

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
GENERAL TEAMSTERS UNION, LOCAL 662 and :
BECKY POIRIER, SUE BRENNEMAN, : Case 43
JULIE RIEMER, INGRID PURVIS, : No. 46187 ME-3158
DEBRA BERENDS AND JULIE SINONO 4/ : Decision No. 27360
Involving Certain Employees of :
TAYLOR COUNTY :
- - - - -

Appearances:

Ms. Becky Poirier, c/o Taylor County Human Services Department, 224 South Second Street, Medford, Wisconsin 54451, appearing on her own behalf.
Ms. Christel Jorgensen, Business Representative, General Teamsters Union, Local 662, 119 West Madison Street, P.O. Box 86, Eau Claire, Wisconsin 54702, appearing on behalf of the Union.
Mr. Charles Rude, Personnel Director, Taylor County, 224 South Second Street, Medford, Wisconsin 54451, appearing on behalf of the County.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER DISMISSING PETITION FOR ELECTION

On August 28, 1991, General Teamsters Union, Local 662 and Becky Poirier, Sue Breneman, Julie Riemer, Ingrid Purvis, Debra Berends and Julie Sinono filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission conduct an election to determine whether the Taylor County registered nurses should be represented by General Teamsters Union, Local 662 in a collective bargaining unit consisting of all registered nurses employed by Taylor County. The six individually-named petitioners are the registered nurses employed by Taylor County. They are currently included in a collective bargaining unit of Human Services Department employees which is represented by General Teamsters Union, Local 662. Taylor County objected to the proposed bargaining unit. Hearing on the petition was held November 21, 1991 in Medford, Wisconsin before Raleigh Jones, a hearing examiner designated by the Commission. Present at the hearing were petitioner Poirier, the Union and the County. Although petitioner Poirier made a formal appearance at the hearing, she did not appear as the nurses' representative or question witnesses. Instead, she and the other individually-named petitioners were represented at the hearing by Local 662. Afterwards, the Union and the County filed briefs which were received by December 26, 1991. A transcript of the hearing was supplied to the Examiner on March 3, 1992, whereupon the record was closed. Being fully advised in the premises, the Commission makes and issues the following

4/ The Notice of Hearing indicated that the Petitioner in this matter was General Teamsters Union, Local 662. Although the election petition was filed and processed by Local 662, it was actually signed by Becky Poirier, Sue Breneman, Julie Riemer, Ingrid Purvis, Debra Berends and Julie Sinono. The caption has been modified to reflect same.

FINDINGS OF FACT

1. Taylor County, hereinafter the County, is a municipal employer with its offices located at the Taylor County Courthouse, 224 South Second Street, Medford, Wisconsin 54451.

2. General Teamsters Union, Local 662, hereinafter the Union, is a labor organization with its offices located at 119 West Madison Street, P.O. Box 86, Eau Claire, Wisconsin 54702. It is currently the exclusive bargaining representative of all regular full-time and regular part-time professional employees of Taylor County employed in the Courthouse and related departments and the Human Services Department, excluding supervisory, managerial, confidential and all other employees. This certified bargaining unit, which has existed since 1981, 5/ consists of 13 social workers and six registered nurses.

3. Becky Poirier, Sue Breneman, Julie Riemer, Ingrid Purvis, Debra Berends and Michelle Armbrust are the six registered nurses employed by Taylor County who are included in the bargaining unit referred to in Finding of Fact 2.

4. The instant proceeding was initiated when the Union and the six registered nurses employed by Taylor County filed the instant election petition seeking the creation of a separate bargaining unit for the registered nurses apart from the existing bargaining unit noted in Finding of Fact 2. The County opposes the creation of a separate unit for the registered nurses.

5. There are currently four bargaining units in the County: a highway unit consisting of 30 employees represented by AFSCME, a sheriff's deputies unit consisting of 13 employees represented by the Teamsters, a non-professional unit consisting of 60 employees working in various departments represented by AFSCME and the professional unit at issue herein. There are no other unrepresented professional employees in the County.

6. The Nursing Services Department provides health and nursing services to the residents of Taylor County. Patty Krug is the director of the Department. She directs and supervises the six registered nurses who provide public health and home care. Public health nursing involves the prevention of illness by means of immunizations, flu clinics, screenings and health education. Home care nursing involves scheduled nursing care under the orders of a physician. All six nurses are interchangeable and can handle either job function. The Nursing Services Department is located in the County Courthouse. The hours of work for the department are 8:00 a.m. to 4:30 p.m., Monday through Friday, with appointments outside those hours scheduled as needed. Weekends and holidays are handled on an on-call basis. The Nursing Services Department is overseen by the Taylor County Health Committee, which consists of County board members and lay persons.

7. The Human Services Department provides social and economic services to the residents of Taylor County. Sue Hady is the director of the Department. She supervises, *inter alia*, 13 employees who are generically known as social workers. The Human Services Department is located about one mile from the Courthouse. The hours of work for the department are 8:30 a.m. to 4:30 p.m. on Monday, Wednesday and Friday and 8:30 a.m. to 8:00 p.m. on Tuesday and Thursday. Weekends and holidays are handled on an on-call basis. The Human

5/ Dec. No. 19121 (WERC, 11/81) indicates that the parties stipulated to this unit.

