

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 MUNICIPAL EMPLOYEES,  
AFSCME, AFL-CIO  
Involving Certain Employees of  
OUTAGAMIE COUNTY  
(RIVERVIEW HEALTH CENTER)  
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Case 117  
No. 33740 ME-2386  
Decision No. 22269

Appearances:

Mr. Gregory Spring, and Mr. Jack Bernfeld, Staff Representatives,  
Wisconsin Council 40, AFSCME, AFL-CIO, 1121 Winnebago Avenue, Oshkosh,  
Wisconsin 54901, appearing on behalf of the Union.  
Lindner, Honzik, Marsack, Hayman & Walsh, S.C., by Mr. Jonathan T. Swain,  
700 N. Water Street, Milwaukee, Wisconsin 53202, 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 on August 30, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of Outagamie County to determine whether said employees desired to be represented for the purpose of collective bargaining by said Union; and hearing having been conducted in Appleton, Wisconsin on October 11, 1984, before Mary Jo Schiavoni, a member of the Commission's staff; and a transcript having been prepared and received on October 26, 1984; and the parties having completed their briefing schedule on January 2, 1985, after mutually agreed upon extensions of the briefing schedules; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

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 with offices at 1121 Winnebago Avenue, Oshkosh, Wisconsin 53901.

2. That Outagamie County, hereinafter referred to as the County, is a municipal employer with offices at 410 South Walnut Street, Appleton, Wisconsin 54911.

3. That the County currently operates a 77-bed skilled nursing care facility called Riverview Health Center in Kaukauna, Wisconsin under a skilled care nursing home license granted by the State of Wisconsin.

4. That the parties stipulated that in the event an election is held the appropriate unit for collective bargaining is as follows: all regular full-time and regular part-time employees employed at the Outagamie County Riverview Health Center, but excluding professional, craft, confidential, supervisory and managerial employees.

5. That the parties further stipulated to the exclusion of the following positions on the basis of their managerial, supervisory, professional or confidential status: the nursing home administrator, the food service director, the director of nursing, the supervisor/director of maintenance and housekeeping, the social worker, the activity director, a confidential account clerk III, four LPN/supervisors, and the registered nurses.

6. That the parties agreed that in the event an election is to be conducted, the medical records clerk will vote under a challenged ballot and her status determined at a later date.

7. That the physical plant at the health care facility, hereinafter referred to as Riverview, has been found to contain numerous violations of the state and federal regulations regarding nursing care facilities; that Riverview has been permitted to continue operation as a skilled nursing care facility because the State of Wisconsin has granted waivers of those violations based upon a long term plan of correction submitted by Riverview for State approval; that Riverview's physical plant consists of two parts: the first consists of two stories and a basement, and was originally built in 1914 and the second is an addition to the original building consisting of three stories and a basement all constructed in 1934; and that specific violations which have been found by the State's inspecting engineer relate to the structural composition of the building itself.

8. That in order to continue operating as a skilled nursing care facility, both for the short and long term, it was necessary to develop a plan of correction for approval by the State; that the original plan of correction for Riverview Health Center was submitted in 1981; that this original proposal was to rebuild Riverview in the form of a 120-bed skilled care facility; that, however, a State moratorium at the time prevented the County from increasing the number of beds; that this moratorium has been translated into a current cap on the number of additional beds; that because of the moratorium, the County's original plan of correction was denied by the State; that following this denial, the County was again required to submit a plan of correction for the continuing deficiencies; that the County employed an architectural firm to prepare cost estimates on various proposals, including the building of a new facility and the cost of remodeling the present physical plant; that this study demonstrated that the cost to remodel or renovate the current physical plant would exceed the cost of building an entire new facility; that since it would not be cost effective to renovate, the County decided to attempt to rebuild Riverview Health Center subject to State approval; that the decision made was to submit a plan to the State to rebuild a 77-bed facility on the current site, in conjunction with a 74-unit apartment complex to be built adjoining the nursing care facility; that the new building would be located on the present site of Riverview Health Center, directly in front of the current facility; that unlike any plans of remodeling, if the plan to rebuild were approved, the operations could continue in the old Riverview facility until the new facility was ready for occupancy; and that this plan of correction, as well as an application for a certificate of need from the State approving the rebuilding plans, was submitted on August 30, 1984, on the same date as the petition in the instant case was filed.

