



ORDER

That the positions of Radiological Technologist, Mental Health Specialist-Follow Along (Day Hospital Coordinator) and Account Clerk (Payroll) be included in the above-described unit, but that the positions of Medical Technologist and Recreation Therapist be excluded from the above-described unit.

Given under our hands and seal at the City of Madison, Wisconsin this 19th day of November, 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 ORDER CLARIFYING BARGAINING UNIT

In a letter received on August 13, 1975 the Union requested that the Commission clarify the unit described above and determine whether the X-Ray Technician and the Day Hospital Coordinator should be included in or excluded from the unit. After several postponements were granted to the parties to permit settlement negotiations on this issue, the Employer, by letter received December 23, 1975, requested that the Commission determine whether the Medical Technologist, Recreation Therapist, Account Examiner and Account Clerk (Payroll) be excluded from the unit. At the January 13, 1976 hearing, the Employer dropped the Account Examiner from the positions it desired clarified. The issue before the Commission concerns the confidential status of the Account Clerk (Payroll) and the professional status of the other four positions raised by the parties.

The Union is the exclusive bargaining representative of an overall unit of non-professional, non-craft employees employed at the Center. There are approximately 200 employees in this bargaining unit.

The Brown County Mental Health Center maintains in excess of 200 nursing home beds and 80 psychiatric beds. A children's treatment program, alcoholism and drug treatment program and psychiatric in-patient program operate out of the Center. The Center is accredited by the Joint Commission on Accreditation of Hospitals; its nursing home beds are licensed by the State of Wisconsin; and it holds a special license from the State to operate its psychiatric and other programs. The Center operates laboratory, x-ray and occupational therapy departments under its licenses and certification. It is in those departments where the Union and the Employer dispute the professional status of several employees.

In considering whether an employee is a professional employee under the Municipal Employment Relations Act, the Commission has applied the specific criteria provided in the statute which are as follows:

Section 111.70(1)(1):

". . .

"(1) 'Professional employee' means:

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; or

2. Any employe who:

- a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;
- b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1."

(Radiological Technologist)

The Municipal Employer employs one Radiological Technologist at the Brown County Mental Health Center. The incumbent, Ruth Bonner, is certified by the American Registry of Radiological Technologists. This certification is based upon two years' training beyond high school and passing a written exam administered by the Board of Radiological Technologists and the Board of Radiology. The State of Wisconsin does not license or certify individuals in this field. Although the two year training program for a Radiological Technologist is presently provided at several technical colleges throughout Wisconsin, Bonner trained for one year at a hospital and one year with a Radiologist. She does not hold a bachelor's degree nor is one required for this position.

Bonner's duties comprise taking x-ray pictures of patients pursuant to the specific request of physicians. She will only change an order if she is having difficulty taking the x-ray desired by the physician. In that case, she will manipulate the patient to obtain the best picture possible. Bonner develops the x-ray pictures she takes, and she also takes electrocardiograms for the Municipal Employer. However, she does not interpret the x-ray pictures or the electrocardiograms. No physician is in attendance when she performs her duties, and there is no one else employed in this department. Her supervision is provided by the Medical Director of the Center. However, Bonner is not supervised on a day-to-day basis. Bonner receives \$4.73 per hour.

In Marinette General Hospital, (9926) 9/70, the Commission made the following observations concerning the Radiological Technologists employed in that hospital:

"While it is true that they (the Radiologic Technologists) exercise some special skills, their work consists primarily of following the accepted procedures in operating x-ray equipment according to the specific orders of doctors and does not require creative thought or judgment or the exercise of wide discretion. It is also true that they possess some special training but that training is not so substantial or of such an academic nature as to qualify them for professional status."

There is nothing in this record which would distinguish Bonner's status from the Radiologic Technologists employed in Marinette General Hospital. Therefore, the Commission concludes that Bonner is not a professional employe as that term is defined by the Municipal Employment Relations Act and accordingly the position of Radiological Technologist is properly included in the unit.

Mental-Health Specialist-Follow Along  
(Day Hospital Coordinator)

The incumbent, June Lindeke, is trained as and licensed by the State of Wisconsin as a licensed practical nurse and Occupational Therapy Aide. The job description for this position states that four years of college is a qualification for the position. However, the incumbent does not have a bachelor's degree.

