#### STATE OF WISCONSIN

# BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :			
FOND DU LAC INSTITUTIONS, LOCAL 1366-A :			
WCCME, AFSCME, AFL-CIO :	Case XXII		
The A Declaration Duling Translation	No. 15035 DR(M)-28		
For a Declaratory Ruling Involving : Certain Employes of :	Decision No. 10628-A		
FOND DU LAC COUNTY (COUNTY HOSPITAL) :			
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# **Appearances**:

Mr. Robert J. Mueller, Attorney at Law, and, Mr. Robert V. Fowler, Corporation Counsel, appearing on behalf of the Municipal Employer.

Mr. William Sandoval, and, Mr. Walter Klopp, Representatives, appearing on behalf of the Petitioner.

#### DECLARATORY RULING

Fond du Lac Institutions, Local 1366-A, WCCME, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission issue a Declaratory Ruling to determine whether licensed practical nurses in the employ of the Fond du Lac County Hospital are supervisors and should therefore be excluded from the collective bargaining unit consisting of all regular full time and regular part time employes of Fond du Lac County, employed in its County Hospital, excluding the Superintendent, Assistant Superintendent, professional employes, office clerical employes, and all supervisors; and a hearing having been held in the matter on December 2, 1971, George R. Fleischli, Hearing Officer being present; and the Commission having considered the evidence and arguments and being fully advised in the premises makes and files the following Findings of Fact and Declaratory Ruling.

#### FINDINGS OF FACT

1. That Fond du Lac County, hereinafter referred to as the Municipal Employer, is a Municipal Employer within the meaning of Section 111.70(1)(a) of the Wisconsin Statutes and, inter alia Operates a County Hospital.

2. That Fond du Lac Institutions, Local 1366-A, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, is a labor organization within the meaning of Section 111.70(1)(j) of the Wisconsin Statutes and represents for purposes of collective bargaining certain employes of the Municipal Employer's County Hospital.

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3. That on July 6, 1966, the Petitioner was certified as the representative of all regular full time and regular part time employes of Fond du Lac County, employed in its County Hospital, excluding the Superintendent, Assistant Superintendent, professional employes, office clerical employes, and all supervisors, for purposes of collective bargaining on questions of wages, hours and conditions of employment; that at the time of the election which preceded said certification the Municipal Employer had one licensed practical nurse in its employ at its County Hospital and that said licensed practical nurse was excluded from the stipulated eligibility list and not allowed to vote on the claim that she was a supervisor; and that since said certification, a question has arisen concerning the alleged supervisory status of the eight licensed practical nurses currently employed by the Municipal Employer at its County Hospital.

The Municipal Employer currently employs three registered 4. nurses, eight licensed practical nurses and thirty-eight nursing assistants at its County Hospital; that the three registered nurses work under the direct supervision of the Director of Nursing and are assigned to work each of the three shifts; that said registered nurses have the responsibility for supervising the nursing activities at the County Hospital during their respective shifts; that the eight licensed practical nurses have the responsibility for checking whether there are sufficient nursing assistants on their shift to cover their ward and to call in additional licensed practical nurses in accordance with the seniority roster if there is an insufficient number of nursing assistants available, and the responsibility of reviewing the "nursing" care plan" for the patients in their ward with the nursing assistants to ensure that the orders of the professional staff are properly carried out; that the licensed practical nurses have, on occasion, recommended that probationary employes not be retained and that said recommendations have been followed by the Director of Nursing in cases where the registered nurses are in agreement with the recommendation of the licensed practical nurse; that said licensed practical nurses have no authority to hire or fire but are on occasion called upon to make recommendations regarding job applicants who happen to be within their acquaintance; that said licensed practical nurses like the nursing assistants have the responsibility to help enforce certain work rules by reporting infractions to the Registered Nurse or the Director of Nursing; that said licensed practical nurses spend the majority of their time implementing the "nursing care plan" with regard to patients on their ward, pouring and passing medication and filling out records and reports; and that said licensed practical nurses perform duties primarily associated with the activity of providing nursing care and have insufficient supervisory responsibilities over nursing assistants to justify their exclusion as supervisors.

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

### DECLARATORY RULING

That the licensed practical nurses employed by the Municipal Employer at its County Hospital are not supervisors within the meaning of Section 111.70(1)(o)1 of the Wisconsin Statutes and are

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therefore included in the existing collective bargaining unit consisting of all regular full time and part time employes of Fond du Lac County employed at its County Hospital, excluding the Superintendent, Assistant Superintendent, professional employes, office clerical employes and all supervisors.

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Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of January, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION By II, Commissioner S. ce *lie* 

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For a Declaratory Ruling Involving Certain Employes of FOND DU LAC COUNTY (COUNTY HOSPITAL)	• • • • • • • • • • • • • • • • • • • •	

## MEMORANDUM ACCOMPANYING DECLARATORY RULING

At the time of the 1966 election, the Municipal Employer had five individuals that it then claimed exercised supervisory authority over 33 nursing assistants. The supervisors involved were the Superintendent, the Assistant Superintendent, two registered nurses and one licensed practical nurse. 1/ This represents an employe-supervisor ratio of 6.6 to one. Since the election the Municipal Employer claims that it has substantially increased the number of licensed practical nurses in an effort to exert greater supervision over the nursing assistants. According to the Municipal Employer's argument it now has 12 employes engaged in the direct supervision of 36 nursing assistants. The 12 supervisors would include the Director of Nursing, three registered nurses and eight licensed practical nurses. This would create an employe-supervisor ratio of three to one.

The Petitioner contends that the increase in licensed practical nurses has been in response to pressure from the federal government under the Medicare and Medical Aid programs and has resulted in an increase in the quality of nursing care provided and not in an increase in the number of supervisors of nursing assistants.

The question in this case is not whether the licensed practical nurses are performing duties which require superior responsibility or understanding but whether they are in fact supervisors within the meaning of Section 111.70(1)(o)1. 2/ It is clear that the supervisory duties of the licensed practical nurses working in the Municipal Employer's County Hospital are not sufficient in number

2/ See companion case decided by the Commission this day, Fond du Lac County (Rolling Meadows Home), (10579-A) 1/72.

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<sup>1/</sup> At the hearing the parties could not agree concerning the reason why the one licensed practical nurse was excluded at the time of the election in 1966. Information contained in the original records of that case indicate that the two individuals signing the stipulated eligibility list agreed to exclude the licensed practical nurse as a supervisor. Fond du Lac County (County Hospital), (7616) 7/66.

or degree to justify the conclusion that they are supervisors within the meaning of that section. Their responsibilities consist primarily of supervising the implementation of the "nursing care plan" which is the supervision of an activity rather than people. To the extent that they call in additional nursing assistants and assign work they are performing work more in the nature of that performed by working foremen or leadmen rather than supervisors. Their duties with regard to the enforcement of work rules are no different than the duties of the nursing assistants themselves.

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Dated at Madison, Wisconsin, this 11th day of January, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION By Chairman nev Rice Commissioner

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