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In the Matter of the Petition of :
 :
UNITED PROFESSIONALS FOR :
QUALITY HEALTH CARE :
 :
Involving Certain Employees of :
 :
CITY OF MADISON :
(DEPARTMENT OF PUBLIC HEALTH) :

Case LX
No. 23763 ME-1609
Decision No. 16763-A

Mr. Lee Cullen, Johnson, Cullen & Weston, Attorneys at Law, appearing on behalf of the Petitioner.

Mr. Timothy Jeffery, Director of Labor Relations, appearing on behalf of the City of Madison.

United Professionals for Quality Health Care, having on December 14, 1982, filed a petition requesting the Commission to clarify an existing certified bargaining unit of professional employees employed in the City's Department of Public Health to include five positions, Health Educator-Aide, WIC Nutritionist, Day Care Coordinator, RN-Welfare Department-Medical Unit and Public Health Nurse Hourly; and hearing in the matter having been held on March 4, 1983 at Madison, Wisconsin, before Examiner Robert M. McCormick a member of the Commission's staff; and a transcript of said proceedings having been prepared and received on April 8, 1983; and both parties having waived the filing of briefs in favor of oral arguments on the record, and the Commission having considered the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit and Amending Certification.

1. That the City of Madison, hereinafter referred to as the City, is a municipal employer having its offices in the City-County Building, 210 Monona Avenue, Madison, Wisconsin, 53709.

2. That United Professionals for Quality Health Care, hereinafter referred to as the Union, is a labor organization having its offices at 1244 South Park Street, Madison, Wisconsin, 53715.

3. That on February 7, 1979, the Union was certified as the exclusive bargaining representative for certain employees in a collective bargaining unit consisting of all regular full-time and regular part-time professional employees classified as Public Health Nurse, Graduate Nurse, Health Educator and Communicable Disease Specialist in the employ of the City in its Department of Public Health, excluding supervisory, confidential and managerial employees, and all other employees of the City of Madison; that the City and Union expanded said certified unit through subsequent bargaining to include in their recognition clause, Article II of the 1982-83 labor agreement, the position of Public Health Pediatric Nurse Practitioner.

4. That at outset of hearing, the Union amended its petition to establish the correct titles for the positions set forth in its petition, which it seeks to have accreted to the existing bargaining unit; Health Educator-Aide/Professional Aide III, WIC Director/Nutritionist, Day Care Public Health Nurse Coordinator, Public Health Nurse-Hourly, Registered Nurse-Hourly and General Assistance Medical Coordinator (to replace RN-Welfare Department Medical Unit); that the City, contrary to the position of the Union, asserted that the duties of the General Assistance Medical Coordinator are performed outside of the instant

unit in a separate professional unit, namely the Social Services Division of Human Services Department, and further contends that the WIC Director Nutritionist is a supervisory position, which should be excluded from the unit.

5. That in the course of the hearing the parties stipulated that Janet Daniel, who occupies the position, WIC Director/Nutritionist does in fact perform supervisory duties so as to properly exclude said position from the bargaining unit; that Daniel approves requests for unpaid leaves and sick leave for professional and support staff subject to her direction; that Daniel has effectively recommended the hire of several non-professional employees on the support staff; that Daniel establishes and changes the schedules for the three professional Public Health Nurse-Hourly employees in the WIC program as well as the schedules for the two clinic aides and one part-time clerk, who makeup the support staff; that the duties of the WIC Director/Nutritionist are of a supervisory nature in sufficient combination and degree so as to make the occupant of said position, a supervisory employee.

6. That the other positions which the Union seeks to accrete to the bargaining unit of public health professionals are in the Department of Public Health and are occupied by employees in the following distribution:

Health Educator Aide/Professional Aide III	- (1)
Day Care Public Health Nurse Coordinator	- (1)
Public Health Nurse-Hourly	- (3)
Registered Nurse - Hourly	- (1)
General Assistance Medical Coordinator	- (1)

7. That the total compliment of employees occupying positions covered by the original certification reflect twenty-five (25) Public Health Nurses, and one (1) Graduate Nurse; that three positions covered by the original certification remained vacant at time of hearing, namely the Health Educator the P.H. Pediatric Nurse Practitioner, and Communicable Disease Specialist; that the occupants of the Public Health Nurse-Hourly and the Registered Nurse-Hourly perform substantially similar duties, as professionals, to those performed by the incumbent Public Health Nurses and Graduate Nurse, the latter positions covered by the original certification set forth in Finding 3; that the occupant of the position Health Educator Aide/Professional Aide III worked alongside the incumbent-Health Educator before said position became vacant, and currently performs a substantial portion of the duties previously performed by the Health Educator, a professional position covered by the original certification set forth in Finding 3.