The Mental Health Specialist-Follow Along performs the following duties:

- "1. Provide help to individuals who need assistance in utilizing the services of the Mental Health Center and other agencies.
2. Provide followup services to those individuals who tend to cancel and fail appointments and provide follow along to individuals and families who need a sustaining relationship in lieu of hospitalization, prior to hospitalization, and/or after hospitalization.
3. This individual will also be responsible for handling crisis situations with individuals."

When first visiting the home of a person referred to her, Lindeke may find that a crisis situation exists. She assesses the situation and decides if immediate commitment is necessary. If commitment is required she will contact the District Attorney and physicians in order to obtain the temporary commitment of that individual.

The Mental Health Specialist-Follow Along does not require the extended period of study contemplated by MERA for a professional employe. Furthermore, although follow up of patients is the primary service performed by Lindeke, she does not make independent evaluations of a patient's condition and determinations for further treatment. In crisis situations, where the incumbent does exercise greater latitude and judgment, the determination to commit is made by an attorney (the District Attorney) and physicians who must be involved in the commitment process. Lindeke does not evaluate and recommend treatment for patients or exercise independent judgment contemplated by MERA. Therefore, the Commission determines that the position of Mental Health Specialist-Follow Along does not meet the statutory criteria established for professional employes, and therefore, the Commission concludes that this position is appropriately included in this unit. 4/

#### Medical Technologist

The incumbent, Virginia Modl, has a bachelor's degree with a concentration in chemistry and medical technology. She interned for one year as a medical technician and she is a registered Medical Technologist and a member of the American Society of Clinical Pathologists (ASCP). This certification was obtained on the basis of the college degree, the internship and passing a written examination.

The Technologist runs the hospital's laboratory. At the time of the hearing, no other personnel were assigned to the laboratory. Modl runs basic laboratory tests, such as blood counts, urines, electrolytes, blood urea nitrogen, etc.; she reads and evaluates these tests. The director of the laboratory is the pathologist at Bellin Hospital. However, in the five years of Modl's tenure as a Technologist, the Pathologist has never visited the laboratory or reviewed Modl's work. Modl, who is presently covered by the parties' collective bargaining agreement, receives \$5.16 per hour.

In Racine County, (11218) 8/72 the Commission determined that:

"The Medical Technologist's primary duties are to run tests as directed by physicians. The Medical Technologist not only performs the laboratory work required but also must be able to evaluate and interpret the test findings."

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4/ See Rock County, (13131) 11/74 - discussion concerning the Alcoholism and Drug Abuse Counselor.

Modl's training, duties and responsibilities are similar to those of the Technologist in Racine County. The Commission finds that Modl's training and duties establish her as a professional employe, and therefore, she is excluded from the unit.

#### Recreation Therapist

The incumbent, Herb Foote, has a bachelor's degree in recreation administration with an emphasis in recreation therapy. Foote is certified as a Recreation Therapist by the National Therapeutic Recreation Society. The Society maintains six levels of certification which range from a Therapeutic Recreation Assistant I which requires two years' full-time job experience or 200 hours of in-service training through a 5th and 6th level of certification. Foote has achieved the 5th level of certification from the association based upon his bachelor's degree and his five years of experience. At the time of the hearing, he was applying for the 6th level of accreditation based upon his taking at least 12 credits beyond the B.A. degree and additional years of experience. The State of Wisconsin neither certifies nor licenses this specialty.

Foote works in the Occupational Therapy Department of the Hospital. His immediate supervisor is the Occupational Therapist (she is in charge of the department). Two Activity Aides and three Occupational Therapy Assistants work in the department, as well. The aides and assistants, as well as the Recreational Therapist are covered by the parties' collective bargaining agreement. Foote receives \$4.40 per hour under the parties' agreement.

Upon referral of patients, Foote first observes the patients at the Center, their manner and level of function. Then he prescribes recreational activity to aid in the patient's treatment. He continues observation of the patient, and he provides feedback to the physician and social worker. Foote prescribes activities and programs for outpatients, as well.

