

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MADISON TEACHERS INCORPORATED
Involving Certain Employees of
MADISON METROPOLITAN
SCHOOL DISTRICT

Case CXXXVI
No. 31779 ME-2232
Decision No. 20836-A

In the Matter of the Petition of
1199W/UNITED PROFESSIONALS FOR
QUALITY HEALTH CARE
Involving Certain Employees of
MADISON METROPOLITAN
SCHOOL DISTRICT

Case CXXXVII
No. 31988 ME-2257
Decision No. 21200

Appearances:

Ms. Susan Weisner-Hawley, Labor Contract Manager, Madison Metropolitan School District, 545 West Dayton Street, Madison, Wisconsin 53703, appearing on behalf of the Municipal Employer.

Kelly, Haus & Katz, Attorneys at Law, by Mr. Stephen G. Katz, 302 East Washington Avenue, Suite 202, Madison, Wisconsin 53703 and Madison Teachers, Incorporated, by Mr. John A. Matthews, Executive Director, 821 Williamson Street, Madison, Wisconsin 53703, appearing on behalf of MTI.

Lawton & Cates, Attorneys at Law, by Mr. Bruce M. Davey, 110 East Main Street, Madison, Wisconsin 53703, appearing on behalf of UP.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT
AND DISMISSING PETITION FOR ELECTION

Madison Teachers, Incorporated, hereinafter referred to as MTI, having on June 16, 1983, filed a petition requesting the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, to clarify a bargaining unit of employees of the Madison Metropolitan School District, hereinafter referred to as the District or the Employer; and a hearing having been held on July 29, 1983, before Daniel J. Nielsen, a hearing examiner on the Commission's staff; and Local 1199W/United Professionals for Quality Health Care, hereinafter referred to as UP, having been allowed to intervene in the matter on the basis of its expressed desire to represent the employees in question; and UP having thereafter filed with the Commission a petition requesting an election among the employees in question; and a stenographic record of the hearing having been made, a transcript of which was received by the Examiner on August 25, 1983; and the parties having submitted written arguments, which were exchanged through the Examiner on September 8, 1983; and the Commission having determined that the issues raised by each petition were essentially identical and should be consolidated for the purpose of decision, and having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby makes the following

No. 20836-A
No. 21200

FINDINGS OF FACT

1. That MTI is a labor organization representing municipal employees for the purposes of collective bargaining; that John A. Matthews is the Executive Director of MTI; and that MTI maintains its offices at 821 Williamson Street, Madison, Wisconsin 53703.

2. That the District is a municipal employer providing educational services to the citizens of the District; that in the provision of said services the District employs professional and non-professional employees; that the Labor Contract Manager of the District is Susan Weisner-Hawley; and that the District maintains its primary offices at 545 West Dayton Street, Madison, Wisconsin 53703.

3. That Local 1199W/United Professionals for Quality Health Care is a labor organization representing employees for the purpose of collective bargaining; that Tracy Suprise is the President and Executive Director of UP; and that UP maintains its offices at 1244 South Park Street, Madison, Wisconsin.

4. That UP is the exclusive bargaining representative for all regular full-time and regular part-time employees of the City of Madison (Department of Public Health) in the classifications of Public Health Nurse, Graduate Nurse, Health Educator, Communicable Disease Specialist and PH Pediatric Nurse Practitioner; that, prior to the 1983-84 school year, nurses in the UP unit were responsible for providing public health services at the Madison Metropolitan Area School District's schools; that these services were provided by contract with the City of Madison; that the City employed approximately twenty-four nurses in its Health Department; that sixteen to eighteen of these nurses were employed as School Nurses; that in the summer of 1982, the District determined to assume the provision of these services directly rather than purchasing them from the City; that as part of assuming the provision of these services, the District determined to hire approximately twelve school nurses representing 10.8 full-time equivalents (FTE); that in July of 1983 the District hired twelve persons for the positions of School Nurse and scheduled these persons to begin their duties with the District on August 23, 1983; and that five of the nurses hired by the District were formerly employed as nurses by the City of Madison Public Health Department.

