

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
BROWN COUNTY PROFESSIONAL EMPLOYEES :
(REGISTERED NURSES) LOCAL 1901E, :
AFSCME, AFL-CIO :
: Case 66
Involving Certain Employes of : No. 46052 ME-509
: Decision No. 17585-A
BROWN COUNTY (MENTAL HEALTH CENTER) :
:

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFL-CIO, 5 Odana Court, Madison, WI 53719-1169, appearing on behalf of the Union.
Mr. John C. Jacques, Assistant Corporation Counsel, Brown County, 305 East Walnut Street, P.O. Box 23600, Green Bay, WI 54305-3600, appearing on behalf of the County.

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

Brown County Professional Employees (Registered Nurses) Local 1901E, AFSCME, AFL-CIO, (herein the Union) filed a petition with the Wisconsin Employment Relations Commission on May 20, 1991, asking that five positions of Nursing Supervisor be included in a bargaining unit of registered nurses employed at the Brown County Mental Health Center. Examiner Karen J. Mawhinney, a member of the Commission's staff, scheduled a hearing for October 14, 1991, which was postponed to November 19, 1991. On October 25, 1991, the County filed with the Commission a Motion to Dismiss the petition. On November 12, 1991, the Commission advised the County that it would not be ruling on the Motion to Dismiss until after the November 19, 1991, hearing in the matter and the completion of post-hearing briefs. On November 13, 1991, Brown County Circuit Court Judge Richard Greenwood issued an alternative writ of prohibition which temporarily prohibited the Commission from taking further action on the Union's petition. The Commission then moved to quash the alternative writ and to dismiss the County's petition for a writ of prohibition absolute. On May 12, 1992, Judge Greenwood quashed the alternative writ of prohibition and dismissed the petition for a writ of prohibition absolute. The County appealed that decision to the Court of Appeals, District III, which affirmed Judge Greenwood on November 17, 1992. (Dec. No. 92-1538, unpublished).

Hearings in the matter were held on September 17 and November 2, 1992, and on January 12, 1993, in Green Bay, Wisconsin before Examiner Mawhinney. The parties completed filing post-hearing briefs on May 24, 1993. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Brown County Professional Employees (Registered Nurses) Local 1901E, AFSCME, AFL-CIO, herein the Union, is a labor organization with an address of 5 Odana Court, Madison, Wisconsin 53719.

2. Brown County, herein the County, is a municipal employer with a mailing address of 305 East Walnut Street, Green Bay, Wisconsin 54305. The County operates a Mental Health Center located at 2900 St. Anthony Drive in Green Bay.

3. The Union is the exclusive bargaining agent for a collective bargaining unit consisting of all regular full-time and all regular part-time professional registered nurses (RN's). The Union seeks through this proceeding to accrete to that bargaining unit five positions of Nursing Supervisors. The incumbents in those positions are Carol Gilsdorf, Dawn Schaefer, Ann Eiler, Edith Riegert, and Diane Pivonka. There are two other bargaining units at the Health Center

-- one is a unit of nursing assistants, licensed practical nurses, (LPN's) support staff, dietary, maintenance, housekeeping, and clerical employes of about 200 or more, the other a professional unit of about 40 employes such as social workers, psychologists, therapists, and occupational therapists. There are approximately 30 RN's in the unit at issue in this proceeding. The Nursing Supervisors have never been included in any bargaining unit.

4. The Executive Director of the Mental Health Center is Robert Cole. The major components of the Health Center are: a psychiatric hospital (herein called the hospital), a general nursing home, a nursing facility for mentally retarded persons (called ICF/MR or intermediate care facility for the mentally retarded), and a residential alcohol and drug abuse treatment program. The Health Center is located on the outskirts of Green Bay, and there are some other programs in separate buildings in the downtown area of Green Bay, such as the mental health out-patient clinic and related programs. The hospital has two units -- the Adult Psychiatric Unit, called Unit 7, and the Children's Adolescent Unit, called Unit 1. Unit Manager for Unit 7 is Shirley Gruender, and Unit Manager for Unit 1 is Mary Broeckel. The general nursing home has three treatment units -- Units 2, 6 and 8. The ICF/MR has three treatment units -- Units 3, 4 and 5. The nursing home has four RN Coordinators which are equivalent to Unit Managers in the hospital. The nursing home also has two Unit Managers.