Services Department is overseen by the Taylor County Human Services Board, which consists of County board members and laypersons.

8. The Human Services Department and Nursing Services Department are separate entities. There is no common supervision, governing board, or shared work space between them. Employees from the Nursing Services Department do not work or fill in for employees in the Human Services Department and vice versa. The relationship between the departments is one of coordination for those clients who have both social-economic and health needs. There are client referrals between the two departments. Additionally, on occasion there are joint home visits by employees from both departments. When this happens, the nurse deals with the client's health needs while the social worker deals with the client's social needs.

9. Under the present labor agreement, social workers and nurses receive the same rate of pay. On two occasions in recent negotiations, nurses could have received more money than the social workers. When this happened, the majority social workers prevented the nurses from receiving a larger pay increase than was given to the social workers. As a result, a split has arisen between the two employee groups.

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

CONCLUSION OF LAW

1. A collective bargaining unit consisting of all regular full-time and regular part-time registered nurses of Taylor County, excluding supervisory, managerial, confidential and all other professional employees of the County is not an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

ORDER 6/

6/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision

The petition for election is dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of August,
1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

William K. Strycker, Commissioner

I dissent.

Herman Torosian, Commissioner

specified in s. 227.52 shall be entitled to judicial review thereof as
provided in this chapter.

Continued

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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.

TAYLOR COUNTY (COURTHOUSE)

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSION OF LAW AND ORDER
DISMISSING PETITION FOR ELECTION

POSITIONS OF THE PARTIES

It is the Petitioners' and Union's position that a separate bargaining unit for the nurses should be established. In support thereof, they first contend that the community of interest between the social workers and nurses is minimal at best. They note in this regard that there is no common supervision between the two employe groups, no interchange to speak of between them and no common work site. Next, they assert that the nurses have been the victim of majority rule at the bargaining table because they are outnumbered two to one by the social workers. According to the Petitioners and the Union, this has resulted in several situations where additional money for just the nurses was vetoed by the majority social workers. The Union submits that under the present circumstances, its ability to represent the minority nurses was and is inhibited by the existing makeup of the bargaining unit. In their view, change is needed so that the interests of the nurses are not continually subordinated to that of the social workers. Finally, they assert that the creation of a nurses unit will not create undue fragmentation of bargaining units.

The County opposes the creation of a separate bargaining unit for the nurses. It wants to maintain the existing professional unit which consists of social workers and nurses. In support thereof, it argues that both employe groups share a community of interest because both provide social and medical services to those people in need because of their economic, physical or mental condition. In the County's view, the fact that social workers and nurses have separate supervision and a separate workplace should not change this result. According to the County, the factor that should be controlling here is avoiding undue fragmentation of bargaining units. Simply put, the County believes it would be counterproductive to create a fifth bargaining unit solely for the nurses. It notes in this regard that if the nurses are successful in getting their own unit, this unit would be just half the size of the County's smallest existing unit (i.e., the sheriff's deputies unit which is composed of 13 employes). It therefore asks that the requested nurses unit not be established.

DISCUSSION

Section 111.70(4)(d)2.a., Stats., provides in pertinent part:

The commission shall determine the appropriate bargaining unit for the purposes of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. . . .

When exercising our statutory discretion to determine whether a proposed

bargaining unit is appropriate, we have consistently considered the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employees share similar interests, usually -- though not necessarily -- limited to those interests reflected in Factors 2 - 5. This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court. 7/

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." 8/

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/ employer relationship. 9/ Although listed as a separate component, under some

7/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580, 592 (1984):

. . . when reviewing the commission's decisions, it appears that the concept (community of interest) involves similar interests among employees who also participate in a shared purpose through their employment. (Emphasis supplied.)

8/ Section 111.70(4)(d)2.a., Stats.

9/ Marinette School District, Dec. No. 27000 (WERC, 9/91).

circumstances, analysis of bargaining history can provide helpful insights as to how the parties, themselves, have viewed the positions in question in the past from the standpoint of both similar interests and shared purpose.

Based upon long-standing Commission precedent, we believe it is well understood by the parties that within the unique factual context of each case, not all criteria deserve the same weight 10/ and thus a single criterion or a combination of criteria listed above may be determinative. 11/

We acknowledge that registered nurses (RNs) perform professional services under the aegis of one clearly identifiable profession. In this sense they appear to possess a shared purpose. 12/ By having essentially the same duties, skills, wages, hours, working conditions, workplace and supervision, they also share similar interests. Nonetheless, application of factors 6 and 7 persuade us that the bargaining unit requested by the RNs is not appropriate.

As noted earlier herein, Factor 6 is generated by Sec. 111.70(4)(d)2.a. Stats., which mandates this Commission to ". . . whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force."

If we were to establish the RN unit requested, we would be creating a diminutive six-person unit at the expense of its parent group -- which itself is of no great size. This, of course, would necessarily result in the existing four bargaining units becoming five -- even though the total number of represented employes would remain at only 122. 13/ In light of this, within the unique, factual context of this case, we believe creation of the requested unit would constitute precisely the kind of fragmentation the statute forbids.

