
In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY
AND MUNICIPAL EMPLOYEES,
AFSCME, AFL-CIO

Involving Certain Employees of

DODGE COUNTY (CLEARVIEW HOME)

Appearances:

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

FINDINGS OF FACT

- No. 11469-A

tered Nurse (RN) or a Licensed Practical Nurse (LPN); that currently there are no RNs who are Team Leaders, though there have been in the past; and, that while there is also a position of "Staff LPN" which is in the bargaining unit, all LPNs currently hold the position of Team Leader.

6. That there are twenty-six (26) Team Leaders in charge of a total of eighty-six (86) employees; that each Team Leader is in charge of between two (2) and eight (8) employees which may include Nursing Assistants (NA), Beauticians, Therapists, Medical Record Clerks and Restorative Nursing Assistants; that the Team Leaders are in turn responsible to either a House Supervisor, which position is occupied by an RN, or a House Manager, which position is occupied by a Team Leader-LPN; that a House Supervisor or a House Manager is responsible for the entire facility on a given shift, except for the day shift which has two House Supervisors and/or Managers, and reports to the Director of Nursing Services, who in turn reports to the Nursing Home Administrator; that there are currently six (6) House Supervisors and three (3) House Managers; that each of the three (3) Team Leaders, who also act as House Managers, function in the capacity of House Manager approximately one-half of the time they work each month, while functioning as a Team Leader the remainder of the time.

7. That the duties of an LPN-Team Leader include the normal duties of an LPN, such as passing medications and doing patient treatment, in addition to directing the activities of the employees assigned to that team; that a Team Leader participates in obtaining replacements for absent employees; that if it is necessary for an employee to work overtime, the Team Leader has the authority to grant the overtime; that a Team Leader fills out an annual evaluation of each employee on the team on or about the team member's anniversary date of employment; that the Team Leader reviews the evaluation with the particular employee, pointing out strong and weak points in the employee's performance; that the Director of Nursing Services considers the evaluations when determining how well the employee has performed and whether an employee should be transferred or promoted to a different position; that the hiring, promoting, and transferring of employees is done centrally, though the Team Leader's recommendations and evaluations are considered; that the scheduling of employees is done centrally; that a Team Leader fills out daily assignment sheets, which assign Nursing Assistants to particular duties and patients; that Team Leaders have issued oral/written warnings, which are the first step of the disciplinary procedure under the current collective bargaining agreement on at least two occasions since the Team Leader position was created; that oral/written warnings are not placed in the employee's personnel file; that a Team Leader has the authority to issue written warnings, which is the second step under the discipline procedure of the collective bargaining agreement, although no Team Leader has issued such a warning as of the hearing herein; and, that while Team Leaders have been told they have the authority to either immediately suspend, or, suspend with the intent to discharge, an employee for a serious offense, such as patient abuse, when the Director of Nursing Services is not available, no such actions have been taken since the creation of the Team Leader position; and, that the Team Leaders are expected to act as immediate supervisors under Step 1 of the contractual grievance procedure.

8. That Team Leaders receive an hourly wage rate of \$7.25, while the hourly wage rate for the position of Staff LPN is \$6.24.

9. That when Team Leaders function as House Managers, they have the same responsibilities with respect to obtaining substitutes for absent employees, granting overtime, evaluating employees, assigning tasks, and disciplining employees as when they function solely as Team Leaders.

10. That, although the Team Leaders spend a majority of their time in patient care activities, they issue oral/written warnings, possess the authority to recommend, or, if necessary to administer, more severe discipline, up to and including suspension with the intent to discharge, evaluate the performance of team member employees, control daily work decisions, including the assignment of work, participate in obtaining substitutes when an employee calls in absent, and, approve overtime of team members.

CONCLUSION OF LAW

That the position of Team Leader is supervisory within the meaning of Sec. 111.70(1)(o) of MERA, and therefore, that the occupants of said positions are not municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

ORDER CLARIFYING BARGAINING UNIT 1/

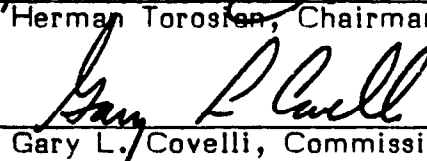
That the position of Team Leader be, and hereby is, excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 24th day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner

- 1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

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

The Union, contrary to the County, contends that the twenty-six (26) Team Leaders employed at the Clearview Nursing Home ought to be included in the bargaining unit. Thus, the crux of the dispute is whether the Team Leader has sufficient supervisory responsibilities over other employees to be excluded from the unit. The Commission has repeatedly considered the following factors in determining if a position is supervisory in nature:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 2/

The Commission has held that not all of the above factors need to be present, but if a sufficient number of these factors appear in any given case, the Commission will find an employee to be a supervisor. 3/ The record clearly demonstrates that Team Leaders supervise employees. Though they spend a majority of their time doing the normal duties of an LPN, 4/ they also have significant and effective authority over employees under their supervision. Team Leaders direct the day-to-day activities of employees, such as the daily assignment of patients and duties, the approval of overtime, and the obtaining of substitutes for absent employees, when necessary. In addition, Team Leaders have issued "oral/written" warnings and have the authority to recommend or take more severe disciplinary action. More-

2/ Fond du Lac County (10579-A) 1/72; and Kenosha County (Brookside Care Center) (19435) 3/82.

3/ Kenosha County (Brookside Care Center) ibid.

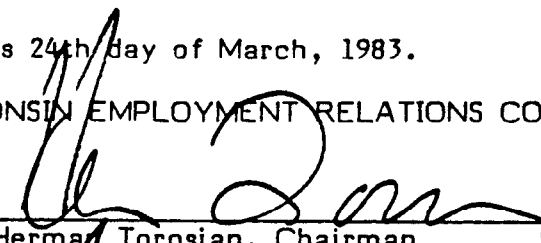
4/ As noted in Finding of Fact 5, RN's may also hold the position of Team Leader; however, none do so as of the hearing herein.

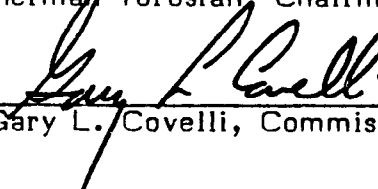
over, Team Leaders annually make written evaluations of employees under their supervision. Based on such factors, the Commission concludes that the position of Team Leader is supervisory, and, therefore, is excluded from the bargaining unit.
5/

Dated at Madison, Wisconsin this 24th day of March, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner

5/ We are aware that hearing was held only six months after the Team Leader position was established and thus, of necessity, our decision is based on limited evidence regarding the actual exercise of the Team Leader's supervisory responsibilities. Should the parties experience since the hearing reflect a different distribution of responsibility, a different result may be warranted.