

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MANITOWOC COUNTY INSTITUTIONAL EMPLOYEES,
LOCAL 1288, AFSCME, AFL-CIO

For Clarification of Bargaining Unit
of Certain Employees of

MANITOWOC HEALTH CARE CENTER

Case XLVI

No. 19208 ME-1201

Decision No. 13894

Appearances:

Mr. Michael J. Wilson, District Representative, Wisconsin Council
of County and Municipal Employees, appearing on behalf of
the Petitioner.

Mr. Richard E. Garrow, Corporation Counsel, Manitowoc County,
appearing on behalf of the Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Manitowoc County Institutional Employees, Local 1288, AFSCME, AFL-CIO, having, on May 23, 1975, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to issue a clarification of a collective bargaining unit wherein the Commission had previously certified the Petitioner as the exclusive representative of certain employees of Manitowoc County 1/; and hearing having been held in the matter at Manitowoc, Wisconsin, on July 11, 1975, Marvin L. Schurke, Hearing Officer, being present; and the parties having subsequently filed briefs in the matter; and the Commission having considered the evidence and arguments, and being fully advised in the premises, makes and files the following

ORDER

IT IS ORDERED that the collective bargaining unit consisting of all employees engaged in the operation of the Manitowoc Health Care Center, excluding the Superintendent, Assistant Superintendent, Supervisor and supervisory help, medical personnel, Business Manager, Registered Nurses, confidential office employees, temporary employees and Food Service Supervisor, be, and the same hereby is, clarified to include the positions of: Licensed Practical Nurse, Medical Records Clerk, Psychiatric Secretary, Bookkeeper I, Bookkeeper II, Receptionist, and Volunteer Coordinator.

Given under our hands and seal at the
City of Madison, Wisconsin, this 22nd
day of August, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

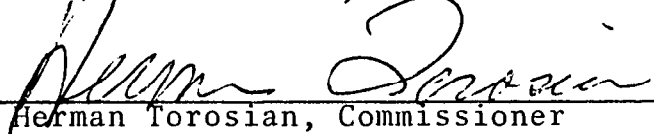
By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

On April 16, 1965, the Commission directed an election in a bargaining unit consisting of all regular full-time and regular part-time employees of the Manitowoc County Hospital, working twenty hours or more per week, but excluding supervisors, registered nurses, licensed trained practical nurses, professional, office employees and welfare workers. An election was conducted and, on May 27, 1965, the Commission issued a Certification of Representatives wherein it was indicated that 46 of 50 eligible employees voted in the election and 28 of those employees voted in favor of Manitowoc County Employees Local No. 986, AFSCME, AFL-CIO, resulting in the certification of that labor organization as the exclusive collective bargaining representative for the employees in the unit. Two licensed practical nurse positions were in existence at that time, and the parties to the instant proceeding stipulated that the licensed practical nurses were excluded from the bargaining unit by the stipulation of the parties to the original representation proceedings. It was the undisputed testimony of Arthur Wells, former Wisconsin Council of County and Municipal Employees District Representative and one of the participants in the original representation proceedings, that the basis for the stipulation excluding the licensed practical nurses from the unit in 1965 was that they were supervisory. Further, it was the testimony of Wells that the only two "office employees" employed in 1965 were excluded from the unit on the basis of their alignment with the Municipal Employer as confidential or managerial employees. The Union involved in the original election proceeding subsequently changed its name and local number, and the name of Municipal Employer's facility involved was also changed; however, the parties have had continuity in their collective bargaining relationship.

Subsequent to the issuance of the original Certification of Representatives, the Municipal Employer gradually added licensed practical nurses to its employment roster, bringing the total to 20 LPN's as of the date of the hearing herein. A bookkeeper position was created in 1968 or 1969, and a second bookkeeper position was added approximately 6 months thereafter. A volunteer coordinator position and two receptionist positions were created in 1973. A psychiatric secretary position was created late in 1974 and a medical records clerk position was added early in 1975. The parties to the instant proceeding stipulated that none of the LPN's presently employed by the Municipal Employer are supervisors, and that all of the incumbent LPN's, along with all of the occupants of the newly created clerical and related position listed above, are employees within the meaning of the Municipal Employment Relations Act (MERA).

The parties to this proceeding are also parties to a collective bargaining agreement for the years 1975 and 1976 which contains the following recognition clause:

"Article I - Recognition and Bargaining Unit

The Employer recognizes the Union as the exclusive bargaining agent of the employees of the Employer engaged in the operation of the Manitowoc County Health Care Center, excluding the Superintendent, Assistant Superintendent, Supervisor and supervisory help, medical personnel, Business Manager, Registered nurses, confidential office employees, temporary employees, and Food Service Supervisor."

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None of the positions listed above is now or ever has been included in the collective bargaining unit. However, the Municipal Employer has, since 1965, added Ward Clerk positions to its table of organization, and said positions have been included in the bargaining unit by agreement of the parties.

POSITION OF THE PETITIONER UNION:

The Union contends that the incumbents of the disputed positions are employees within the meaning of MERA and that they have a community of interest with the established unit of employees of the same employer, so that they should be accreted to the existing bargaining unit. The Union argues that the addition of the 27 disputed positions to the 114 positions in the existing bargaining unit would not affect the representative status of the Union. The Union points out that all of the positions, except the LPN classification, were newly created after the Certification of Representatives, and offered evidence to show that the basis for exclusion of the LPN's from the unit has evaporated since the issuance of the Certification of Representatives. The Union asks for the accretion of all of the disputed positions to the bargaining unit without an election among the occupants of the disputed positions, contending that such an accretion election would be contrary to both statutory and Commission policy.

