

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
WISCONSIN NURSES ASSOCIATION : Case XL
Involving Certain Employes of : No. 19401 ME-1221
CITY OF MADISON (DEPARTMENT OF PUBLIC : Decision No. 14463-A
HEALTH) :

Appearances:

- Mr. Charles D. Huggins, Representative, appearing on behalf of the Petitioner.
- Mr. Timothy C. Jeffery, Director of Labor Relations, appearing on behalf of the Municipal Employer.
- Mr. George E. Lewis, Representative, appearing on behalf of the Intervenor, Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.
- Mr. LaVern M. Nelson, Representative, appearing on behalf of the Intervenor, City of Madison Professional and Supervisory Employees Association.

AMENDED DIRECTION OF ELECTION

Wisconsin Nurses Association, hereinafter referred to as the Petitioner, having on July 25, 1975, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employes of City of Madison (Department of Public Health), to determine whether said employes desire to be represented by said Petitioner for the purposes of collective bargaining; and hearing in the matter having been conducted on November 3, 1975; and the Commission on March 17, 1976, having in this matter directed an election among all regular full-time and regular part-time professional employes employed by the City of Madison (Department of Public Health), but excluding supervisory, confidential, managerial and all other employes; and prior to any further action by the Commission, the Commission having been advised that certain of said professional employes are presently included in a voluntarily recognized collective bargaining unit represented by Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO; and thereupon the Commission, on March 23, 1976, having set aside the aforementioned Direction of Election, and hearing in the matter having been reconvened on April 26, 1976, Kay Hutchison, Hearing Officer, having been present; and during the course of the hearing, Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter Local 60, having been permitted to intervene on the basis that it presently represents certain employes of City of Madison (Department of Public Health), and further, City of Madison Professional and Supervisory Employees Association having been permitted to intervene on the basis that it represents certain employes relevant herein; and the Commission, having considered the evidence and arguments of counsel and being fully advised in the premises, and being satisfied that a question has arisen concerning representation for certain employes of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in an appropriate collective bargaining unit consisting of all regular full-time and regular part-time professional employes classified as Public Health Nurse, Graduate Nurse, Health Educator, and Communicable Disease Specialist, in the employ of the City of Madison (Department of Public Health) who were employed on July 21, 1976, but excluding supervisory, confidential, managerial employes and all other employes, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employes desire to be represented by Wisconsin Nurses Association for the purposes of collective bargaining with City of Madison (Department of Public Health).

Given under our hands and seal at the
City of Madison, Wisconsin this 21st
day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING AMENDED DIRECTION OF ELECTION

The instant proceeding was initiated by a petition filed with the Wisconsin Employment Relations Commission by Wisconsin Nurses Association, hereinafter the Petitioner, requesting the conduct of a representation election among "all regular full-time and regular part-time Registered Nurses employed in the City of Madison (Department of Public Health), excluding supervisory, confidential, managerial, clerical, and temporary employes." Hearing was held in the matter on November 3, 1975. The Commission, on March 17, 1976, directed the conduct of an election among "all regular full-time and regular part-time professional employes employed by the City of Madison (Department of Public Health), but excluding supervisory, confidential, managerial and all other employes", to determine whether they desired to be represented by the Petitioner.

Subsequent to issuance of said Direction, the Commission was advised that certain of said professional employes are presently included in a voluntarily recognized collective bargaining unit represented by Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO. Thereupon, the Commission set aside the Direction issued on March 17, 1976 and reconvened hearing in the matter on April 26, 1976, during which Local 60, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO hereinafter Local 60, and City of Madison Professional and Supervisory Employees Association, hereinafter the Association, were permitted to intervene in the proceeding.