5. The hospital is licensed as a psychiatric hospital by the Wisconsin Department of Health and Social Services, herein DHSS. DHSS enacts administrative rules under Wis. Adm. Code, Sec. HSS 124. Sec. HSS 124.13 describes the responsibilities for providing nursing services to hospital residents. Sec. HSS 124.13(1)(b) states:

The nursing service shall be directed by a registered nurse with appropriate education and experience to direct the service. A registered nurse with administrative authority shall be designated to act in the absence of the director of the nursing service. Appropriate administrative staffing of the nursing service shall be provided on all shifts.

Sec. HSS 124.13(1)(c) states:

Staffing. 1. An adequate number of registered nurses shall be on duty at all times to meet the nursing care

needs of the patients. There shall be qualified supervisory personnel for each service or unit to ensure adequate patient care management.

2. The number of nursing personnel for all patient care services of the hospital shall be consistent with nursing care needs of the hospital's patients.

3. The staffing pattern shall ensure the availability of registered nurses to assess, plan, implement and direct the nursing care for all patients on a 24-hour basis.

Under DHSS's interpretations of the rules, registered nurses currently on duty may fulfill both the "supervisory" and the "administrative" responsibilities noted above, and the official job titles of nurses assigned to these responsibilities need not include the word "supervisor." The responsibilities of the staff nurses must be accurately reflected in the individual job descriptions and hospital policies and procedures. DHSS views "supervisory personnel" as someone who would report back to management and be reviewing and observing all procedures to see that the administrative rules are carried out in a unit or section of a hospital. Responsibilities for "supervisory personnel" also include monitoring staff performance, assigning staff to assure adequate patient care, and intervening to protect patients from abuse. Under DHSS's rules, "supervisory personnel" need not have the authority to effectively recommend the hiring of employes, the authority to lay off employes or recall them from layoff, to promote or reward employes, or to adjust grievances under a collective bargaining agreement. DHSS requires that "supervisory personnel" have some disciplinary authority. If "supervisory personnel" saw patient abuse, he/she would have to file an incident report but would not be required under DHSS requirements to have responsibilities beyond such reporting. Other hospital personnel have the same requirement regarding patient abuse. The County must comply with the requirement to provide "supervisory personnel" on site 24 hours a day, or it would receive a written notice of violation.

6. The County maintains job descriptions and performance appraisals for all employes, and employes are evaluated yearly. The following is the job description of Nursing Supervisor:

BROWN COUNTY MENTAL HEALTH CENTER
DEPARTMENT OF NURSING

NURSING SUPERVISOR

POSITION PURPOSE:

Responsible for providing supervision of total nursing care for entire Mental Health Center on assigned shift, functions as a nursing specialist, consultant, educator, and resource person to the total needs of the Mental Health Center.

POSITION IN ORGANIZATION:

Reports to: Assistant Nursing Services Administrator-Hospital. Receives clinical direction from the Nursing Services Administrator in the Nursing Home.

Supervises: Direct and indirect supervision of Brown County Mental Health Center employees on assigned shift.

RESPONSIBILITIES:

The following responsibilities comprise the principal functions of this job and shall not be considered a detailed description of all the work that may be required in this job:

1. Supervises nursing care that maintains a well-functioning Center which meets local, state and federal standards.
2. Screens and admits all clients to Brown County Mental Health Center.
3. Directs/supervises personnel during all medical and psychiatric emergencies within the Center.
4. Assigns staff to provide adequate nursing coverage.
5. Provides direct assessment, care, treatment, and medication to clients as need arises.
6. Serves as a role model, consultant, educator, and resource person for the nursing staff of Brown County Mental Health Center.
7. Serves as the focal point for all questions and telephone calls from within and outside the facility.
8. Maintains continuity of care through appropriate exchange of information.
9. Maintains responsibility for safe client care

through the use of appropriate planning, implementation, and evaluation procedures.

