

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
WISCONSIN COUNCIL OF COUNTY AND : Case LXVII  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO : No. 24689 ME-1683  
Involving Certain Employees of : Decision No. 17488  
EAU CLAIRE COUNTY (HEALTH CENTER & :  
MOUNT WASHINGTON HOME) :  
- - - - -

Appearances:

Mr. Guido Cecchini, Business Representative, Wisconsin Council of  
County and Municipal Employees, AFSCME, AFL-CIO, appearing  
on behalf of the Union.  
Mr. William Thiel, Corporation Counsel, Eau Claire County, appearing  
on behalf of the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among certain employees of Eau Claire County to determine whether said employees desired to be represented by said Union for the purposes of collective bargaining; and hearing in the matter having been conducted on August 8, 1979 by Timothy E. Hawks, a member of the Commission's staff; and the Commission, having considered the entire record, and the arguments of the parties, being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law, and Direction of Election.

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 470 Garfield Avenue, Eau Claire, Wisconsin 54701.

2. That Eau Claire County (Health Center and Mount Washington Home), hereinafter referred to as the County, has its offices at the Eau Claire County Courthouse, Eau Claire, Wisconsin 54701.

3. That in the instant proceeding the Union seeks an election among Licensed Practical Nurses, hereinafter referred to as LPNs, employed by the County at its Health Care Center and also its Mount Washington Home to determine whether said LPNs desire to be represented by the Union for the purposes of collective bargaining; that the Union is the certified representative of the remaining non-professional employees employed by the County at said locations; that during the course of the hearing herein the County, contrary to the Union, contended that the LPNs employed at the Health Care Center, five in number, are supervisors, rather than employees, and therefore should be excluded from the eligibles in any election directed by the Commission; and that, however, the County does not contend that the LPNs employed at the Mount Washington Home are supervisors.

4. That the Health Care Center employs four full-time and one part-time LPNs, five full-time and three part-time Registered Nurses, hereinafter referred to as RNs; that two of the RNs serve in an administrative/supervisory capacity, one as Director of Nursing and the other as the Inservice Training Director; that during each shift there is also a Charge Nurse who is a RN responsible for the supervision of other LPNs and RNs working on that shift; that intermediate supervisory authority of employees at the Health Care Center rests in the position of Assistant Director of County Institutions; and that ultimate supervision of all County institution employees is exercised by the Director of County Institutions.

5. That the Health Care Center is comprised of three units, or wards, described as One North, One South, and Two South; that the work schedules for the facility involves three shifts with one RN or LPN assigned to each unit during each shift; that Two South contains a detoxification unit which by State law requires the presence of an RN; that One North and One South usually contain approximately 30 patients, and Two South contains approximately 50 patients, five of whom are in the detoxification unit.

6. That the LPNs exercise only limited supervisory authority over Nurse's Aides, which includes: (1) assigning the work of the Aides in relation to patient care, (2) initial evaluation of the Aides' work performance both informal and formal, and (3) preparation of written reports of inappropriate action of the Aides; that the LPNs do not have the authority to effectively recommend the hiring or discharge of Aides, or other employees; that the LPNs on the day and evening shifts "supervise" no more than one Aide and that generally the LPNs "supervise" no more than two Aides; that the scheduling of the Aides' hours and shifts is administered by the nursing office and not by the LPNs; and that the LPNs do not effectively recommend either the promotion or wage increases for the Aides.

7. That the LPNs are primarily responsible for the supervision of the patient care responsibilities; that, in particular, the LPNs, in the course of their work day, spend a majority of their time engaged in the following activities: (1) preparing a written plan of care for the patient, (2) preparing written reports regarding patient progress, (3) arranging the feeding of patients and assisting in the feeding of patients, (4) the preparation of the administration of medication upon written orders, for patients, (5) upon order the application of medically prescribed treatments to patients, (6) the maintenance of a patient's status chart, and (7) the supervision of the hygienic needs of patients.

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

#### CONCLUSIONS OF LAW

1. That all Licensed Practical Nurses employed by the Eau Claire County at its Area Health Care Center are not clothed with sufficient duties and responsibilities to constitute the occupants of said positions as supervisors as defined by Section 111.70(1)(o) of the Municipal Employment Relations Act, and therefore said individuals are "municipal employees" within the meaning of 111.70(1)(b) of said Act.

2. That a question of representation, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act, has arisen among Licensed Practical Nurses in the employ of Eau Claire County.

NOW, THEREFORE, it is

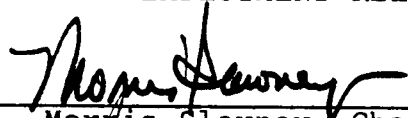
DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission among the employees of the voting unit consisting of all regular full-time and regular part-time Licensed Practical Nurses employed by Eau Claire County at the Mount Washington Home and at the Eau Claire Area Health Care Center, excluding managerial, supervisory and confidential employees, who are employed on December 4, 1979, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees casting a ballot desire to be represented by the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO; and that should a majority of such employees vote in favor of representation by said Union, then said employees will be included in the existing voluntarily recognized bargaining unit described as all regular full-time and all regular part-time employees of Eau Claire County institutions, excluding managerial, supervisory, confidential and professional employees.

Given under our hands and seal at the  
City of Madison, Wisconsin this 6th  
day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND DIRECTION OF ELECTION

The County, contrary to the Union, contends that the five (5) licensed practical nurses at the Eau Claire Area Health Care Center are supervisors and therefore should be excluded from the unit.

Section 111.70(1)(b) of MERA defines the term "supervisory" as follows:

... Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 1/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employee to be a supervisor. 2/

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1/ Fond du Lac County, (10579-A) 1/72; St. Croix County (Health Care Center), (14518) 4/76; Wood County, (10345-A).

2/ Wood County, supra.

The LPNs at the Eau Claire Area Health Care Center exercise a limited degree of supervision of the Aides with whom they work. The record establishes however that the LPNs are primarily supervising an activity and not employees. Finding of Fact No. 7 details the patient care duties of the LPNs' and reflects that a great majority of their time is spent executing these duties. On the first and second shift the LPNs direct only one Aide, and during the third shift they direct two Aides. Scheduling of the hours and locations of the aides is performed by the Director of Nursing. Supervisory authority is shared with four (4) levels of employees: the Charge Nurse, the Director of Nursing, the Assistant Director of Institutions, and the Director of Institutions. The authority to effectively recommend the hiring, promotion, transfer, or discharge of the Aides does not rest with the LPNs although they may recommend the discipline of the Aides.

The LPNs are first and foremost responsible for the supervision of an activity, namely, patient care. The direction of the Aides is incidental to providing adequate care. The overwhelming majority of the LPNs work day is devoted to patient care. The time spent exercising supervisory authority over the Aides is inadequate to justify excluding them from the bargaining unit.

The Commission was presented with a similar issue in Columbia County Home, (13536-A) 6/75, where the employer asserted that two LPN IIs applied independent judgment in reassigning employees on a day-to-day basis, participated in employee evaluation and recommended the disposition of employee grievances. In the instant proceeding, as in Columbia County, the record established that the LPNs are primarily engaged in the supervision of an activity and not employees, and accordingly such individuals are not supervisors as that term is contemplated by the Municipal Employment Relations Act.

In sum, the record fails to establish that the LPNs possess sufficient criteria of supervisory authority in either quality or degree to justify their exclusion from the bargaining unit as supervisors as that term is defined by Section 111.70(1)(o) of the Municipal Employment Relations Act.

Dated at Madison, Wisconsin on this 6th day of December, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Gary L. Covelli  
Gary L. Covelli, Commissioner