POSITION OF THE MUNICIPAL EMPLOYER:

While stipulating that there exists a community of interest between the employees in the disputed positions and the employees in the existing bargaining unit, and that a merger of the residual unit composed of the disputed positions with the existing unit would be appropriate in the event the petitioner here won a representation election in that residual unit, the Municipal Employer differs from the Petitioner on the question of whether an election should be held. Noting that the Municipal Employer has not been provided with a copy of a showing of interest filed by the Petitioner with the Commission in support of the instant petition, the Municipal Employer contends that it has had no indication of whether employee interest in the Union is strong, weak or indifferent. The Municipal Employer contends that both it and the employees involved are entitled to a secret ballot vote to determine the desires of the employees with respect to representation by the Petitioner.

DISCUSSION:

The policies of the Commission do not require that a petition concerning unrepresented employees be supported by a showing of interest, and there was thus no requirement that the Petitioner herein accompany its petition with the showing of interest which was filed herein. It has long been the policy of the Commission that a certification of a collective bargaining representative will not be issued on the basis of authorization cards alone. Gimbel Brothers Department Store (356) 2/42. The showing of interest filed in this case is therefore not regarded by the Commission as persuasive evidence of how the case should be decided.

We agree with the Union that an accretion of the disputed positions would be appropriate in this case. The election sought by the Municipal Employer would, in essence, be an "accretion election" of the sort which has recently been disavowed by the Commission in Fox Valley Technical Institute (13204) 12/74 and Sheboygan Joint School District (12897) 7/74.

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The only way an election would be appropriate among the incumbents of the disputed positions would be in a situation where a residual unit was to be established, as was done in Cochrane-Fountain City Schools (13700) 6/75. However, while the disputed positions would also constitute a residual unit of all unrepresented non-professional employees of the Municipal Employer, the Petitioner has shown persuasive reasons why such a residual unit should not be established.

During the ten years since the original representation proceeding, the Municipal Employer's work force has been considerably enlarged and the size of the existing bargaining unit has more than doubled, from 50 to 114 employees. While the original Direction of Election and Certification of Representatives make separate mention of "supervisors" and LPN's as exclusions from the bargaining unit, it is undisputed here that the basis for the exclusion of the LPN's from the bargaining unit was that they were in fact supervisors at that time. Only 2 such LPN-supervisors positions existed at that time. With a tenfold increase in the number of LPN's employed, the supervisory authority of even the original 2 LPN's has disappeared. Except where they have been found to be supervisory (e.g. in St. Croix County Hospital (11179) 7/72), the Commission has consistently included licensed practical nurses in units with other non-professional employees of municipally operated health institutions. Winnebago County Hospital (6043) 7/62; Marinette General Hospital (7569) 4/66; Kenosha County (8637) 7/68; Monroe County (8166-C, 11913) 6/73; Douglas County (13389) 2/75. The Commission also notes that the current collective bargaining agreement between the parties does not reflect the exclusion of LPN's as a class, such as was done in the original Direction of Election and Certification of Representatives. Now that the basis for their exclusion from the existing unit has ceased to exist, there is no reason to continue the exclusion of the LPN's from the unit or to invite fragmentation of an otherwise appropriate unit by the creation of a residual unit here.

The original Certification of Representatives excluded office employees as a class but, as with other areas within the Municipal Employer's table of organization, there has been a considerable increase in the number of clerical employees since 1965. The parties have heretofore been somewhat inconsistent in their handling of clerical and related positions, as the record indicates that newly created ward clerk positions have been included in the bargaining unit, while the disputed clerical positions have not. The current collective bargaining agreement makes provision for the exclusion of "confidential office employees", and review of the table of organization provided by the Municipal Employer to the Commission indicates that at least 2 office positions will continue to be excluded from the unit. The combined effect of the stipulation of the parties that the clerical and related positions in dispute here are not confidential, and the evidence that the existing unit already includes some clerical and related positions, provides a compelling reason for a finding that the newly created clerical positions should be accreted to the existing bargaining unit.

EFFECT OF INCLUSION OF DISPUTED POSITIONS IN UNIT:

The results of the election conducted by the Commission in 1965 indicate that a substantial number of employees then favored the Petitioner here as their collective bargaining representative, and the evidence adduced by the Union during the hearing herein indicates that the Petitioner would maintain its majority in the enlarged unit, based on its present voluntary membership, even if it were to be assumed that all of the incumbents of the disputed positions and present employees making fair share payments would vote against the Petitioner in a representation election if one were now to be conducted in the entire enlarged unit. The

Commission therefore concludes that the inclusion of the disputed positions in the existing bargaining unit does not, and will not, affect the representative status of the Union. We have therefore issued the accompanying Order Clarifying the Bargaining Unit to include all of the positions in dispute.

The Commission notes that the petition filed to initiate the instant proceeding was filed during the fifth month of a twenty-four month collective bargaining agreement between the parties. In City of Fond du Lac (11830) 5/73 the Commission first enunciated a policy applied in that case and in subsequent cases involving accretion of positions to bargaining units, to the effect that the Commission's determination that positions were to be accreted to a unit did not automatically extend the coverage of an existing collective bargaining agreement to the accreted positions. However, the Union, in its representative capacity has the right to bargain on wages, hours and working conditions affecting the accreted employees.

Dated at Madison, Wisconsin, this 22nd day of August, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

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