10. Maintains the confidentiality of all client and business records, documents, and information per departmental standards and State/Federal Confidentiality Laws.
11. Provides consultative services to all departments and Brown County Mental Health Center, community agencies, and contract counties as needed.
12. Interprets and transmits administrative policies and procedures, as necessary.
13. Maintains documentation in accordance with departmental and facility standards and requirements of regulatory bodies such as JCAHO.
14. Establishes and maintains cooperative, effective working relationships with other departments, service areas, and personnel within the facility.
15. Assists Unit Managers/Unit Coordinators in completing job appraisals on appropriate staff.
16. Demonstrates awareness of Center and departmental objectives and priorities and complies with all applicable departmental and Center policies and procedures.
17. Complies with departmental Quality Assurance standards and participation in Quality Assurance monitoring.
18. Initiates disciplinary action according to established policy and procedure.
19. Serves as administrative representative in the absence of the Nursing Services Administrators and Mental Health Center/Health Care Administrators during assigned shift.
20. Implements in-service programs for the Educational Services Department, when appropriate.
21. Attends in-service training, departmental and other committee meetings as required and necessary to carry out the responsibilities of the job.
22. Assumes responsibility for professional growth and development by attending conferences and seminars.
23. Performs additional job-related duties as necessary within scope of job responsibilities.

AUTHORITY:

Provides supervision of total nursing care for clients on assigned shift. Serves as administrative representative in the absence of administration; disciplines in accordance with Center policies and procedures.

KNOWLEDGE, SKILLS AND ABILITIES:

1. Knowledge and understanding of general nursing and psychiatric theory and practices including those basic knowledges related to nursing such as biological, physical, social and medical sciences and their applications to the client care programs.
2. Ability to plan, organize, implement and evaluate total nursing care.
3. Ability to plan and direct the work activities of the entire Mental Health Center/Health Care Center nursing staff.
4. Ability to use initiative and good judgment in adapting, devising and evaluating procedures and techniques on a day-to-day basis as well as in emergency situations.
5. Ability to maintain accurate records.
6. Ability to make decisions; ability to establish and maintain effective working relationships with all levels of personnel in all departments of the Mental Health Center/Health Care Center.
7. Ability to follow oral and written instructions.
8. Ability to establish and maintain effective public and working relationships.

POSITION QUALIFICATIONS:

Bachelor's degree in nursing from an accredited school of nursing plus three (3) years of nursing experience, at least one of which has been in a supervisory capacity; must be licensed by the Wisconsin State Board of Nursing; or any combination of education and experience which provides the necessary knowledge, skills and abilities.

Approved: 6/1/89 Robert Cole, Executive
Director Brown County Mental
Health Center

The following is the job description of an RN or staff nurse:

STAFF NURSE

General Description

Under general supervision of the Head or Supervisory Nurse, is responsible for the coordination of nursing services within assigned unit(s) of the Mental Health Center; in the absence of the Head Nurse, is responsible for the direct or indirect nursing care of the patients within assigned unit (s); does related work as required.

Examples of Duties

Assists in creating an atmosphere conducive to the physical and mental health of patients on assigned unit (s); is responsible for the administration of patient care treatments and medications in accord with physicians orders and established nursing policies; observes symptoms, case progress, and results of medications and treatments; directs nursing assistants and L.P.N.'s in patient care on assigned unit (s); maintains clinical charts and patient reports; makes unit rounds and attends staffing with physicians, recording physician's observations and orders; initiates emergency measures when needed; in the absence of an L.P.N., may give medications and perform treatments; may admit patients to a unit in accordance with established Center policies and procedures; keeps informed and relates the basic illness of the physically and mentally ill patient with new developments and the current therapeutic measures for total patient care; participates in in-service education programs and other committee and staff meetings as requested; utilizes all standard medical equipment; performs same duties as the Head Nurse in his/her absence.

Knowledges, Skills and Abilities

Knowledge and understanding of the terminology, theory, techniques, and practices of professional nursing; knowledge of medicines and narcotics, along with their effects, side actions and contraindications; knowledge of a variety of specialized equipment; ability to

develop and carry out a nursing plan to meet patient needs; ability to analyze facts and conditions and apply sound nursing principles in making decisions; ability to lead and assist in supervising the work of subordinate personnel; ability to train others; ability to understand and carry out policies and procedures governing patient care; ability to establish and maintain effective working relationships with physicians, patients and all nursing staff, and other Center departments.

Education and Experience

Graduation from an accredited school of nursing. Must be licensed by the Wisconsin State Board of Nursing.

7. The job description for Nursing Supervisor was drafted by Bonnie LaRose, former Mental Health Services Administrator and Nursing Service Administrator at the Mental Health Center. LaRose is currently a consultant for the Health Center. LaRose set up the job description by listing the responsibilities in order of priority. Therefore, the most important function of the job of Nursing Supervisor is the responsibility for supervising nursing care. This responsibility is generally met through review of reports coming into the nursing office, since the RN's would be providing direct supervision in most cases. Nursing Supervisors are expected to make rounds on all nursing units at least three times per shift to observe, assess, and evaluate nursing care. However, making such rounds is not always possible. Nursing Supervisors consider the function of supervising nursing care to be part of their continuous duties. Staff RN's are also responsible for supervising nursing care on their units. When making rounds, Nursing Supervisors check on patients, check on admissions and discharges, and check to see if staff is functioning appropriately.