9. That before the County can rebuild the Riverview Health Center, the State must approve the project and issue a certificate of need; that the State's decision is due by the 15th of December, although the State has authority to extend that date an additional 60 days; that no later than February 15, the State must notify Riverview as to its approval or rejection of the proposal to rebuild the Riverview Health Center; that if the proposed plan of correction is accepted the County will then proceed with the rebuilding of the Riverview Health Center; that, if the plan of correction is rejected, the County may appeal the decision if denied authorization to rebuild or it may correct the building deficiencies in some other manner; that the County would be required to submit a new or amended plan of correction within a fairly short period of time; that the alternatives, should a new or amended plan be submitted, would range from closing the facility entirely, to changing the facility from skilled care to intermediate care with a corresponding reduction of staff; and that a decision by the County regarding the future operation of Riverview has not been made at this time and need not be made until exhaustion of the appeals procedure which decision could take an additional six months.

10. That the only issue before the Commission is whether it is appropriate to hold the petition in abeyance or to go forward with an election at this time; that the County takes the position that an election would be inappropriate at this time due to the substantial uncertainty created by the State in approving the County's plan to rebuild the health care facility, and maintains that the employees' best interests will be served by holding the petition in abeyance until the uncertainties of the rebuilding determination to be made by the State are resolved; that the Union opposes the holding of the petition in abeyance and request that an election be conducted forthwith.

### CONCLUSIONS OF LAW

1. That it is inappropriate to hold the petition for election in abeyance in the instant circumstance.

2. That all regular full-time and regular part-time employees employed at the Outagamie County Riverview Health Center excluding professional, craft, confidential, managerial and supervisory employees, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

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 Conclusion of Law 2 above.

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

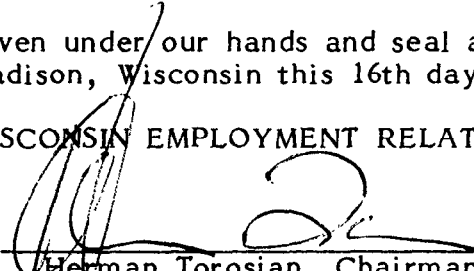
### DIRECTION OF ELECTION

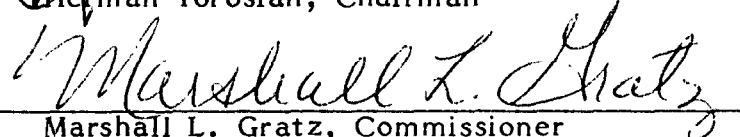
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees employed at the Outagamie County Riverview Health Center excluding professional, craft, confidential, managerial, and supervisory employees, who were employed by Outagamie County on January 16, 1985, 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 voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purpose of collective bargaining with Outagamie County on wages, hours and conditions of employment, or whether such employees desire not to be so represented by said labor organization

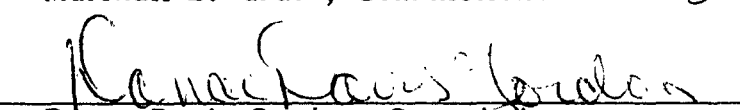
Given under our hands and seal at the City of  
Madison, Wisconsin this 16th day of January, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

OUTAGAMIE COUNTY (RIVERVIEW HEALTH CENTER)

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

BACKGROUND

The parties stipulated that the unit described in Findings of Fact 4, above, is an appropriate bargaining unit if the State decides to allow the County to rebuild its Riverview facility. The County argues, however, that the Commission should not order an election in that or any other unit involving the instant employees until uncertainties concerning the scope, nature and location of the County's nursing home operations are resolved.