BACKGROUND:

The Department of Public Health is divided into four sections, which are broadly identified as Nursing, Administrative, Environmental and Consumer Protection, and Laboratory. Within the four sections, various professional, technical and clerical employes are employed. The following numbers of employes are employed in the designated "professional" classifications 1/ at the specified salary range within the department:

"Nursing -

| | | |
|----|---------------------------------|--------------|
| 25 | Public Health Nurse | \$930-\$1073 |
| 1 | Graduate Nurse | \$842-\$963 |
| 1 | Communicable Disease Specialist | \$963-\$1116 |
| 1 | Dental Hygienist | \$811-\$935 |

Administrative -

| | | |
|---|-----------------|---------------|
| 1 | Health Educator | \$1027-\$1217 |
|---|-----------------|---------------|

Environmental and Consumer Protection -

1/ The Municipal Employer considers all the listed positions to be professional; the Commission does not necessarily concur in such conclusion.

| | | |
|--------------|--------------------------------|----------------|
| 7 | Public Health Sanitarian II | \$1027-\$1217 |
| Laboratory - | | |
| 1 | Microbiologist III | \$1073-\$1273 |
| 1 | Chemical Analyst III | \$1073-\$1273 |
| 3 | Microbiologist II | \$989-\$1155 |
| 3 | Chemical Analyst II | \$989-\$1155 |
| 1 | Environmental Technologist | \$1027-\$1217" |

In addition to the foregoing, a position of Day Care Supervisor has recently been created and attached to the Nursing Section.

During the course of the November 3, 1975 hearing it was established that the professional employes from the various sections work with one another on an informal, day to day basis on four integrated task forces. The task forces and their potential participants are as follows:

Communicable Disease Control -

Nurse
Communicable Disease Specialist
Public Health Sanitarian
Microbiologist

School Health Program -

Nurse
Public Health Sanitarian
Health Educator
Microbiologist
Chemical Analyst
Communicable Disease Specialist

Day Care -

Nurse
Public Health Sanitarian
Microbiologist

Clinic Program -

Nurse
Microbiologist
Health Educator

Local 60 is the voluntarily recognized representative of the clerical and technical employes employed by the City of Madison in its various departments. The terms and conditions of employment for such employes are set forth in the 1976 collective bargaining agreement between the City of Madison and Local 60. Specifically included in the coverage of that agreement, through the recognition clause, are the Department of Public Health positions of:

Chemical Analyst I, II, III
Dental Hygienist
Microbiologist II, III
Public Health Sanitarian

POSITIONS OF THE PARTIES:

It is the position of the Petitioner that a collective bargaining unit consisting solely of Registered Nurses, as initially petitioned for, is not inconsistent with either the provisions of the Municipal Employment Relations Act (MERA), or the policies of the Commission. However, in light of the Commission's previous Directive in the instant proceeding 2/ which established a unit broader than Registered Nurses to be appropriate, the Petitioner amended its petition at the hearing conducted on April 26, 1976 to request an election within a residual unit consisting of all unrepresented professional employes employed within the Department of Public Health. The Petitioner avers that such a collective bargaining unit would be comprised of the positions of Public Health Nurse, Communicable Disease Specialist, Graduate Nurse and Health Educator.

The Petitioner contends that the inclusion herein of additional professional positions within the Department of Public Health which are presently included in the unit represented by Local 60, would not only disrupt an established bargaining relationship, but would also subjugate the interests of the Registered Nurses whom the Petitioner seeks to represent.

Whereas the Petitioner seeks to represent the remaining, unrepresented professional employes in the Department, it claims that two positions, although presently unrepresented, are not appropriately included in the residual unit. Specifically, the Petitioner avers that the Environmental Technologist and the Day Care Supervisor are professional employes with a community of interest separate and distinct from that of the Public Health Nurse, Graduate Nurse, Communicable Disease Specialist and Health Educator.

