seal at the
City of Madison, Wisconsin this 1st
day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Norman Torosian, Commissioner

No. 13779

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The parties stipulated to all relevant matters except the appropriateness of the sought unit and the eligibility of the petitioner to represent employees in the unit which the Municipal Employer claims is appropriate. Petitioner seeks a unit consisting of only professional Registered Nurses in the employ of the Municipal Employer. The Municipal Employer asserts that the Dental Hygienist is a professional employee and, thus, that the unit is appropriate only if she is included. It also contends that Petitioner is not a labor organization within the meaning of Section 111.70(1)(j) 1/ and, therefore, is not qualified to represent that unit because it would not admit the Dental Hygienist to membership.

DENTAL HYGIENIST

The Municipal Employer employs one Dental Hygienist in its Health Department. She compiles and presents information on proper methods of dental care and proper diet. She examines school children and occasionally others for signs of dental disease and related problems. In the event that a potential or existing dental condition is discovered, she consults with the child's parents and dentist. If no family dentist is available, she may refer the matter to the Municipal Employer's consulting dentist. The present occupant of this position has held it for twenty-five years. She is a registered Dental Hygienist with one year of specialized instruction in dental hygiene beyond the high school level.

The Municipal Employer indicated that in the future it would seek a degreed person to fill this position should it be vacated. Further evidence revealed that should a person with those qualifications not apply, the Municipal Employer might accept someone with less education, provided he meets the minimum registration requirements.

The educational requirements to obtain registration for this vocation have apparently advanced in the past twenty years from one year to two years of specialized education beyond the high school level. A four-year course is also available, though not required.

The Dental Hygienist with any level of training receives wages at pay grade P-3 or P-4. 2/ The Dental Hygienist's supervisor has been

1/ All statute sections referred to herein unless otherwise noted are Wis. Rev. Stat. (1973).

2/ 1974 WAGE RANGES

<u>Range</u>	<u>Workweek</u>	<u>1974 Rate</u>
P-1	35 hour	\$401.60
P-2	40 hour	412.80
P-3	35 hour	428.00
P-4	40 hour	440.00
P-5	35 hour	452.00
P-6	40 hour	463.00
P-7	35 hour	496.00
P-8	40 hour	512.80

requesting for the past year that the wages of this position be placed on the same level as that of the Registered Nurses (RN). No action has been taken thereon.

By comparison, Licensed Practical Nurses (LPN) with one year of training are placed at pay range P-1 and P-2. RN's are placed at three ranges: P-3 and P-4, P-5 and P-6, and P-7 and P-8. RN's presently employed progress to higher ranges on the basis of approximately five years seniority for every move. New RN's will be placed in the first ranges. Those with bachelor's degrees or who attain them will move to ranges P-5 and P-6. Those who have or obtain a master's degree or its equivalent will be placed on ranges P-7 and P-8. All RN's must have either three years of specialized hospital study, a specialized two-year associate degree program or a specialized four-year college degree, and pass a state certification exam.

DISCUSSION

Section 111.70(1)(1) defines "professional employee" as follows:

1. Any employee engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process."

Consistent with our policy, the parties have agreed that the instant RN's are "professional employees". The evidence reveals that the Municipal Employer's Health Department supervisor will attempt to upgrade the instant position by seeking a four-year specialized college degreed person to fill any future vacancy and by having requested that the Municipal Employer create a salary structure for the Dental Hygienist similar to that of the newly hired Registered Nurses. However, the testimony reveals that if a person with a four-year college degree is not available to fill a future vacancy in the instant position, the Municipal Employer might accept someone with minimum certification requirements. Further, the Municipal Employer has taken no action on the requested salary structure change for approximately the last year. We, therefore, find that the proposed changes are too speculative to give them weight herein. 3/

3/ Outagamie County (11523) 6/73.