8. The Department of Nursing has a policy that in the absence of the Mental Health Services Administrator/Nursing Services Administrator, the Assistant Nursing Services Administrator is delegated and authorized to act in his/her place, and in the absence of the Assistant Nursing Services Administrator, the shift Nursing Supervisor is delegated and authorized to act in his/her place. LaRose was the Mental Health Services Administrator/Nursing Services Administrator, but the position is currently vacant. Maureen Ackerman is the Assistant Nursing Services Administrator. Those two positions are generally staffed on Monday through Friday day shifts. A similar policy exists for the absence of the Nursing Services Administrator/Nursing Home and ICF/MR, wherein the authority is delegated to an RN Coordinator, and in the absence of an RN Coordinator, the shift supervisor or Nursing Supervisor is delegated and authorized to act. Four top administrators -- the Executive Director, the Management Services Administrator, the Nursing Home Administrator, and the Mental Health Administrator -- are on call during evenings and weekends to allow Nursing Supervisors to contact an administrator for situations or problems such as alleged or real client abuse. When LaRose was an administrator, she expected to be called for reports on abuse incidents and then she would decide whether to serve an employee a notice of investigation or take other action. She also expected to be called if a client died, if there were a fire in the facility, or if the units were becoming filled up and other counties were continuing to call to notify the facility that police or deputies were bringing clients to the facility. Administrators are called for all major decisions involving personnel or administrative decisions. Nursing Supervisors make medical and nursing care decisions without consulting the administrators.

9. The Assistant Nursing Services Administrator, Ackerman, is the

immediate supervisor of the Nursing Supervisors and evaluates them. Ackerman has worked at the Health Center for 20 years and spent most of that time as a Nursing Supervisor and still occasionally fills in as a Nursing Supervisor. The Nursing Services Administrator in the nursing home, Lee Ann Sachs, also has authority over the Nursing Supervisors for clinical issues. Sachs reports to the Nursing Home Administrator, Dorothy Riley.

10. Nursing Supervisors do not make recommendations to hire personnel and are not involved in the hiring process. The Personnel Coordinator at the Health Center is Nancy Tomchek-May, who heads up the office with a staff of two others. The County maintains a Human Resources Department in downtown Green Bay, which has a staff of six people. Tomchek-May is in charge of recruitment and selection of applicants. Applications for jobs are filed in the downtown central office, and sent out to the Health Center. The applications are then taken to the appropriate manager who screens them. If an application is for the nursing area, it would go to the Assistant Nursing Services Administrator, Ackerman. Tomchek-May works with Ackerman in the screening process. Ackerman conducts the hiring interviews for the nursing area, and makes a determination regarding hiring with Tomchek-May. Ackerman has delegated some interviewing duties to a staff RN, Sandra Foster. Ackerman has not delegated any of her hiring duties to Nursing Supervisors, except while she was on medical leave. Gilsdorf, a Nursing Supervisor, interviewed job applicants on two occasions in May of 1991. If Ackerman needs assistance due to an overload of work, she would defer her hiring responsibilities to the Nursing Services Administrator in the nursing home, Sachs. Unit Managers for Units 1 and 7 in the hospital would be involved in interviewing and recruiting for positions such as social workers or ward clerks, and would have input with Ackerman for hiring staff RN's. The Executive Director, Cole, has the hiring authority, and Tomchek-May and Ackerman recommend hiring.