It is the position of the Municipal Employer that the Commission's initial unit determination herein, which established as appropriate a unit of all professional employes in the department, should be upheld despite the fact that certain of those employes are presently represented by Local 60. The Municipal Employer contends that the interrelated tasks, the common working conditions, and the statutory directive to avoid fragmentation warrant the reaffirmation of such a unit. Moreover, the Municipal Employer urges the Commission to expand the scope of previous Direction and conduct an election within an appropriate collective bargaining unit consisting of all professional employes employed by the City of Madison. The Municipal Employer argues that the present voluntarily recognized collective bargaining unit represented by Local 60 has grown like "Topsy." As a result, the Municipal Employer asserts that certain professional positions have been included in the overall clerical and technical unit without rational basis. The Municipal Employer argues that the creation of a second or residual collective bargaining unit within the department would unduly burden municipal management in its labor relations with department employes and fly in the face of the statutory directive to avoid fragmentation which guided the Commission's initial direction herein.

During the course of the hearing conducted on April 26, 1976, the Municipal Employer contended that the position of Day Care Supervisor was professional and should be included in either a department-wide or city-wide professional employe collective bargaining unit. However, in its brief, the Municipal Employer changed its position with regard to the

2/ Decision No. 14440, 3/76.

bargaining unit status of the Day Care Supervisor and asserted that the position was not professional, but was supervisory and thereby should not be included in any unit herein.

It is the position of Local 60 that an election conducted pursuant to the petition of the Petitioner should not involve those positions already represented by Local 60. In addition to the non-professional, clerical and technical positions in the Department, Local 60 represents the professional employes in two of the four departmental divisions, specifically those in the laboratory division and the environmental and consumer protection division 3/ and the Dental Hygienist in the Nursing section. Local 60 presently administers a collective bargaining agreement covering the period of December 14, 1975 through December 25, 1976. The contract specifically sets forth the wages and working conditions of the following relevant departmental positions: Chemical Analyst II and III, Dental Hygienist, Laboratory Aide, Laboratory Assistant I and II, Microbiologist II and III, Public Health Field Assistant II, Public Health Sanitarian II and Public Health Technician.

The position of the Association is similar to that of the Municipal Employer. Specifically, the Association asserts that an appropriate collective bargaining unit herein should encompass professional positions on a department-wide, or preferably, city-wide, basis. The Association and Local 60 expressed interest in appearing on an election ballot herein in the event that the Commission determined a department-wide or city-wide collective bargaining unit.

DISCUSSION:

Prior to being advised that Local 60 presently represents certain professional and non-professional employes in the Department of Public Health and other departments of the Municipal Employer, the Commission directed the conduct of an election among all professional employes in the Public Health Department. Whereas the Petitioner initially petitioned for a unit consisting solely of Registered Nurses, the Commission reasoned that the Registered Nurses and other professional employes in the department constituted an appropriate unit. The rationale resulting in such unit determination assumed that none of the professional employes in the department were presently represented for the purposes of collective bargaining with the Municipal Employer. 4/ Accordingly, the comingling of the Nurses and other professional employes precluded the stranding of the other professional employes without the opportunity to select representation. However, the assumption of nonrepresentation was not founded and upon knowledge of the same, the Commission set aside the initial direction of election.

The Municipal Employer urges the Commission to uphold or expand upon its initial unit determination establishing a departmental professional unit. The Municipal Employer contends that the Commission's initial direction herein established that the appropriate collective bargaining unit consists of "all professional employes in the department" (Emphasis added). The Municipal Employer asserts that the splitting of the department into two bargaining units would not be consistent with the Commission's original direction and the statutory directive to avoid fragmentation.

3/ There is presently one unrepresented position in the environmental and consumer protection division, namely the Environmental Technologist. Local 60 claims that the omission of said position from its unit is by oversight rather than intent.

4/ No evidence had been presented with regard thereto.

Section 111.70(4)(d)2a of MERA provides that:

"The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employes unless a majority of the craft employes vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot."