5. That in June of 1983 the District hired Diane Wood and Deborah Kauffman in the positions of Nurse Practitioner; that the Nurse Practitioner will have one permanently assigned school in which he/she will function as the School Nurse; that the School Nurse duties will occupy approximately twenty percent of the Nurse Practitioner's time; that beyond their School Nurse assignments, the Nurse Practitioners will work with nurses to aid in planning, development and implementation of the nursing practice within the nurses' assigned schools; that one of the Nurse Practitioners will be responsible for schools in the southwest attendance area of the District, while the other will be primarily responsible for schools in the northeast attendance area of the District; that in addition to the above-described responsibilities, the Nurse Practitioners may be individually assigned District-wide responsibility for specific programs; that the Nurse Practitioners will be involved in the interviewing and hiring of Nurse's Aide applicants; that Diane Wood, together with Mary Gulbrandsen, the District's Public Health Services Coordinator, individually interviewed approximately forty-six applicants for the position of Nurse's Aide in July, 1983; that each of these interviewers assigned ratings to the applicants and that Nurse's Aides were hired on the basis of these ratings; that the Nurse Practitioners, together with the Building Principals, will be responsible for evaluating the performance of thirty-five Nurse's Aides employed by the District; that the Nurse Practitioners, together with the school nurses and the building principals, will be responsible for supervising the nurse's aides; that the Nurse's Aides are ultimately supervised by the Building Principal; that the work of the Nurse's Aides is largely routine in nature; that the Nurse Practitioners have the authority to make recommendations as to discipline and transfers of Nurse's Aides, but that the ultimate authority in this area is retained by Gulbrandsen; that the Nurse Practitioner will be involved in screening and interviewing candidates for nurse's positions in the future; that the Nurse Practitioners have not been involved in the screening and interviewing of candidates for nurse's positions in the initial round of hirings; that Gulbrandsen retains the ultimate authority to hire nurses; that the Nurse Practitioner is a lead worker; that the Nurse Practitioners will be members of the Health Services Management Team, a central coordinating body for the Health

Services program in the District; that the Health Services Management Team will set criteria for initial employment, evaluation and discipline; that the Management Team will formulate and implement health programs within the schools; that the Health Management Team will be responsible for establishing policies and procedures for the health services programs in the schools; that the Nurse Practitioner does not possess supervisory duties and responsibilities in sufficient combination and degree so as to constitute a supervisory employee; and that the Nurse Practitioners, by virtue of their participation in the Health Management Team, participate in the formulation, determination and implementation of policy in a significant manner.

6. That the School Nurses employed by the District will be assigned to clusters of schools; that, while some nurses will have only one school, most of the nurses will be responsible for three or four schools; that the School Nurses will travel between the schools according to an established schedule; that the School Nurses will be responsible for the provision of health services to the student and faculty populations of the schools, including provision of emergency nursing services and nursing management of illnesses and accidents; that the School Nurses may, on an ad hoc basis, be involved in the preparation and presentation of units to health classes to the District; that the School Nurses will be involved in multi-disciplinary teams (M-Teams) within the schools for evaluation of student problems; that the School Nurses will sit as members of Building Coordination Teams providing evaluation and services to students with special problems; that the School Nurses will be responsible for health counseling of students and their families as the situation requires; that the School Nurses are required to be certified as school nurses by the Department of Public Instruction within three years of their employment; that the DPI certification is a requirement of the School District rather than the Department of Public Instruction or Department of Regulation and Licensing; that School Nurses are required to be licensed by the Wisconsin Department of Regulation and Licensing; that the work of the School Nurse is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, cannot be standardized by output, and requires knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual study; that School Nurses share a community of interest with other professional employees of the School District; and that a separate unit of School Nurses would constitute undue fragmentation of bargaining units within the District's work force.