11. When the County determines what level of discipline is to be imposed on an employe, the Department Head/Supervisor must consult with the Personnel Coordinator and/or the professional staff of the County's Personnel Department. The appropriate administrator of the area and the Executive Director must give advance approval of suspensions or discharges of employes, and the Corporation Counsel and Personnel Director are also to be consulted before such action is taken. At times, even the County Executive may be consulted before an employe is terminated. Most disciplinary matters are referred to the Personnel Department because the County wants to maintain a level of consistency in discipline. The Health Center tries to notify an employe of discipline through a meeting with someone from the Personnel Office, a Unit Manager, the individual employe and a Union steward. All employes, whether Nursing Supervisors, RN's, LPN's, or nursing assistants, are expected to intervene in any situation to protect a client from abuse, and all employes are expected to report such incidents. Nursing Supervisors normally call an administrator if there is an allegation that another employe abused a client. They might take part in asking some initial questions regarding an incident. The Health Center's procedure states that once a client is safe, staff are to report the incident immediately to the Nursing Supervisor who then is to protect the client, conduct a preliminary investigation of the incident, remove the employe involved from direct client contact and to contact hospital or nursing home administrators, at home if necessary. Tomchek-May is also to be notified immediately and assists in investigating claims of abuse. During night shifts or weekends when other administrators are not on duty, a Nursing Supervisor may be directed by an administrator to issue a Notice of Investigation to an employe, pending further investigation. If other managers are not on duty, Nursing Supervisors are the ones to remove employes from work sites and initiate investigations. There are two options available to remove employes accused of abusive conduct
-- the employe may be placed in an area where he or she does not work directly

with clients, or he or she may be relieved from duty for up to 72 hours. The investigation of abuse charges is usually done by a Unit Manger, RN Coordinator, the Assistant Nursing Services Administrator or the Nursing Services Administrator. Nursing Supervisors take statements from people who are available on night shifts. The ultimate responsibility for an investigation lies with the Executive Director and the Administrator for the area, whether it be the hospital or nursing home. As in other disciplinary matters, decisions regarding discipline in abuse investigations are made by the Executive Director (Cole), the Personnel Coordinator (Tomchek-May), with input from the Corporation Counsel and the Human Resources Director. Nursing Supervisors may issue Notices of Investigation and RN's may not do so. Both of them may take part in the actual investigation. However, Nursing Supervisors cannot issue Notices of Investigation without authorization from an administrator. Tomchek-May is involved in minor disciplinary matters, such as tardiness, and Cole would be made aware of such disciplinary actions even over minor disciplinary matters. If a Nursing Supervisor saw an employe doing something wrong, such as sleeping on the job, the Nursing Supervisor could speak to that employe, but would then refer the matter to a Unit Coordinator. If a Unit Coordinator were not on duty, the Nursing Supervisor would write the issue up on an anecdotal note or call the on-call administrator about the problem.

12. Nursing Supervisors approve all admissions to the hospital, which includes the acute units or Units 1 and 7. Admissions to the nursing home and the ICF/MR go through social workers and are done during regular business hours. However, admissions to the hospital units are done only by the Nursing Supervisors. Nursing Supervisors must follow several policies and procedures governing the admission of clients to the hospital. They do not make those policies or procedures but need to exercise judgment in following them. They need to have good physical assessment skills in the admission process and to be able to determine that the primary problem with a client is psychiatric in nature and that the client is medically stable. They need to decide whether to admit a client directly or to take a client to another hospital first, as the hospital is not a full medical facility. Nursing Supervisors also need to follow regulations for authorization from other counties sending clients and make sure legal papers are in order to admit clients into the hospital. There can be financial implications if someone from another county is admitted without that county's approval. Admissions may come in from 12 other counties and Nursing Supervisors may have to contact those counties if there are questions about the clients or the paperwork.

13. Nursing Supervisors are available to staff as medical resource persons, and they direct staff in medical and psychiatric emergencies when there is no RN on duty, such as the evening shift in Unit 1 or in other places in the facility where no RN is on duty. Nursing Supervisors may provide direct patient care when no RN's are on duty. Nursing Supervisors routinely get involved with medical problems on shifts when Unit Coordinators and staff RN's are not on duty. A Nursing Supervisor would also be called if an employe became ill while working, and she would evaluate the situation to arrange for the employe to go to the emergency room or to be sent home.

14. Nursing Supervisors are the focal point for all questions and telephone calls. They are expected to take telephone calls within five minutes, as many of the calls involve crisis situations, such as potential suicides.

15. Most of the units in the facility have established patterns of assigned staff, as the census is fairly stable in most units. Nursing Supervisors get involved in changing the staffing needs for Units 1 and 7 in the hospital where the number of clients and the acuity of clients change more

rapidly. A scheduling secretary, Charlene Bode, takes care of the majority of regular scheduling. Vacations are approved in advance by Ackerman or Sachs, and Bode schedules staff to cover for absences known in advance, such as vacations, holidays, and other types of leave. Nursing Supervisors adjust schedules to maintain adequate staff. They follow policies and procedures developed by the County but use some judgement as to whether staffing should be increased or not. There is a pre-established client/staff ratio of one staff to every three or four clients on Unit 1 and one staff to every six or seven clients on Unit 7. Those staffing levels are adjusted according to census, potential admissions or discharges, acuity of clients, and special precautions.

