

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**1199W/UNITED PROFESSIONALS FOR QUALITY HEALTH CARE, SEIU**  
Involving Certain Employes of  
**UNIVERSITY OF WISCONSIN HOSPITAL & CLINICS AUTHORITY**

Case 1  
No. 55565  
E-3098

**Decision No. 29478-A**

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Appearances:

Cullen, Weston, Pines & Bach, by **Attorney Gordon E. McQuillen**, 122 West Washington Avenue, Suite 900, Madison, Wisconsin 53703, appearing on behalf of 1199W/United Professionals for Quality Health Care, SEIU.

von Briesen, Purtell & Roper, S.C., by **Attorney Steven B. Rynecki**, 411 East Wisconsin Avenue #700, Milwaukee, Wisconsin 53202-4470, appearing on behalf of University of Wisconsin Hospital & Clinics Authority.

**ORDER DENYING PETITION FOR REHEARING**

On October 26, 1998, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit with Accompanying Memorandum in the above matter wherein it was ordered that per diem nurses be included in an existing bargaining unit of "patient care" employes of the University of Wisconsin Hospital and Clinics Authority.

On November 13, 1998, the Authority filed a petition for rehearing pursuant to Sec. 227.49, Stats. asserting that the Commission had made a material error of law.

No. 29478-A

On December 8, 1998, 1199W/United Professionals for Quality Health Care, SEIU, filed a written statement in opposition to the petition.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

**ORDER**

The petition for rehearing is denied.

Given under our hands and seal at the City of Madison, Wisconsin this 11<sup>th</sup> day of December, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**UNIVERSITY OF WISCONSIN HOSPITAL  
AND CLINICS AUTHORITY**

**MEMORANDUM ACCOMPANYING ORDER  
DENYING PETITION FOR REHEARING**

In its petition, the Authority asserts that the Commission erred by concluding that the per diem nurses should be included in the existing patient care unit and then compounded that error by failing to give the per diem nurses the right to vote on whether they wished to be so included. The Authority contends that the per diem nurses do not have the requisite community of interest to be included in the same unit as the regular full-time and regular part-time nurses and that, in any event, it is an absurd interpretation of the statute to require inclusion without a vote. Given the foregoing, the Authority asks the Commission to reverse the decision issued on October 26, 1998.

In its response, 1199 argues that the Authority is simply dissatisfied with the result reached by the Commission in the original decision and has failed to raise any material error of law or fact which would warrant granting the petition. Thus, 1199 asks that the petition be denied.

We have reviewed the matter and concluded that we did not make any material errors of law or fact in our October 26, 1998 decision and thus we have denied the petition.

In our decision, we stated the following:

In our view, the question of whether per diem nurses should be placed in the existing patient care bargaining unit turns on the answers to the following questions:

1. Are per diem nurses “employees” of the University of Wisconsin Hospital and Clinics Authority within the meaning of Secs. 111.02(6)(a) and 111.05(5), Stats., who are therefore entitled to be represented for the purposes of collective bargaining under the Wisconsin Employment Peace Act?

Review of the record and above-noted statutory provisions persuades us the answer to this question is “yes.” Per diem nurses are employed by the Authority and the only exclusions from employe status listed in Sec. 111.02(6)(a) are confidential, managerial, executive and supervisory employes. There is no claim or evidence that the per diem nurses are confidential, managerial, executive, or supervisory employes. Further, the statute does not limit “employe” status to

regular full-time and regular part-time employees and thus casual or temporary employees are entitled to be represented for the purposes of collective bargaining. Thus, even if some or all per diem nurses are casual or temporary employees of the Authority, they are nonetheless eligible to be represented for the purposes of collective bargaining.

2. Are per diem nurses “patient care” employees within the meaning of Sec. 111.05(5)(a), Stats.?

Review of the record persuades us the answer to this question is “yes.” As reflected in the portion of the per diem job description contained in Finding of Fact 3 and the testimony in the record, per diem nurses provide patient care.

3. Does Sec. 111.05(5), Stats., require that all “patient care employees” be included in the same collective bargaining unit?

Review of the statute satisfies us that this question must be answered “yes.” Section 111.05(5)(a), Stats., specifies that there shall be “one unit” of employees engaged in the “function” of “Patient care” and Sec. 111.05(5)(b), Stats., specifies that the creation of additional units is limited to employees who are not engaged in one of the three functions listed in Sec. 111.05(5)(a) – i.e., fiscal and staff services, patient care and science.

Because the per diem nurses are patient care employees of the Authority and because the Legislature has specified that there shall be only one patient care bargaining unit of Authority employees, we read statutes as clearly requiring that the per diem nurses be included in the existing patient care unit represented by the Union.

Given this conclusion, we need not engage in the traditional community of interest analysis which would occur under the Municipal Employment Relations Act (see, *ARROWHEAD UNITED TEACHERS v. ERC*, 116 WIS.2D 580 (1984) and which would be appropriate when and if we are called upon to determine what additional unit(s) should be created under Sec. 111.05(5)(b), Stats.

Nor do we need to determine whether some or all per diem nurses are casual or temporary employees. Even if some or all per diem nurses are casual or temporary employees, we believe they must be included in the same unit as regular full-time and regular part-time employees because the Legislature has specified that all patient care employees shall be in a single unit.

Based on the foregoing, we have ordered that all per diem nurses be included in the existing patient care bargaining unit represented by the Union.

We remain persuaded that the foregoing is correct and is also dispositive of much of what the Authority argues on rehearing. However, to specifically respond to the Authority's contentions about the propriety of including the per diem nurses in the existing unit without a vote, it is useful to make some additional comment.

When interpreting the provisions of the Wisconsin Employment Peace Act, we have not had occasion to discuss whether there are circumstances under which it is appropriate for us to refuse to clarify employes into an existing bargaining unit without a vote. However, we have considered this question under the Municipal Employment Relations Act (MERA). Because there is a substantial similarity of purpose and principal between these two Acts, our MERA decisions are instructive.

As reflected in CITY OF CUDAHY, DEC. NO. 21887-B (WERC, 1/90), under MERA, where, as here, placement of employes in the existing unit is clearly warranted by the existing unit description (i.e. "patient care" employes naturally fall within the confines of the statutorily-described "patient care" unit – particularly when the statute also dictates there shall be only one "patient care" unit), inclusion of the employes in the existing unit by unit clarification without a vote is appropriate unless the inclusion calls into question the incumbent union's continuing majority status. We find no basis for departing from this MERA standard when interpreting WEPA. We further think it apparent that inclusion of some 135 employes in an existing unit of some 935 employes clearly does not call into question 1199's continuing majority status. Thus, our inclusion of the per diem nurses in the patient care unit without a vote was not an error of law.

In closing, it is important to note that our decision does not forever foreclose the "per diem" nurses from voting on the question of whether they wish to be represented by 1199 for the

purposes of collective bargaining. Like all “patient care” unit employes, in any future election which seeks to decertify 1199 or replace it with a different union, the “per diem” nurses included in the existing unit by our decision will be eligible to vote.

Dated at the City of Madison, Wisconsin this 11th day of December, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner