

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE

No. 19327-A

Assistant Public Health Nursing Superintendent, and thirteen individuals occupying the classification of Public Health Nurse III; that following the conduct of said elections the Union was certified as the collective bargaining representative of the professional nurses in the aforesaid separate unit, as reflected in the Amended Certification of Elections issued on May 15, 1964.

4. That the Union initiated the instant proceeding by petition seeking a determination by the Commission to the effect that Auxiliary Public Health Nurses in the employ of the Bureau are, in fact, presently part of the unit described above, or in the alternative should be accreted to said unit; and that the City opposes such request, contending that said "pool" nurses are temporary employees; that the occupants of said positions were never included in said unit by the Commission; and that the City has never voluntarily agreed to include them in said unit.

5. That sometime prior to the filing of the petition herein the City changed the identity of the various nurse classifications in the Bureau and as a result said classifications are now Public Health Nurse I and II; that since October, 1979 the Bureau has employed the services of nurses classified as Auxiliary Public Health Nurses, which since that time has ranged from six to fifteen positions, and at the time of the hearing herein six individuals were occupying such classification; that said positions, hereinafter identified as pool positions, are filled by professional nurses, who were formerly bargaining unit members or who are on extended leaves of absence therefrom; that a nurse who occupies such a pool position usually designates the number of hours she is available for duty, and indicates her preference as to assignments in the three areas of nursing service provided by the Bureau; that said pool employees except on rare occasions are employed for the purpose of temporarily filling regular full-time or regular part-time nursing positions resulting from temporary vacancies, or leaves of absence involving nurses in the unit; that pool employees are called for active employment on a rotating basis, and in said regard may turn down an assignment; that, in any event, pool employees may not work more than 20 hours per week, nor more than three consecutive months; and that the following tabulation reflects the total number of hours worked by pool members for the twelve month period from May 1, 1981 through April 30, 1982:

<u>Pool Member</u>	<u>Hours</u>	<u>Pool Member</u>	<u>Hours</u>
Bartling	432.1	Olsen	321.7
Bozym	260.0	Pomazal	251.5
Kobs	124.0	Rach	335.0
McGinn	466.0	Salvadori	22.8
Naggs	302.0	Wiciak	267.7
Niedermann	133.0		

6. That the collective bargaining agreement existing between the parties at the time of the hearing herein does not specifically identify the classifications in or excluded from the unit represented by the Union, but merely refers to the "classifications as defined" in the Certifications issued by the Commission; that certain provisions of said agreement relating to the application of fringe benefits, make a distinction between eligible full-time and eligible part-time employees, the latter apparently regularly employed and working 20 hours or more, but less than forty hours, per week; that provisions of said collective bargaining agreement relating to "financial" matters, relating to rates of pay and fringe benefits, were subject to approval, and were approved, by the Common Council of the City, which adopted an ordinance in that regard; and that said "financial" matters include the following:

Salaries	Health Insurance	Owed Time
Pensions	Major Medical Insurance	Terminal
Holidays	Life Insurance	Jury Duty
Sick Leave	Shift and Weekend	Automobile
	Differential	Allowance
Military Leave	Overtime	
Duty Incurred Liability		

7. That, while the Public Health Nurses employed in the pool, except on rare occasions, perform duties identical to those performed by nurses in the bargaining unit represented by the Union, and under the same supervision, and while they receive pay rates identical to unit personnel, as well as identical automobile allowance, they do not receive the remaining "financial" benefits set forth in the

previous Finding of Fact, as a result of an ordinance adopted by the City Council in 1972.

8. That said auxiliary nurse positions, unlike the positions presently covered by the existing collective bargaining agreement, are not civil service positions, but rather they are defined by City ordinance as "temporary" employees, since they are employed less than six months per year; and that, further, since said auxiliary personnel may select or reject work assignments, as well as work locataion, and because of various short-term lengths of their employment, they are, in fact, casual employees, and have not been, and are not, included in the unit represented by the Union.

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

#### CONCLUSIONS OF LAW

1. That individuals occupying the classification of Auxiliary Public Health Nurse in the Bureau of Public Health Nurses, although employed as casual employees, are employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That professional employees occupying the classification of Auxiliary Public Health Nurse in the Bureau of Public Health Nurses of the City of Milwaukee, because their wages, hours and working conditions differ substantially from those applicable to all regular full-time and regular part-time professional nurses occupying the classification of Public Health Nurse, and that, therefore said Auxilliary Public Health Nurses constitute a division separate and apart from said regular full-time and regular part-time Public Health Nurses, and that, therefore all Auxiliary Public Health Nurses, excluding managerial, supervisory and confidential employees, constitute a single and separate appropriate collective bargaining unit within the meaning of Sec. 111.70(1)(e) and (4)(d) 2.a. of the Municipal Employment Relations Act.

3. That a question of representation has arisen among all Auxiliary Public Health Nurses in the employ of the Bureau of Public Health Nurses of the City of Milwaukee, excluding managerial, supervisory and confidential employees, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

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

#### DIRECTION OF ELECTION

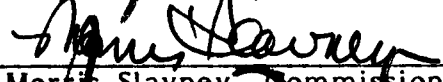
IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the appropriate collective bargaining unit consisting of all Auxiliary Public Health Nurses in the employ of the Bureau of Public Health Nurses of the City of Milwaukee, excluding managerial, supervisory and confidential employees, who were employed as of the date of this Directive, except such employees who may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Staff Nurses Council, Local 5015, AFT, AFL-CIO for purposes of collective bargaining with the City of Milwaukee on wages, hours and conditions of employment.