7. That MTI is the exclusive bargaining representative for teachers and other related professionals employed by the School District; that the Commission, by Decision No. 14814-C (8/78), ordered that the certification of the "Professionals" unit in the District be amended to read as follows:

All regular full-time and regular part-time teaching and other related professional personnel who are employed in a professional capacity to work with students and teachers, employed by the District including psychologists, psychomotrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading teacher, university hospital teachers, trainable group teachers, librarians, cataloger, educational reference librarian, text librarian, Title I coordinator, guidance counselors, teaching assistant principals (except at Sunny Side School), project assistants, principal investigators, researchers and photographer technician, but excluding supervisor - cataloging and processing, on-call substitute teachers, interns, and all other employees, principals, supervisors and administrators.

that the parties thereafter voluntarily amended the above description by removing from the unit "teaching assistant principal (except at Sunny Side School)" and adding to the unit "teachers on leave of absence, and teachers under temporary contract"; that these changes are reflected in the recognition clause and appendices to the 1980-83 collective bargaining agreement between the District and MTI; that the School Nurses are the only unrepresented professional employees in the District; that all other professional employees of the District are included in the above-described bargaining unit; that the membership of the above-described bargaining unit numbers approximately 1,743; that the School Nurses are properly

included in the category "other related professional personnel who are employed in a professional capacity to work with students and teachers"; and that the inclusion of the School Nurses in the above-described "professionals" bargaining unit does not raise a question of representation in said bargaining unit.

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

CONCLUSIONS OF LAW

1. That the School Nurses employed by the District are municipal employees within the meaning of Sec. 111.70(1)(b), MERA, and professional employees within the meaning of Sec. 111.70(1)(l), MERA.

2. That the Nurse Practitioners employed by the District are not supervisory employees within the meaning of Sec. 111.70(1)(o), Stats., but are managerial employees and are not, therefore, "municipal employees" within the meaning of Sec. 111.70(1)(b), MERA.

3. That a separate unit of School Nurses within the District would not constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., MERA, in that it would unduly fragment bargaining units within the municipal workforce.

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

ORDER CLARIFYING BARGAINING UNIT AND DISMISSING PETITION FOR ELECTION 1/

1. That the positions of Schools Nurses in the Madison Metropolitan School District shall be, and hereby are, included in the unit consisting of professional employees of Madison Metropolitan School District; and therefore the existing certified professional bargaining unit presently represented by Madison Teachers, Incorporated, is hereby amended to read as follows:

1/ 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 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

(footnote continued on page 5)

All regular full-time and regular part-time teaching and other related professional personnel who are employed in a professional capacity to work with students and teachers, employed by the District including psychologists, psychomotrists, social workers, attendants and visitation workers, work experience coordinator, remedial reading teacher, university hospital teachers, trainable group teachers, librarians, cataloger, educational reference librarian, text librarian, Title I coordinator, guidance counselors, teaching assistant principals (except at Sunny Side School), project assistants, principal investigators, researchers, photographer technician, and school nurses but excluding supervisor - cataloging and processing, on-call substitute teachers, interns, and all other employes, principals, supervisors and administrators.

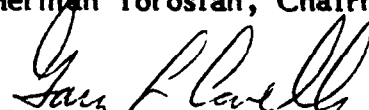
2. That the petition for representation election filed by UP in Case No. CXXXVII, is hereby dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 18th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

1/ (footnote continued)

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.

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 DISMISSING PETITION FOR ELECTION

BACKGROUND

The provision of health services in the Madison schools had, until August of 1983, been accomplished through a purchase of services with the City of Madison Health Department. In 1982, the District determined that it could more economically and efficiently provide the desired level of services through an "in-house" operation. To this end the District terminated its contract with the City after the 1982-1983 school year and set about hiring nurses, advanced nurse practitioners and nurse's aides to staff the District program. In the summer of 1983, thirty-five nurse's aides, twelve school nurses and two nurse practitioners were hired. Five of the nurses hired by the District were formerly employed by the City of Madison as school nurses under the cancelled purchase of services agreement.

In June, 1983, MTI filed the instant petition seeking to accrete the nurses to the existing "professionals" unit. Local 1199W/United Professionals for Quality Health Care, the exclusive representative for the school nurses employed by the City, intervened at the hearing and filed a separate petition for an election in a unit consisting of school nurses. The District joined in UP's arguments for a separate unit, contending that the nurses enjoyed a community of interests sufficiently distinct from those of the other professionals in the existing unit to merit their exclusion therefrom. UP further noted that the School Nurses had a history of bargaining as a separate unit while employed by the City, and urged the Commission to honor this independent history of bargaining. The District argued that, should the Commission add the nurses to the existing unit, the nurses should be allowed to vote on whether they wished such inclusion.