There is an acuity policy which details the elements Nursing Supervisors consider when deviating from the pre-established staffing levels. Physicians might also order a one-to-one staffing ratio for dangerous or disruptive clients, or order precautions for suicidal clients. Nursing Supervisors can pull staff from one unit to another unit. They must follow collective bargaining agreements when changing staffing assignments, and they are evaluated on this duty by the number of grievances filed, among other things. The daily responsibility for staffing is given to the Nursing Supervisors, but that responsibility is shared by the Unit Managers and each staff RN when working. The RN's work on separate units and are aware of what happens on their units, while the Nursing Supervisors see the facility as a whole. Nursing Supervisors may impose mandatory overtime upon employes if they cannot get enough staff to work. A checklist was developed for Nursing Supervisors to follow in the event they needed to impose such mandatory overtime. However, an administrator would make a final decision on this matter. If employes are scheduled but Nursing Supervisors see that they are not needed, the Nursing Supervisors may call employes and tell them not to come in to work that day. When replacing employes who have called in sick, Nursing Supervisors follow a procedure to give hours in accordance with seniority pursuant to the collective bargaining agreements. Nursing Supervisors are able to change staff assignments of on-call employes, who are hired to work in any unit. They can also ask part-time employes coming in for extra hours to work wherever they are needed.

16. The scheduling of work and the planning or assignment of work is done by Unit Coordinators or Unit Managers, and the Nursing Supervisors do not become involved unless there is an emergency where the Nursing Supervisors need to make adjustments to ensure adequate staffing, such as changes in patient needs or employe sick calls. Coordinators set up case loads for nursing assistants, and staff RN's assign specific work to employes. Nursing Supervisors instruct staff if they see a procedure being done incorrectly and give the staff directions on how procedures are to be handled. Staff RN's also see that the work of LPN's and nursing assistants is being done correctly.

17. There has been a historical pay differential between Nursing Supervisors and staff RN's of 19.2 percent. Nursing Supervisors and RN's are paid per hour, receive overtime and shift differentials, and punch a time clock. Unit Managers and Unit Coordinators are paid a set salary as part of the administrative plan. On June 17, 1992, the County Board of Supervisors adopted a resolution for Nursing Supervisors, which included the following:

THEREFORE, BE IT RESOLVED by the Brown County Board of Supervisors that the following agreement is hereby adopted for the Nursing Supervisors for 1991-1992, effective January 1, 1991.

1. Wages

- a) 19.2% differential over Local 1901E, Staff Nurse classification.

- b) Retention bonus shall be paid at a rate of \$800 per year.
- c) Overtime paid at time and one-half in the same manner as Local 1901E Registered Nurses.
- d) Recruitment bonus of \$1,000 to be paid in the same manner as Local 1901E Registered Nurses.
- e) Shift differential of \$.70 per hour for PM shift and \$1.00 per hour for night shift for hours worked outside of the 24/40 schedule as a Nursing Supervisor.

2. Utilized as Staff RN's

When Supervisors are utilized as Staff RN's, RN Coordinators or Unit Managers, whether by choice or scheduled as such, they will receive the Nursing Supervisor hourly pay. If utilized as Staff RN they will receive the Staff RN shift differential. There is no shift differential for Unit Coordinator or Unit Manager.

3. Longevity

To be paid in same manner as Local 1901E Registered Nurses.

4. Holidays

To be administered and paid in the same manner as Local 1901E Registered Nurses.

5. Personal Holidays

To be administered and paid in the same manner as Local 1901E Registered Nurses.

6. Wisconsin Retirement Credit

To be administered in the same manner as Brown County administrative employees.

7. Disability Leave (Sick Leave), Health Insurance, Dental Insurance, Life Insurance, Funeral Leave, Vacation, and Tuition Assistance Program (TAP)

To be administered in the same manner as Brown County administrative employees.

8. 24/40 Nursing Supervisors

To be administered in accordance with the 1901E Registered Nurses memorandum of understanding for 24/40.

9. Part-time Employees

To receive prorated benefits according to hours worked (average hours worked of previous 6 months).