POSITIONS OF THE PARTIES

The County argues as follows. The State is due to decide by February 15, 1985, whether or not to allow the County to build a replacement facility for Riverview. If the State decides not to allow the County to build a new facility, then the County would find it necessary to alter the scope, nature and/or location of some or all of its nursing home operations. Therefore, conducting a representation election in the stipulated unit is not proper at this time because:

1. WERC cannot now know that the stipulated unit will be an appropriate unit in the context of the operations if they change substantially as is possible.

2. Until it is known whether and what changes will be made in the County's operations, WERC cannot know which of the employees will lack a reasonable expectation of continued employment so as to be ineligible to vote. WERC therefore cannot now be certain that an election among the current complement of employees will be representative of the bargaining unit complement after any such changes are implemented.

3. Employees ought not be put to a choice of union representation or no union representation in the context of significant uncertainties about their job security and the nature of their employer's operations.

The Union argues that the degree of uncertainty existing in this case is not sufficient to warrant denying the employees in the stipulated bargaining unit an immediate opportunity to obtain representation if that is their majority will.

DISCUSSION

We are satisfied that it is proper to direct an election in the stipulated unit at the present time and without awaiting developments concerning possible State decisions and possible County responses thereto.

In cases of this kind, we must balance the possibility that future operational changes will make the stipulated unit inappropriate or render the current employee complement unrepresentative of future complements of nonsupervisory Riverview employees, against the interests of the current complement of Riverview employees in immediate exercise of their statutory right to choose whether to bargain collectively with the County through a majority representative.

The County has shown, at best, that it may be making significant changes in the nature of its delivery of nursing home services at some time in the future. Thus, it is possible that the County will ultimately make changes that (1) deprive some of the employees currently in the stipulated bargaining unit of a reasonable expectation of continued employment; (2) reduce and change the Riverview complement to a group of which the current complement is unrepresentative; and/or (3) perhaps render the stipulated bargaining unit inappropriate. At present, however, it is speculative whether any such changes will be made. In any event,

no date certain has been established on which any such material changes will be implemented. 1/

In such circumstances, the clear and present interests of the current Riverview complement in having a prompt opportunity to vote on representation outweighs the distant and speculative possibility that the present voting group will be less representative of future Riverview complements than a voting group identifiable only at some indeterminate later date. 2/

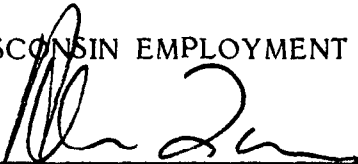
The County also argues that it is somehow unfair to employees to conduct a representation election at a time when possible changes in the County's operations of potential significance to the employees and their jobs are under consideration. We find no merit in that contention. To be sure, job security and other employee concerns may be heightened in the context of talk of possible changes in the County's nursing home operations. However, a heightened degree of employee concern about their economic futures in light of possible County actions is not a reason to deprive the employees of their statutory right to decide as a group whether and by whom they wish to be represented for purposes of collective bargaining with the County about their wages, hours and conditions of employment.

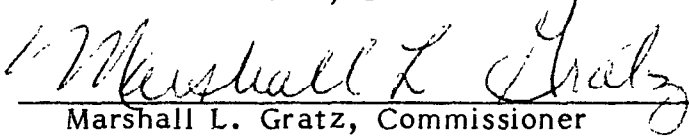
Accordingly, we have directed an election forthwith in the stipulated unit. As agreed by the parties, the employee occupying the position of medical records clerk will be permitted to vote by challenge and the status of her position determined in this proceeding only if her vote would affect the outcome.


Dated at Madison, Wisconsin this 16th day of January, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

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1/ In contrast, both of the NLRB cases relied upon by the County involved Employer plans to take specified actions on dates certain. See, Douglas Motors Corp., 128 NLRB 307 at 308 (1960) and Plum Creek Lumber Co., Inc., 214 NLRB 619 (1974).

2/ See generally, Mandar Inn II, Dec. No. 14250 (WERC, 1/76); and Family Heritage Nursing Home, Dec. No. 8265 (WERC, 11/67).