Finally, the District argued, contrary to MTI and UP, that the Nurse Practitioners should be excluded from any unit established on the basis of their supervisory and managerial duties.

DISCUSSION

I. THE APPROPRIATE UNIT

In Madison Metropolitan School District, 14814-C (8/78), the Commission concluded that the description of the District's "professionals" unit should be amended to include ". . . other related professional personnel who are employed in a professional capacity to work with students and teachers . . ." so as to reflect the inclusion of such individuals found appropriate in that proceeding. The threshold question in the instant case is therefore whether the School Nurses fall within this unit description. If so, their appropriate inclusion in the "professionals" unit would follow from the previous action of the Commission.

The School Nurses are plainly professionals employed in a professional capacity to work with students and teachers. None of the parties dispute this, and the record fully supports that conclusion. The issue is whether the nurses are "related professional personnel." The Commission deems "related professional personnel" to refer to those that work in support of the educational process. Referring to Employer's Exhibit #2 2/, it is apparent that the District's Health Services program is designed and intended to integrate the School Nurses into the overall educational process, and specifically to educate children in matters of

2/ "Discussion - Board of Education, February 14, 1983."

health and wellness, as well as maintaining their health. 3/ This places the School Nurses solidly in a supportive role relative to the educational mission of the schools and brings them within the classification of "related professionals." We thus conclude that the work performed by the School Nurses would justify their inclusion in the existing "professionals" unit represented by MTI.

There remains, however, the question of whether the nurses may be "carved out" of the professionals unit and given the option of voting for a separate unit as requested by both UP and the District. The two primary arguments advanced in support of this result are the distinction in the interests of the nurses as professionals from the other professionals and their separate history of representation with their former employer. As noted above, the Commission has already weighed the implications of mixing District employees employed in various professions in a single bargaining unit and has determined that such a combination is appropriate. Obviously, there are significant distinctions between the educational backgrounds, qualifications and job duties of teachers and nurses. The same may be said of psychologists, social workers, researchers, librarians and each of the other professions represented in the existing unit. The common thread among these individuals is their work in support of the educational process. The nurses share this ultimate goal with the other professionals employed by the District, and the Commission is persuaded that the nurse's efforts in support of the educational process overcome the distinctions between their particular profession and those of the other unit members. This is especially so in light of the statutory mandate to avoid fragmentation of bargaining units. 4/

With regard to the argument that these nurses have a history of bargaining separately with their employer, the Commission would note that there is no history of separate bargaining with the School District. Bargaining history is relevant only insofar as it relates to a previously established relationship between the parties. In structuring or revising unit descriptions, the Commission is sensitive to the desirability of not disturbing such a relationship without compelling reason. As there is no such relationship between these employees and this employer, neither UP's status as representative of City nurses nor the fact that five of the twelve School Nurse positions are occupied by former members of the City nurse bargaining unit warrant a separate nurses' unit in this new employer's work force.

II. THE ALLEGED SUPERVISORY/MANAGERIAL STATUS OF THE NURSE PRACTITIONERS

The District asserts that the two Nurse Practitioners should be excluded from the bargaining unit because they are supervisory employees. In evaluating a claim of supervisory status, the Commission considers the following factors:

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 skills or for his supervision of employees;

3/ Employer's Exhibit #2, "PHILOSOPHICAL CONSIDERATIONS," at page 1, and "SERVICE," at pages 1 and 2.

4/ UP and the District suggest that the District may somehow "waive" consideration of the fragmentation argument since the Employer is the primary beneficiary of the statutory policy. The legislature has directed the Commission to avoid fragmentation and adherence to this mandate is not conditioned upon the consent of the Employer. Certainly the positions taken by the parties are relevant to the issue of undue fragmentation, but they are in no way controlling.

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; and
7. The amount of independent judgment exercised in the supervision of employees.