Moreover, since the RNs have been included in the existing unit since 1981, Factor 7 (bargaining history) also favors maintenance of the unit as presently constituted. If these two groups (in conjunction with the County and with the approval of this Commission) originally perceived a sufficient community of interest between them as to justify only one bargaining unit to

10/ Shawano-Gresham School District, Dec. No. 21265 (WERC, 12/83); Green County, Dec. No. 21453 (WERC, 2/84); Marinette County, Dec. No. 26675 (WERC, 11/90).

11/ Common purpose Madison Metropolitan School District, Dec. Nos. 20836-A and 21200 (WERC, 11/83); similar interests, Marinette School District, supra; fragmentation, Columbus School District, Dec. No. 17259 (WERC, 9/79); bargaining history, Lodi Joint School District, Dec. No. 16667 (WERC, 11/78).

12/ We parenthetically note that the record does not preclude a finding of "shared purpose" (albeit a broader one) between the RNs and the social workers, as well.

13/ Given the broad spectrum of county activities in which these 122 represented employes are engaged (highway - 30; sheriff's department - 13; other departments (Courthouse) - 60; all professional employes - 19), inferentially, at least, they may constitute most of the work force employed by Taylor County.

represent both, 14/ subsequent disagreements experienced during collective bargaining on only two occasions do not appear to constitute a change of circumstances sufficient to fracture that original stipulation.

Our colleague cites those two occasions in his dissent. They are of concern to us, as well. We note, however, that during the 11 year existence of this bargaining unit, these were the only instances when RN interests were even arguably "submerged."

We acknowledge that from time to time tensions can arise within any bargaining unit as the bargaining representative seeks to represent fairly the interests of the employees -- interests which are usually similar, but may occasionally appear to assume competitive proportions. In our opinion, however, this neither constitutes a valid basis for finding the existing unit to be "inappropriate," 15/ nor justifies the creation of a separate and otherwise appropriate splinter unit for the dissidents. Should a group of employees fail to receive fair representation, it has recourse to prohibited practice proceedings.

Given the foregoing, we conclude that a separate RN unit is not appropriate.

Dated at Madison, Wisconsin this 17th day of August, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

William K. Strycker, Commissioner

14/ See Taylor County, Dec. No. 19121 (WERC, 11/81).

15/ See Rock County, Dec. No. 26303 (WERC, 1/90) and Milwaukee County, Dec. No. 19753-A (WERC, 2/83), aff'd Case No. 609-864 (CirCt. Milw., 12/83) for the proposition that internal unit disputes are not generally relevant to an appropriate unit determination.

Dissenting Opinion of Commissioner Torosian

I agree with my colleagues that the undue fragmentation and bargaining history factors used when determining appropriate bargaining units favor the continuance of a unit of professional nurses and social workers. I would normally reach the same outcome as the majority in cases similar to the instant case, but the specific facts of this case lead me to conclude otherwise.

Here we have a request for (1) a unit that would otherwise be appropriate 16/ and (2) a history of representation in which the unique interests and aspirations of said proposed unit have clearly been submerged by a larger group of different professionals (13 social workers versus 6 nurses). 17/ The Commission's guiding principle in establishing appropriate bargaining units has been the following:

The Municipal Employment Relations Act recognizes that there is a need for a pattern of bargaining units by organizations of their own choosing, which may be reasonably expected to be concerned with the unique interests and aspirations of the employees in said units. To establish a unit wherein the interest of a large group of employees are likely to be submerged would not, in our opinion, give adequate protection to the rights guaranteed to employees in the Act. However, units cannot be so fragmented so as to be inadequate for viable collective bargaining.

Dane County (10492-A) 3/72; Columbia County (11068) 6/72; City of Kiel (11368) 10/72; City of New Berlin (13173) 11/74; City of Madison (14463-A) 7/76; Lincoln County (16845) 2/79

Here it is undisputed by all parties concerned that the nurses on two recent occasions were offered and could have received a larger wage increase than the social workers, but were denied same by the social workers who constitute a majority of the employees in the combined professional unit.

16/ Section 111.70(4)(d)2.a., Wis. Stats., provides ". . . the commission may decide whether, in a particular case, the employees in the same or several . . . professions or other occupational groupings constitute a unit." (Emphasis added) Nurses are a distinct, separate professional group with different duties and skills, separate supervision and separate work location.

17/ These two conditions were not present in the two cases cited by the majority in Footnote 12.

Further, this is not a situation where the unit as a whole received something else in place of the extra increase proposed to the nurses. Rather, when faced with either accepting the extra increase for nurses or receive nothing at all, the Union, led by the social workers, chose the latter.

Under the very specific facts of this case, I conclude that the factors of undue fragmentation and bargaining history do not outweigh factors 1 - 5, and that the Commission should not exercise its discretion under Sec. 111.70(4)(d)2.a., Wis. Stats., to continue to combine the professions of nurses and social workers into one collective bargaining unit. Therefore, I conclude that a separate unit of nurses is appropriate in this case.

Dated at Madison, Wisconsin this 17th day of August, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Commissioner