8. That the occupant of the Day Care Public Health Nurse-Coordinator works under supervision of Director of Public Health Nursing and interfaces with other public health professionals in the certified unit in applying public health principles to insure delivery of public health services to the day care centers' populations, including staff at the centers; that said occupant's performance of said duties, together with her accreditation and training in public health nursing creates a community of interest between the Day Care Public Health Nurse-Coordinator and the remaining professional public health positions covered by the original certification set forth in Finding 3.

9. That the occupant of the position, General Assistance Medical Coordinator, Kay Jimenez, though a registered nurse by training and accreditation, performs the substantial portion of her duties in the Social Services Division of the Human Services Department; that Jimenez does carry out some liaison functions with supervisory personnel in the Public Health Department, but that the major portion of her duties consists of evaluating whether clients on general assistance are eligible for medical treatment, directing the clients to any one of an assortment of health care providers, after coordinating State and Federal categorical resources which may defray such costs; that the General Assistance Medical Coordinator performs the substantial portion of the duties previously performed by the former occupant of the position, Social Worker III (Medical Specialist), a position outside of the certified unit of professionals in the Public Health Department set forth in Finding 3.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That employees occupying the classifications of Public Health Nurse-Hourly and Registered Nurse-Hourly are professional employees performing similar duties to those performed by the professional employees currently occupying classifications in the certified bargaining unit set forth in Finding 3 above, and that, said positions are properly included in said bargaining unit; that the employee occupying the position Health Educator Aide/Professional Aide III is a professional employee performing similar duties to those previously performed by the Health Educator, which though currently a defunct position, was nonetheless covered by the original certification set forth in Finding 3, and that therefore, Health Educator Aide/Professional Aide III is a position properly included in said bargaining unit; that the position of Day Care Public Health Nurse Coordinator is occupied by a professional employee performing the duties substantially similar to those performed by Public Health Nurses, who are currently in the bargaining unit set forth in Finding 3, and therefore, the Day Care Public Health Nurse Coordinator is properly accreted to the bargaining unit.

2. That the position, Public Health Pediatric Nurse Practitioner, though not included as a classification in the original certified unit set forth in Finding 3, and thereafter covered by parties' most current collective agreement, is a professional position, when occupied, that should properly be included in said bargaining unit.

3. That the occupant of the position, WIC Director/Nutritionist, performs supervisory duties in sufficient combination and degree so as to exclude said position from the bargaining unit set forth in Finding 3; that the position General Assistance Medical Coordinator is a position outside of the certified unit of professionals in the Public Health Department 1/ set forth in Finding 3, and therefore properly excluded from said bargaining unit.

On the basis of the above and foregoing Findings of Fact, Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT AND AMENDING CERTIFICATION 2/

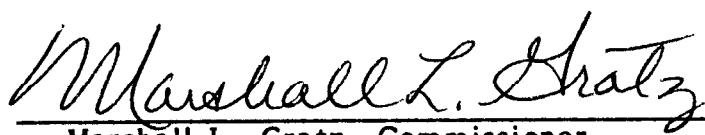
That the previously certified bargaining unit set forth in Finding 3 is clarified and amended, to reflect the accretion of the positions set forth in Conclusions of Law 1 and 2, and that, as amended, the Certification of said unit becomes: all regular full-time and regular part-time professional employees classified as Public Health Nurse, Public Health Nurse-Hourly, Registered Nurse-Hourly, Graduate Nurse, Health Educator Aide/Professional Aide III, Communicable Disease Specialist, Day Care Public Health Nurse Coordinator, and Public Health Pediatric Nurse Practitioner in the employ of the City of Madison Department of Public Health, excluding supervisory, confidential, and managerial employees, and all other employees of the City.

Given under our hands and seal at the City of
Madison, Wisconsin this 3rd day of July, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

1/ See City of Madison, Dec. No. 19772-A (WERC 5/84).