The Commission has interpreted the foregoing to mean that there is a need for a pattern of bargaining units which permits employes the right to be represented in workable units by organizations of their own choosing, which may be reasonably expected to be concerned with the unique interests and aspirations of the employes in said units. To establish a unit wherein the interests of a large group of employes are likely to be submerged does not, in the Commission's opinion, give adequate protection to the rights guaranteed to employes in the Act. However, the Commission has held the units cannot be so fragmented so as to be inadequate for viable collective bargaining. 5/

Whereas the statute directs that the Commission "whenever possible" avoid fragmentation of units, it does not specify that there be only one potentially appropriate unit in a given situation. Accordingly, the Commission is not precluded from finding, on the basis of previously unrepresented evidence, that a unit of more limited composition herein is also consistent with the statute. The instant matter concerns whether or not the amended unit petitioned for is repugnant to MERA, and therefore, since the Commission is confronted with a determination of whether a residual unit of professional employes in the Department of Public Health is appropriate.

The residual unit petitioned for herein would effectively consist of all the professional employes in two divisions of the department, namely the sections of Nursing and Administration. The Commission is satisfied that such residual unit is not repugnant to the Act. Furthermore the Commission finds that the creation of a unit comprised of Nurses and Health Educators along division lines does not constitute undue fragmentation of bargaining units.

Contrary to the arguments of the Municipal Employer, the desirability of a broader collective bargaining unit does not outweigh the longstanding, voluntary collective bargaining relationship between the Municipal Employer and Local 60. It should be noted that MERA precludes the Commission from finding appropriate a collective bargaining unit which combines professional and non-professional employes

5/ Dane County (10492-A) 3/72; Columbia County (11068) 6/72; City of Kiel (11368) 10/72; City of New Berlin (13173) 11/74.

without benefit of a self-determination vote among the professionals. The unit represented by Local 60, wherein certain professionals in the Department of Public Health are included with non-professionals, is not inherently inappropriate, especially in light of the long bargaining history between the Municipal Employer and Local 60, and the specific reference to job classifications in Local 60's contract with the Municipal Employer. It can only be concluded that the professionals' inclusion in the unit was by design and consent. We are satisfied, in light of the size of the professional work force and the voluntary relationship between the Municipal Employer and Local 60, that the statutory directive to avoid fragmentation is not violated by the creation of a residual unit of professional employes in the Nursing and Administration sections of the Department of Public Health.

During the course of the hearing several issues arose with respect to the inclusion or exclusion in collective bargaining units under consideration of three positions; specifically the Environmental Technologist, Day Care Supervisor and Dental Hygienist. Whereas the Commission has directed an election herein within a residual unit of professional employes in the Nursing and Administration sections, the position of Environmental Technologist, although presently unrepresented, is not assigned to either of those sections and does not share a community of interest with the unit established herein but appears to share a community of interest with the employes in the laboratory section who are presently represented by Local 60. Accordingly, we find the position of Environmental Technologist to be excluded from the unit herein. In the event that either the Municipal Employer or Local 60 desires to clarify said position's inclusion or exclusion from the unit represented by Local 60, the Commission will entertain a petition for the same.

The Petitioner and the Municipal Employer appear to agree to the exclusion of the Day Care Supervisor, but on different grounds. No testimony was adduced during the hearing to determine whether the Day Care Supervisor is either professional or supervisory. Accordingly, the Commission makes no determination herein with regard to the employe or unit statute of Day Care Supervisor. Should the incumbent appear to cast a ballot in the instant election, either party may challenge said ballot, and upon a request, the Commission shall subsequently determine the employe status and/or appropriate unit inclusion of the Day Care Supervisor, and if necessary, amend the collective bargaining unit description.

The Dental Hygienist assigned to the Nursing section is presently represented by Local 60. The Municipal Employer, contrary to the Petitioner, asserts that the Dental Hygienist is a professional employe. The job description offered by the Municipal Employer during the course of the hearing described the duties of the Dental Hygienist as "semi-professional work in implementing and carrying out a comprehensive dental health program . . ." The position requires a degree in Dental Hygiene from an accredited dental hygiene educational program and possession of, or eligibility for, license as a Dental Hygienist in the State of Wisconsin. On the basis of the duties, educational requirements and statutory definition of "professional employe," the Commission is

satisfied that the Dental Hygienist is not a professional employe within the meaning of the Act, and accordingly has excluded said position from the professional unit herein.

Dated at Madison, Wisconsin this 21st day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

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