The training required and received by the Recreational Therapist meets the educational criteria for a professional employe under MERA. Furthermore, Foote exercises independent judgment in observing, evaluating and prescribing recreational activity for patients. The Recreational Therapist here, is clearly distinguishable from the Recreational Therapist in Dodge County, (6067) 7/62 who the Commission found was not a professional employe. In Dodge County the Recreational Therapist was a high school graduate who had completed only a three-month course in occupational therapy at Mendota State Hospital. Here, the position requires a person with advanced training and experience in the field. Thus, both on the basis of educational attainment and the employment of independent judgment, the Commission concludes that Foote is a professional employe and should be excluded from the unit.

#### Account Clerk (Payroll)

The Municipal Employer employs an Account Clerk (Payroll), 5/ an Account Clerk (Examiner-Billing) and an Account Clerk who divides her

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5/ The Municipal Employer introduced a job description for a Payroll Examiner. The Union established that no such position had been created by the Brown County Board of Supervisors. There are many Account Clerks employed by Brown County. It seeks to exclude only one Account Clerk position on the basis of confidential status. For clarity the Commission has referred to the position in question as Account Clerk (Payroll).

time between payroll and billing. The account clerks work in the Center's business office under the supervision of the Business Manager, James Deprez. The Business Manager shares a confidential secretary with three other individuals. However, Deprez uses the confidential secretary for approximately one-third of her time.

The Account Clerk (Payroll) performs the following duties:

"Refers to confidential personnel file of past and present employees for personnel information.

Calculates amount of hours worked on time cards.

Prepares payroll ledgers.

Maintains current seniority list, keeps accrual sick and vacation days records current; post leaves to payroll records.

Distributes payroll checks to department supervisors and individuals.

Maintains current number of hours worked for retirement service report.

Maintains system to enforce union rates from the current labor contract for all employees within the proper time limit.

Maintains list of probationary employees; determines benefits per established policies for employees on and off probation.

Maintains storage of employee timecards.

Prepares client-resident payroll.

Keeps employee records current.

Prepares payroll input for computer; receives and verifies output from computer (micro-fiche and hard copy).

Maintains current employee profile.

Keeps County Personnel office informed of personnel changes.

Maintains professional staff logs.

Maintains all payroll deductions, such as credit union, United Fund, and labor union dues.

Informs new employees of payroll regulations.

Posts annual accrual sick and vacation day benefits for employees.

Verifies unemployment compensation requests.

Fills out Workmen's Compensation employee accident reports.

Operates Burroughs Encoder (magnetic tape) for computer input.

Prepares statistical and payroll reports for Administrator and other governmental agencies.

And other related payroll duties."

The Municipal Employer seeks to exclude the Account Clerk (Payroll) Nancy May, primarily because she has access and refers to the confidential

personnel file maintained by the Municipal Employer. The file itself and the key for it are kept in a section separate and some distance from the business office. The key to the file is kept by the confidential secretary of the Director of Nursing, Amy Heyman. One other copy of the key is kept in the business office in the file of master keys. However, the five individuals 6/ who are permitted access to the file use Heymen's key. The file contains the complete personnel files of all employes of the Center including supervisory and administrative staff. These personnel files contain disciplinary notations and letters and other confidential matter. The Account Clerk uses these files to obtain information which is public in nature, such as rate of pay, dates of hire and termination of employes. She also prepares a time utilization chart of supervisory employes for the Program Director and Business Manager. The Account Clerk is asked to compute the total hours worked by members of the bargaining team at the time of negotiations. However, she does not compute offers, take notes of closed meetings of the Municipal Employer's negotiating team, type grievance letters, or participate in labor relations matters on behalf of the Municipal Employer.

It is apparent that May performs no confidential duties, as such. Her claimed confidential status is based on her access to a file containing confidential information. The reason for her access is not to obtain confidential information, however. She is not privy to the strategy of the employer in negotiations. Based on the foregoing, the Commission concludes that the Account Clerk (Payroll) is not a confidential employe, accordingly, she is properly included in the bargaining unit. 7/

Dated at Madison, Wisconsin this 19th day of November, 1976.

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6/ The individuals with access to the file are the Program Director (Executive Director), the Business Manager, the Inpatient Coordinator, the Director of Nursing, and the Account Clerk (Payroll).

7/ Racine Area VTAE, (9188) 8/69.