2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by

(Footnote 2 continued on Page 4)

(Footnote 2 continued)

following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER CLARIFYING
BARGAINING UNIT AND AMENDING CERTIFICATION

At outset of hearing the parties stipulated to the corrected descriptions of the positions which the Union seeks to accrete to the existing certified bargaining unit. In the course of hearing the City and the Union stipulated that the position WIC Director/Nutritionist was a supervisory position, properly excluded from the bargaining unit. The parties further stipulated that the array of positions, with corrected titles, set forth in Finding 4, (excepted for General Assistance Medical-Coordinator) constituted all of the residual professional positions in the Public Health Department, heretofore not included in the unit description contained in the initial certified unit, set forth in Finding 3.

The City's constructive position, contrary to the Union's position, in effect contends that the employees occupying the positions of Health Educator Aide/Professional Aide III, Day Care Public Health Nurse Coordinator, Public Health Nurse-Hourly and Registered Nurse-Hourly should be given the opportunity to vote to determine whether a majority of said employees wish to become a part of the certified unit and be represented by the Union.

The Union requests that said positions should be accreted to the certified unit based upon the occupants' performance of duties as similar to public health professionals covered by the initial certification. The Union further contends that the small number of employees to be accreted (6), would not distort or overwhelm the number of employees occupying the originally certified positions which is 25.

The Union, contrary to the City, contends that the Registered Nurse occupying the position, General Assistance Medical Coordinator, should be accreted to the instant certified unit. The Union urges that the current occupant performs public health nursing skills and works closely with other public health professionals in making medical evaluations of general assistance clients, rather than performing just social worker - intake functions, as was the case under the old procedure, when the position was entitled, Social Worker III (Medical Specialist).

The Commission is satisfied that the positions (excluding the General Assistance Medical Coordinator) set forth above, which the Union seeks to accrete, should properly be included in the certified unit, without a need for a vote. The duties of the six (6) occupants are substantially similar, and supportive of the public health mission, performed by the twenty-six (26) public health professionals covered by the initial certification. The six (6) occupants have a community of interest with the remaining (26) employees. Said professionals currently occupy classification descriptions which were not in place at the time of initial certification. There exists no distortion in the number of professionals to be accreted vis-a-vis the complement of professionals who were covered by the original certification. Therefore, the Commission has directed the accretion of the four positions set forth in its Order Amending Bargaining Unit.

The Commission concludes that the record supports the parties stipulation to exclude WIC Director/Nutritionist as a supervisory position.

The issue of whether the General Assistant Medical Coordinator position belongs in the instant unit of professionals in the Department of Public Health was also argued and decided in a recent unit clarification case involving the City of Madison and Local 60, AFSCME, 3/ the representative of professional employees in the Social Services Division of the Department of Human Services. In that case the Commission concluded as follows:

The record evidence indicates that the occupant of the Medical Coordinator position performs substantially the same duties as previously performed by the Social Worker III

3/ City of Madison, Dec. No. 19772-A (WERC, 5/84).

(Medical Specialist). The only evidentiary factors which can be said to approach a community of interest with the public health professionals in the Department of Public Health is the fact that the current occupant of the Medical Coordinator position is a registered nurse, and that for a time prior to January 1, 1983, a public health nurse from Public Health was temporarily assigned to the Social Services Division to work alongside the Medical Specialist in order to process the medical assistance client entries and billings and eligibility determinations for the services of medical providers. The bargaining unit to which the instant Union and (United Professionals in a companion unit clarification case) seek to place the Medical Coordinator, namely the Public Health unit, reflects a certified bargaining unit which consists of:

all regular full-time and regular part-time professional employees classified as public health nurse, graduate nurse, health educator, and communicable disease specialist in the employ of the Madison Department of Public Health"
(Emphasis supplied)

The Commission concludes that the duties of General Assistance Medical Coordinator are not performed in the public health department but on the contrary, are exclusively performed in Social Services Division of the Department of Human Services. The description of the United Professionals' bargaining unit does not cover positions outside of the Department of Public Health. The fact that the Medical Coordinator is a registered nurse by training and accreditation, does not operate to place the position outside of the instant unit represented by Local 60, AFSCME.

The Commission finds nothing in the record evidence to reverse its findings in the above-noted case and therefore concludes that the position of General Assistant Medical Coordinator should not be included in the instant unit as argued by the Union.

Dated at Madison, Wisconsin this 3rd day of July, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner