

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DISTRICT 1199W/UNITED
PROFESSIONALS FOR QUALITY HEALTH
CARE, affiliated with the
National Union of Hospital and
Health Care Employees, RWDSU,
AFL-CIO

Involving Certain Employees of

WAUSHARA COUNTY
(HEALTH DEPARTMENT)

Case XIII
No. 32315 ME-2288
Decision No. 21422

Appearances:

Johnson, Cullen & Weston, Attorneys at Law, by Ms. Roz Simon, 20 North Carroll Street, Madison, Wisconsin 53703, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. James R. Macy, P. O. Box 1278, Oshkosh, Wisconsin 54902, appearing on behalf of the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

District 1199W/United Professionals for Quality Health Care, affiliated with the National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, having on October 20, 1983 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, in a claimed appropriate bargaining unit consisting of all regular full-time and regular part-time registered nurses employed by Waushara County, but excluding guards, supervisors and all other employees to determine whether said employees desired to be represented for the purpose of collective bargaining by said Union; and a hearing having been held on November 23, 1983, in Wautoma, Wisconsin, before Examiner Mary Jo Schiavoni; and the County having submitted a brief on December 7, 1983, and the Union having submitted a reply brief on December 22, 1983; and the Commission, having considered the entire record and arguments of the parties, and being fully advised in the premises herein, hereby issues the following.

FINDINGS OF FACT

1. That District 1199W/United Professionals for Quality Health Care, affiliated with the National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 1244 South Park Street, Madison, Wisconsin 53715.

2. That Waushara County, hereinafter referred to as the County, is a municipal employer having its offices at the Waushara County Courthouse, Wautoma, Wisconsin 54982; and that among its governmental functions, the County maintains and operates a Health Department, wherein individuals occupying the following classifications are employed:

Director of Health Services	1
Coordinator of Home Health Care	1
Administrative Assistant	1
Registered Public Health Nurses	12
Licensed Practical Nurse	1
Home Health Aides	3
Secretaries and Clerk Typists	3

3. That the only professional employees in the County's Health Department are registered nurses.

4. That on October 20, 1983, the Union filed a petition requesting to represent the professional employees in the County's Health Department, i.e., all regular full-time and all regular part-time registered nurses; that the County contends that this requested unit is not an appropriate unit within the meaning of Sec. 111.70(4)(d)2.a., Wis. Stats., and that to be appropriate it must include all employees of the Health Department, both professional and non-professional; that the County also argues that the home health care coordinator is a supervisory and/or managerial employee and should be excluded from the bargaining unit, while the Union argues that she is neither a supervisory nor managerial employee and should be included in the bargaining unit; and that the Union argues that the administrative assistant is a supervisory and/or managerial employee who should be excluded from an over-all unit, while the County argues that she is neither a supervisory nor a managerial employee and should therefore be included in the unit.

5. That the department operates during normal business hours with weekend coverage for emergencies; and that the director of health services is responsible for the overall operations of the department and for the direct supervision of four registered nurses located in the public health division of the department; and that the director also oversees both the office support staff including the administrative assistant and three other clerical employees, and the home health care employees in the home health care division where the home health care coordinator is located along with eight other registered nurses, one licensed practical nurse and three home health care aides.

6. That the Union's non-inclusion of non-professional health department employees does not render the petitioned-for bargaining unit inappropriate; and that the collective bargaining unit requested by the Union consists exclusively of professional employees of the County's Health Department and is an appropriate unit for collective bargaining.

7. That the home health care coordinator, Ellen Knipp, is a part-time employee assigned to and responsible for the operation of the home health care division; that she is a registered nurse; that she reports directly to the director of health services; that she spends forty to fifty percent of her time assessing patients and their needs through home visits and on follow-up paperwork; that she spends twenty to twenty-five percent of her time on assigning cases to the home health care nurses and aides, based primarily upon their caseload and the geographic location of the patients and nurses, and monitoring the required reports which they file; that such reports and records are checked primarily for completeness and to ensure compliance for Medicare approval; that she spends ten percent of her time on coordinating patient health care between the County and two hospitals which she visits; that she spends between two and eight percent of her time in the actual patient care of one or two patients she has assigned to herself; that the remainder of her time is spent on attending and preparing for inservices, and planning for the home health care division; that the duties of home health care coordinator relating to supervision consist of monitoring the activities of the home health care nurses and aides in a routine fashion and are similar to the duties of a lead person; that the home health care coordinator does not hire, fire, promote, transfer or discharge employees nor does she effectively recommend such action; that with respect to hire, she, on one occasion, recommended an individual for employment, which recommendation was not followed; that she does not possess the authority to issue written reprimands; that the home health care coordinator does review the nurses' reports to ensure that they are filled out completely, but refers persistent problems to the director of health services for further disciplinary action; that she does not evaluate employees'