10. If any of the preceding items are to be changed, each Nursing Supervisor shall be notified. Discussions between Nursing Supervisors, administration and Personnel will take place to explain any changes as they arise.

The major differences in job duties between staff RN's and Nursing Supervisors are the following -- a staff nurse is responsible for clients on a particular unit where she or he is working, while a Nursing Supervisor is responsible for clients and their care on all the units; Nursing Supervisors approve admissions of clients to the hospital, and staff RN's may handle some of the paperwork in admissions but not the approval to admit clients; and Nursing Supervisors handle outside telephone calls and serve as medical resources persons for RN's or other employes.

18. Nursing Supervisors do not conduct employe evaluations. Nursing Supervisors assist in job appraisals by reporting their opinions on personnel to hospital Unit Managers, particularly where Unit Managers may not see employes who work on night shifts. Both staff RN's and Nursing Supervisors use anecdotal notes to report matters of job performance, good or bad, for employes. On-call employes and probationary employes may not have enough seniority to work when Unit Managers and RN Coordinators are on duty, and the Nursing Supervisors are more likely to be in a position to see their work. Nursing Supervisors and RN's would give input about job performance to RN Coordinators in the nursing home and to Unit Managers in the hospital. Nursing Supervisors do not recommend whether or not to retain employes. Cole, Tomchek-May and the administrators for either the nursing home or the hospital decide whether to retain probationary employes. The Unit Managers and RN Coordinators recommend whether or not to retain probationary employes. Nursing Supervisors do not take part in decisions to promote employes. Nursing Supervisors may ask Tomchek-May or others to take note of an employe's attendance, but Unit Managers and RN Coordinators are primarily responsible for tracking employes' attendance and tardiness.

19. Nursing Supervisors do not represent management at any step of the grievance procedures of the three collective bargaining agreements. They have no authority to adjust grievances.

20. The hospital refers to shifts as A.M.'s, P.M.'s and nights. The A.M.'s are day shifts, the P.M.'s are a second shift of afternoon and evening, and nights are a third shift, starting at 11:00 p.m. and ending at 7:00 a.m. Gilsdorf and Eiler both work one week of nights and one week of floating shifts. Pivonka and Schaefer work a 24/40 shift on weekends, with means they work two 12-hour shifts on the weekend. Riegert works the P.M. shift from 3:00 p.m. to 11:20 p.m. A part-time nurse, Suzanne Schroeder Johnson, also picks up hours as a Nursing Supervisor, but her position is not an issue in this proceeding. It is typical during evenings, weekends, and holidays for the Nursing Supervisors to be the most responsible employes on site for both the nursing home and the hospital. Nursing Supervisors have overall responsibility to ensure that staff gives good nursing care and that staff is following procedures and policies established by the facility. The number of employes working under the Nursing Supervisors depends on the shift worked, but could vary from 20 to 60 people, with 20 to 40 being the normal range. Nursing Supervisors are to supervise nursing care rather than give direct nursing care, although they may give direct care at times, which generally takes up ten percent of their work duties. On night shifts, from 11 p.m. to 7:20 a.m., a Nursing Supervisor may be the only licensed RN on duty for six units and may provide direct nursing care to patients up to 25 percent of the time.

21. Nursing Supervisors have no role in preparing, formulating or implementing the budget for the Health center. They can commit the facility to labor expenses through their decisions on calling in, replacing, or increasing staff. They do not make any other major expenditures. Nursing Supervisors hold monthly meetings to keep up to date on changes in policies or procedures and to bring problems forward. Ackerman and Sachs preside over the meetings. Nursing Supervisors are not given the opportunity to have input into changes for policies and procedures. The facility maintains over 600 policies and procedures. All employes are expected to follow these policies and procedures. If an employe has a question about procedure or a problem, that employe should ask a Nursing Supervisor who interprets the policy or applies it to a given factual situation.

22. The incumbents in the position of Nursing Supervisor do not possess supervisory duties and responsibilities in sufficient combination and degree to be supervisory employes.

23. The incumbents in the position of Nursing Supervisor do not exercise sufficient control and authority over the County's resources or have sufficient involvement at a high level of responsibility in the formulation, determination and implementation of management policy so as to be managerial employes.