City of Rice Lake, 20791 (6/83) at page 6. It is not necessary that all of these factors be present in order to find supervisory status, merely that a sufficient number or combination of factors be present. Rice Lake, supra, at page 6. Applying the standard set forth above to the facts in the record, it appears that the Nurse Practitioners do not function as supervisors for the nurses or the nurse's aides. The aides' work is directed on a daily basis by the School Nurse and the building principal. While the Nurse Practitioner does have the authority to assign tasks to the aides, the primary duties of the aides are routine in nature, and do not require regular reassignment by their supervisor(s). Furthermore, it appears that the nurse and the building principal may also assign work to the aides. The Nurse Practitioner does have the authority to recommend discipline of an aide, but this too is a function shared by the nurse and the principal, as well as the Health Services Coordinator. The Health Services Coordinator and principal are ultimately responsible for disciplining the aides. The primary support for the District's supervisory argument appears to be the involvement of the Nurse Practitioner in hiring nurse's aides. One of the Nurse Practitioners sat in on the interviews of candidates for the aides' positions and rated the applicants on an equal basis with the Coordinator. The Nurse Practitioner, however, did not prepare the rating system used but rather assigned points on the basis of answers given in the interviews. While this clearly involves the use of independent judgment in evaluating the information provided, the application of judgment and its effect on the hiring process were limited by the use of the criteria established by the Coordinator. While the Nurse Practitioners have significant involvement in the hiring interviews it appears that the Practitioner's authority in the hiring process is not extensive. In combination with other factors, the interviewing might support a conclusion that the Nurse Practitioners were supervisory. Standing essentially alone, however, it will not suffice to exclude them from the unit. The record supports the conclusion, instead, that the building principals are the ultimate supervisors of the aides.

As to the Nurse Practitioners' interaction with the School Nurses, the Commission is convinced that the Nurse Practitioners function as lead workers rather than supervisors. While the Nurse Practitioner may recommend discipline of a School Nurse, the Coordinator admitted that she would conduct an independent investigation before taking any disciplinary steps. The Nurse Practitioners will provide leadership and support to the nurses, but supervisory authority over the nurses is vested in the Coordinator. We therefore conclude that the Nurse Practitioner does not function as a supervisory employe over either the aides or the School Nurses, and accordingly the Nurse Practitioners may not be excluded from the bargaining unit on that basis.

The District maintains that the Nurse Practitioners are managerial employes, irrespective of their supervisory duties. This follows from their membership on, and participation in, the Health Services Management Team, a centralized management team of four persons charged with planning, developing, implementing and evaluating health services within the District. An individual is a managerial employe if he/she participates in the formulation, determination and implementation of policy in a significant manner, or has the effective authority to commit the Employer's resources. City of Rice Lake, supra, at page 6. The duties of the Health Services Management Team, as detailed in the outline prepared by the District in February of 1983, include inter alia development of specific programs to implement general health services, establishment of the systems by which health services will be delivered, programming for staff development, determination of standards of practice for nurses and nurse's aides and coordination of personnel policies and procedures in the Health Services Program. There is little question that performance of these functions would significantly

enmesh the members of the Management Team in the formulation, determination and implementation of policy. Moreover, the Nurse Practitioners would constitute 50% of the regular membership on the Team. If the Management Team system envisioned by the District does in fact operate as designed, the Nurse Practitioners, by virtue of their membership on the Team, would be more closely aligned with the interests of management than those of the other related professionals. We therefore find that the Nurse Practitioners are managerial employees and excluded from the bargaining unit. 5/ Should it develop that the actual duties performed by the Nurse Practitioners do not parallel the record evidence supporting their exclusion from the unit, MTI has available the option of petitioning for clarification of the positions into the unit based upon changed circumstances.

III. THE DISTRICT'S REQUEST FOR A VOTE

The District argues that even if the Nurses are not a separate bargaining unit, the Nurses should be given a vote on whether to be included in the professionals unit or to remain unrepresented. We are satisfied that no such vote is warranted in these circumstances for there is nothing in the record which suggests that the addition of the twelve nurses to the unit of approximately 1743 other employees would jeopardize MTI's majority status. 6/ We therefore have ordered the amendment of the existing certified unit of professionals to include the School Nurses without a vote.

Dated at Madison, Wisconsin this 18th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

5/ We note that the Nurse Practitioners had not actually begun their duties at the time MTI filed the instant petition.

6/ See, for example, Joint School District No. 2, City of Sun Prairie, 20459 (3/83).