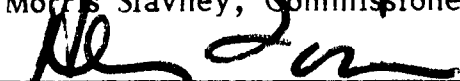
Given under our hands and seal at the City of Madison, Wisconsin this 25th day of August, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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

The Union filed the within petition to clarify the bargaining unit described as follows:

All regular employees having the classifications of Public Health Nurse II, I, Junior Public Health Nurse and Graduate Nurse I, employed in the Health Department of the City of Milwaukee, excluding all other employees, confidential employees, supervisors and executives.

In their most recent agreement, the parties eliminated all but one of the titles included in the above description, i.e. Public Health Nurse. During the course of the hearing the parties stipulated that the description of the unit should be amended. They could not agree to the wording of the description. The Commission has updated the description in a manner it finds appropriate.

Positions of the Parties:

The Union asserts that the position title describing the auxiliary or pool nurse position is reflected in the existing unit description. The Union argues that these "pool" nurses share a community of interest with other Public Health Nurses employed by the City sufficient to warrant their inclusion in the bargaining unit, citing Madison Metropolitan School District, (14161-A, 6746-C) 1/77, where the Commission held that teachers under temporary contract were appropriately included in the bargaining unit with regular full-time and part-time certified teachers. In further support of its argument, the Union cites Arrowhead School District, (17213-B) 6/80, where teacher interns were found not to be casual employees. The auxiliary nurses have regularity in and expectation of continued employment comparable to employees found to be appropriately included in the bargaining unit in Commission decisions in Village of Mt. Horeb, (19188) 12/81, and Village of Monticello, (18463-A) 5/81.

The Union concludes therefore, that the pool or auxiliary nurses should be accreted to the Public Health Nurse bargaining unit.

However, should the Commission clarify the unit in question by excluding the the auxiliary positions from the bargaining unit, the Union's alternate request is that the Commission find that the pool nurses constitute an appropriate unit separate and apart from the bargaining unit being clarified and accordingly direct a representation election among the occupants thereof.

The City, alternatively, avers that the Public Health Nurses who fill auxiliary positions are not regular appointed part-time employees as those clarified into the unit by Commission in Marathon County, (19129, 19130) 11/81, but rather are employees who fill in for regular employees on an irregular part-time basis. They are not entitled to any fringe benefits and have no protection under Civil Service nor the Municipal Employment Relations Act (MERA). The City asserts that the auxiliary nurse is a casual employee analogous to those employees found to be casual in the following cases: Montello School District, (17829) 5/80, Tomah Area School District, (8208-D) 5/78, Joint School District No. 1, (10216) 3/71, and Joint School District No. 3. (10388) 6/71. Hence, the City takes the position that employees who occupy the Auxiliary Public Health Nurse position are excluded from the subject bargaining unit. Moreover, the City is opposed to having

confidential, etc." Such directions and memorandum did not list any auxiliary position either in or out of the unit - simply for the reason that no such auxiliary classifications were in existence at that time. Further, the instant petition reflects the first occasion that either party request a determination as to whether the auxiliary positions are or should be included in the existing unit. Simply put, the unit as certified and as existing to the date of this decision did not include said auxiliary positions, and therefore the Union had no authority to bargain with respect to those positions, and perhaps that is the reason that there exists differences in the benefits received by them and the employees in the bargaining unit.


Contrary to the conclusion of the City, casual employees are employees under the Municipal Employment Relations Act (MERA). 3/ Further, the fact that they are not civil service employees is not determinative as to whether they should be included in the existing unit, whether they constitute a separate unit, or whether they should be included in any appropriate unit.

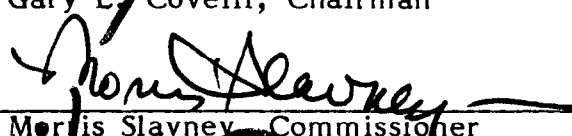
Following the hearing, the City, at the request of the Commission, submitted a document reflecting the number of hours worked by the nurses in said pool positions during the one year period from May 1, 1981. The Union received a copy of said tabulation and accepts the document as being correct. The data therein is summarized in para. 5 of the Findings of Fact.


Since the working conditions of the Auxiliary Public Health Nurses are substantially different from all regular full-time and regular part-time Public Health Nurses in the Bureau, we have concluded that the professionals in said auxiliary positions constitute a division of employees separate and apart from those in the unit presently represented by the Union, and thus, the Commission may, under MERA, establish a separate division as a separate appropriate collective bargaining unit. Because of said circumstances we have found said unit to be appropriate, and the employees in said unit have the right to determine for themselves as to whether they desire to be represented for collective bargaining. Such a determination is not unique among "substitute" professional employees. See Milwaukee Board of School Directors (8901) 2/69. Because of the manner in which said pool employees become members of said pool, and because of the limited size thereof, we have concluded that all employees therein, regardless of the number of hours they may have worked during the year involved, are eligible to vote in the election.

Dated at Madison, Wisconsin this 25th day of August, 1982

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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3/ Wauwatosa Board of Vocational and Adult Education (8158) 8/67.