performance; that there is no evidence that she has participated in disciplinary proceedings with respect to employees in the home health care division of the department; that she has the authority to relieve an employee from duty in emergency situations but that she has never exercised it; that the home health care coordinator does not have a significant input into personnel decisions of the home health care division; that, while the home health care coordinator does make assessment visits and patient assignments to the home health care nurses based upon those assessments, other experienced staff nurses also make such assessment visits and case assignments from time to time; that similarly, another experienced staff nurse also performs hospital coordination in addition to the home health coordinator; that the home health coordinator has not participated in preparation of the budget; that, although she has the authority to order supplies from the department's budget, these purchases are for low-cost or inexpensive items, and that other staff nurses possess this same authority to order supplies; that, although the home health care coordinator may be, and often is, consulted on certain minor procedural or policy decisions regarding the home health care division, her input into the decision-making process is not substantive; and that her recommendations are presented to the director of health services who may or may not concur with these suggestions.

8. That the home health care coordinator does not possess supervisory duties and responsibilities in sufficient combination and degree to be a supervisory employee.

9. That the home health care coordinator does not participate in the formulation, determination, and implementation of policy to a significant degree nor does she have the effective authority to commit the County's resources.

10. That inasmuch as a health department professionals only unit is an appropriate unit, it is unnecessary to determine whether the administrative assistant, a non-professional employee, is a supervisory and/or managerial employee within the meaning of the Municipal Employment Relations Act.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time professional employees employed by the Waushara County Health Department, but excluding supervisory, managerial, confidential and all other employees, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

2. That the home health care coordinator position is neither supervisory nor managerial in nature, and that therefore the occupant of said position who is both a professional employee, and a "municipal employee" within the meaning of Sec. 111.70(2)(b) of the Municipal Employment Relations Act, is appropriately included in the bargaining unit set forth above.

3. That a question of representation within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act has arisen among the municipal employees in the collective bargaining unit set forth in paragraph 1, above.

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

DIRECTION OF ELECTION

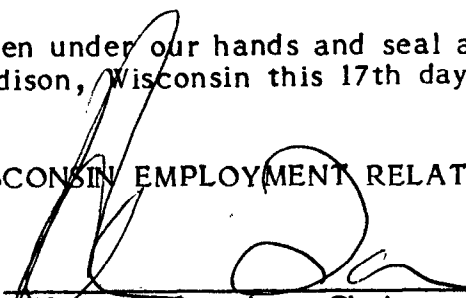
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all full-time and regular part-time registered nurses employed by the Waushara County Health Department, but excluding supervisory, managerial, confidential and all other employees, who were employed by Waushara County on February 17, 1984, except

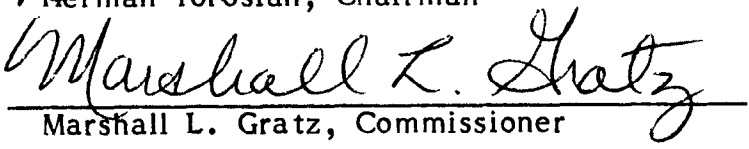
such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees desire to be represented by District 1199W/United Professionals for Quality Health Care, affiliated with the National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, for the purpose of collective bargaining with Waushara County on wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

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

The parties in the instant matter have raised three issues for resolution. The County argues that the unit in which an election is sought is not a proper unit within the meaning of the Municipal Employment Relations Act (MERA), and that it would be an appropriate unit in this case only if expanded to include the non-professionals. The Union, while maintaining that it desires a unit limited to professional employees of the Health Department, would, however, participate in an election, should the Commission decide that the only appropriate unit is the overall unit proposed by the County.

The parties also dispute the status of two employees. The County contends that the home health care coordinator is a supervisory and/or managerial employee. The Union disagrees. The Union, on the other hand, maintains that the administrative assistant is a supervisory and/or managerial employee, which the County disputes.

The Appropriate Unit or Units:

The County argues that the unit requested by the Union is not an appropriate bargaining unit. It stresses that the overriding determinative factor is to avoid fragmentation by maintaining as few units as practical in keeping with the size of the total municipal work force. It argues that there is a bargaining history of both professionals and non-professionals meeting as a group to bargain with the County's Personnel Committee. It also argues that both professionals and non-professionals enjoy common supervision, wages, hours, and working conditions.