Thus the instant position requires the minimum certification educational requirements of two years of specialized training beyond high school. By comparison, Registered Nurses are required to have a three year specialized hospital training course or a four year specialized college degree. In the last six to seven years the minimum educational requirement to obtain registration has been changed to permit completion of a two-year associate degree program with the same minimum academic content as the other two programs. 4/

We have previously held that two years of specialized training beyond high school is not "professional training". 5/ Further, the Municipal Employer now recognizes the difference in the need for "professional" education for RN's by actively encouraging those with minimum qualifications to achieve a more comprehensive level of professional training while it has not found it necessary to do so with the Dental Hygienist. On that basis and the record as a whole we conclude that the Dental Hygienist is not a professional employee within the meaning of Section 111.70(1)(1) and therefore have excluded her from the instant unit.

During the course of the hearing Counsel for the Municipal Employer contended that the Petitioner was not a labor organization within the meaning of the Act, and, therefore, was not qualified to obtain representative status on the contention that it admits into its membership supervisory and managerial employees and would also exclude from membership the Dental Hygienist. The Hearing Officer ruled against permitting the Municipal Employer to adduce evidence with regard to the status of the Petitioner as a labor organization. However, during the hearing Counsel for the Municipal Employer was given the opportunity to make an offer of proof with regard to said contention. We sustain the Hearing Officer's ruling in that regard. Counsel for the Municipal Employer, in its offer of proof, contended that the evidence would establish that the Petitioner has certain membership requirements and restrictions, that its clinical interest is professional in the areas of community health, geriatrics, maternal and child health, medical and surgical, psychiatric and mental health. Further, that the evidence would establish that all registered nurses, including supervisory and managerial employees, are admitted into membership of the Petitioner regardless of the supervisor status of such individual, and further, that the Dental Hygienists could not be admitted into the Association as a member on the basis that the interests of the Petitioner do not cover the area of dental hygienists. After said offer of proof, on an inquiry by the Hearing Officer, the representative of the Petitioner admitted that Dental Hygienists are not admitted to membership in the Petitioner, however, that they may belong to a "local" organization, known as "Patient Care-Council," representing employees in a particular local unit, which local unit performs the functions of the collective bargaining representative and permits all of its members to vote on the results of contract negotiations.

The Commission will not, in a representation proceeding, question the internal affairs of an organization, which the Commission is satisfied exists for the purpose of representing municipal employees for the purposes of collective bargaining. We stated in City of Milwaukee, Case VI, 6/ as follows:

4/ Sections 441.04, .05 and .06, Wis. Admin. Code.

5/ City of New Berlin (13173) 11/74 [Children's Assistant Librarian]; Marquette General Hospital (9926) 9/70 at pp. 6-7.


6/ Decision No. 6960, 12/64.

... the Board 7/ should not, in a representation proceeding, question the internal affairs of an organization, which the Board is satisfied exists for the purpose of representing municipal employees in conferences and negotiations with municipal employers on matters pertaining to wages, hours and conditions of employment. Therefore, in a representation proceeding, we do not believe that we should impose conditions on any organization seeking to represent municipal employees, which conditions would limit the right of such organizations to establish rules for the acquisition, retention and rejection of membership. To do so in a representation proceeding would impinge on the voluntary nature of such organizations. If the rules of such an organization permit supervisors to membership and/or excludes classes of employees from membership, the employees involved have a right to refuse to become members thereof, and if said organization is seeking to represent the employees in an election proceeding before this board, the employees can vote to reject such organization as their collective bargaining representative. If it can be established, in a prohibitive practice proceeding, that any labor organization which has been selected as the collective bargaining representative of municipal employees in an election conducted by the Board, that the rules and regulations of such an organization interfere with the rights of employees under Section 111.70 or that supervisory employees have dominated that organization and thus interfered with the rights granted to the employees, we will, among other remedies, set aside the certification."

Dated at Madison, Wisconsin, this 1st day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner

7/ now the Commission.