

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT**

On September 11, 1997, District 1199W/United Professionals for Quality Health Care, SEIU, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission asking that an existing bargaining unit of patient care employes of the University of Wisconsin Hospital and Clinics Authority be clarified to include the approximately 135 “per diem” registered nurses who, on average, work at least two shifts per month. The Authority opposed the petition on a variety of grounds. Attempts by the parties to voluntarily reach agreement on the appropriate disposition of the petition were unsuccessful.

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Hearing on the petition was held on February 18, 19 and 26, March 19, and April 16, 1998 in Madison, Wisconsin before Examiner Peter G. Davis. The parties filed post-hearing briefs, the last of which was received June 22, 1998.

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

FINDINGS OF FACT

1. The University of Wisconsin Hospital and Clinics Authority, herein the Authority, is an employer operating a hospital and clinic in Wisconsin and having its principal offices at 600 Highland Avenue, Madison, Wisconsin.

2. District 1199W/United Professionals for Quality Health Care/SEIU/AFL-CIO, herein the Union, is a labor organization functioning as the collective bargaining representative of approximately 935 patient care employees of the Authority.

3. Per diem nurses provide patient care to individuals who seek health care services from the Authority. Per diem nurses work when needed to cover absences of bargaining unit employees, vacancies in bargaining unit positions, and fluctuations in patient needs. The February 1998 Position Description for per diem nurses states in pertinent part:

The Nurse Clinician – Per Diem and Agency is responsible for providing direct and indirect patient care in inpatient and approved surgical and ambulatory care areas. He/she is expected to competently perform the patient care responsibilities of the registered nurse within the assigned work setting.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. Section 111.05(5), Stats., requires that all patient care employees be included in a single collective bargaining unit.

2. Per diem nurses are patient care employees within the meaning of Secs. 111.02(6)(a) and 111.05(5), Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

Per diem nurses are hereby included in the patient care bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin this 26th day of October, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

STATUTORY PROVISIONS

Section 111.02(3), Stats., provides:

(3) “Collective bargaining unit” means all of the employes of one employer, employed within the state, except as provided in s. 111.05(5) and except that where a majority of the employes engaged in a single craft, division, department or plant have voted by secret ballot as provided in s. 111.05(2) to constitute such group a separate bargaining unit they shall be so considered, but, in appropriate cases, and to aid in the more efficient administration of ss. 111.01 to 111.19, the commission may find, where agreeable to all parties affected in any way thereby, an industry, trade or business comprising more than one employer in an association in any geographical area to be a “collective bargaining unit”. A collective bargaining unit thus established by the commission shall be subject to all rights by termination or modification given by ss. 111.01 to 111.19 in reference to collective bargaining units otherwise established under ss. 111.01 to 111.19. Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employes in each separate unit have voted by secret ballot as provided in s. 111.05(2) so to do.

Section 111.02 (6) (a), Stats., indicates:

(a) “Employee” shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a nonconfidential, nonmanagerial, nonexecutive and nonsupervisory capacity, and shall not be limited to the employes of a particular employer unless the context clearly indicates otherwise.

Section 111.05(5)(a), Stats., requires that:

(5) (a) Collective bargaining units for representation of the employes of the University of Wisconsin Hospital and Clinics Authority shall include one unit for employes engaged in each of the following functions:

1. Fiscal and staff services.
2. Patient care.
3. Science.

(b) Collective bargaining units for representation of the employes of the University of Wisconsin Hospital and Clinics Authority who are engaged in a function not specified in par. (a) shall be determined in the manner provided in this section. The creation of any collective bargaining unit for such employes is subject to approval of the commission. The commission shall not permit fragmentation of such collective bargaining units or creation of any such collective bargaining unit that is too small to provide adequate representation of employes. In approving such collective bargaining units, the commission shall give primary consideration to the authority's needs to fulfill its statutory missions.

DISCUSSION

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 "employes" 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 employes and thus casual or temporary employes are entitled to be represented for the purposes of collective bargaining. Thus, even if some or all per diem nurses are casual or temporary employes of the Authority, they are nonetheless eligible to be represented for the purposes of collective bargaining.

2. Are per diem nurses "patient care" employes 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 employes" 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 employes engaged in the “function” of “Patient care” and Sec. 111.05(5)(b), Stats., specifies that the creation of additional units is limited to employes 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 employes of the Authority and because the Legislature has specified that there shall be only one patient care bargaining unit of Authority employes, 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 employes. Even if some or all per diem nurses are casual or temporary employes, we believe they must be included in the same unit as regular full-time and regular part-time employes because the Legislature has specified that all patient care employes 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.

Dated at Madison, Wisconsin this 26th day of October, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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