Section 111.70(4)(d)2.a. of MERA states as follows:

. . . The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

This language supports the Union's view that inclusion of the non-professionals is not necessary for the Commission to find the unit appropriate. While we are mindful that this decision, in this instance, results in the exclusion of eight non-professional employees from the bargaining unit, the statute does not contemplate their combination in a bargaining unit with professionals absent the assent by vote of a majority of professionals. Nor in our view does the statutory anti-fragmentation policy require that the professionals' willingness for such a combination be tested where no petitioning organization seeks to represent such a combined unit. Nor would such an outcome be required by the County's practice of dealing with departmental employee groups of combined professionals and non-professionals.

Accordingly, the unit requested by the Union is not rendered inappropriate by its non-inclusion of non-professionals. That was the County's only basis for requesting other than the petitioned-for unit. Thus, we have concluded that a unit of all professional employees in the Health Department is appropriate. 1/

1/ While registered nurses constitute all the Health Department professional employees currently, we have revised the petitioned-for unit description to cover all the professional employees in the Department.

Inasmuch as we have concluded that a unit consisting exclusively of professionals is appropriate, it is unnecessary to determine whether the administrative assistant, a non-professional, is a supervisory and/or managerial employee.

Home Health Care Coordinator:

Section 111.70(1)(o)1 provides as follows:

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

The Commission, in determining whether the statutory criteria of Sec. 111.70(1)(o)1 are present in sufficient degree or combination to warrant the conclusion that the position is supervisory, considers the following criteria:

1. The authority to recommend effectively 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;
5. Whether the supervisor is primarily supervising an activity or 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 and discretion exercised in the supervision of employees. 2/

Not all of the above factors considered by the Commission in determining supervisory status need be present, but if they appear in a sufficient combination the Commission will find an employee to be a supervisor. 3/

A review of the record regarding the duties and responsibilities of the home health care coordinator convinces the Commission that the factors necessary to find the position supervisory are not present in sufficient combination or degree to warrant such a conclusion.

The home health care coordinator is a registered nurse who works on a part-time basis. She reports directly to the director of health services and oversees operations in the home health care division of the Health Department. She spends substantial portions of her time in patient assessment, case assignment, hospital coordination and monitoring required reports written by the other home health care nurses. The record reveals that these records and reports are checked primarily for completeness and to ensure compliance with Medicare

2/ City of Milwaukee (6960) 12/64; City of Manitowoc (18590) 4/81.

3/ Dodge County (17558-C) 2/3/81; City of Lake Geneva (18507) 3/81.

requirements. Smaller portions of her time are spent in direct patient care and on attending and preparing for department inservices. The home health care coordinator's auxiliary supervisory duties consist of monitoring the activities of the home health care nurses and aides in a routine fashion similar to that of a lead person. The home health care coordinator does not hire, fire, promote, transfer or discharge employees nor does she effectively recommend such action. She has no authority to issue written warnings nor does she evaluate employees. The record does reveal, however, that she has the authority to relieve an employee from duty in emergency situations, but she has not, to date, exercised such authority. The home health care coordinator does not contribute significant input into the personnel decisions involving the home health care division. The evidence also establishes that, with regard to her patient assessment, case assignment, and hospital coordination duties, other experienced senior nurses have also performed such functions from time to time. Based on the totality of factors herein, we find that the home health care coordinator is not a supervisory employee.

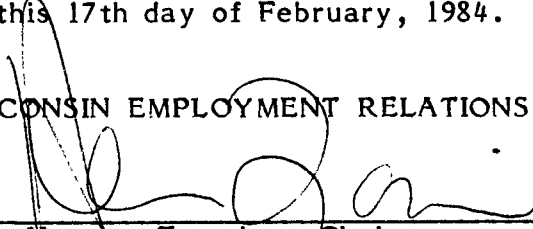
In determining whether an employee is a managerial employee, the Commission has held that the employee must participate in the formulation, determination and implementation of policy to a significant degree or must have the effective authority to commit the municipal employer's resources. 4/

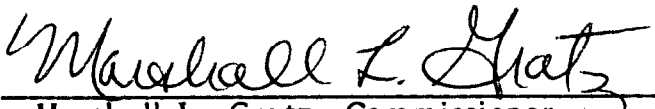
The evidence indicates that the home health care coordinator does not participate in the preparation of the budget and that any purchases or orders for supplies which she makes are for low cost or inexpensive items. Moreover, other staff nurses possess this same authority to order supplies. With respect to participation in policy decisions, the record demonstrates that, although she may be consulted on certain procedural or policy decisions involving the home health care division, the policies are minor and her input into the decision-making process is not substantive nor does she participate to any significant degree. We therefore conclude that the home health care coordinator is not a managerial employee either.

Dated at Madison, Wisconsin this 17th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

4/ Dodge County (18076) 3/83; Green County (16270) 3/78; City of Wausau (14807) 7/76; and School District of Town of Barksdale et al. (Ondossagon) (19667) 6/82.