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

CONCLUSION OF LAW

The Nursing Supervisors at the Brown County Mental Health Center are not supervisory employes within the meaning of Sec. 111.70(1)(o)1, Stats., nor are they managerial employes within the meaning of Sec. 111.70(1)(i), Stats., but are municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

The positions of Nursing Supervisors at the Brown County Mental Health Center are hereby included in the bargaining unit represented by Brown County Professional Employees (Registered Nurses) Local 1901E, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

(Continued)

respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(b). 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

1/ 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.

(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

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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.

BROWN COUNTY

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

POSITIONS OF THE PARTIES:

Motion to Dismiss:

The County

In support of its Motion to Dismiss the petition, the County asserts that the Commission must take notice of the statutory regulatory authority granted to the Department of Health and Social Services (DHSS) over hospitals. Sections 50.34 through 50.39, Stats. provide that DHSS license and regulate hospitals in the state, and DHSS enacts administrative rules governing the operations of hospitals. DHSS has enacted Ch. HSS 124, Wis. Adm. Code, which requires hospitals to have "supervisors" on site at all times. Those supervisors must have the authority to manage, direct and monitor the nursing care provided to patients by employes, and they must have the authority to initiate disciplinary actions against members of the staff. The County complies with this regulatory requirement by employing five Nursing Supervisors, those now named in the Union's petition for inclusion into the bargaining unit.

The County argues that the requirements of HSS 124.13 make Nursing Supervisors "supervisors" for purposes of Sec. 111.70(1)(o), Stats. Under DHSS regulations, Nursing Supervisors must have the authority to effectively recommend discipline, the authority to direct and assign nursing staff, the authority to manage the hospital in the absence of other management personnel, and must be able to intervene to protect patients. Such authority meets the requirements of Sec. 111.70(1)(o), Stats.

The Commission has the statutory authority to determine whether a municipally employed person is a municipal employe or a supervisor, and the authority set forth in Sec. 111.70(4), Stats., must be harmonized with the regulatory authority granted to DHSS over hospitals. The Commission cannot ignore the legal obligation of municipal hospitals set forth in HSS 124 to employ "nursing supervisors." The Commission cannot prohibit that which DHSS requires of hospitals. If the Commission were to determine that the five Nursing Supervisors are not "supervisors" for MERA purposes, it would prevent hospitals from complying with HSS 124.13 because that provision requires that Nursing Supervisors have the authority to initiate discipline. The Commission has recognized that a conflict of interest would exist if supervisors and those supervised were included in the same bargaining unit.

The County contends that the Commission's authority to determine bargaining unit status is limited by Sec. 50.36, Stats., and that the Commission cannot determine that DHSS's authority to require the employment of Nursing Supervisors may be superseded by MERA. In conclusion, the County states that the Commission must defer to DHSS's statutory authority.

The Union

The Union relies on the testimony of Stephen Schlough of DHSS, as support for its position that Nursing Supervisors can be municipal employes and still fulfill the obligations of the administrative code. Staff nurses can and do serve as "supervisors" under DHSS regulations, and the registered nurses so assigned to "supervise/direct" the nursing service are not necessarily empowered with or required to have the supervisory authority defined in Sec. 111.70(1)(o), Stats.

The Union asserts that staff nurses as well as Nursing Supervisors have continuing responsibilities to intervene in patient abuse situations and take part in the incident reports which have the potential for disciplinary action. Schlough testified that the "supervisor" only had to file an incident report, and that a supervisor did not have to have the responsibility to determine discipline or to effectively recommend it. There is no jeopardy to the hospital's certification and license if Nursing Supervisors are found to be municipal employes. Nursing Supervisors are primarily responsible for the supervision of nursing care, an activity.

The Union contends that granting its petition for clarification of the bargaining unit will not prohibit the County from meeting its DHSS obligations. Schlough never asserted that the Nursing Supervisor must have the authority to manage the hospital in the absence of other management personnel, but instead contended that the supervisor was someone who would be responsible for reporting back to management.

The Merits:

The County

The County argues that the hospital must employ Nursing Supervisors to retain its state license to operate and to keep its accreditation from the Joint Commission on Accreditation of Hospitals. The County asserts that the attribute of authority to direct nursing staff is the determining factor in applying the supervisory criteria of Sec. 111.70(1)(o), Stats., and all other criteria are immaterial because a hospital cannot operate without the continued presence of Nursing Supervisors such as the five in issue. The exercise of supervisory authority inherently requires that a high degree of independent judgment be used.

The County submits that other supervisory criteria support its position, such as the number of employes supervised and the ratio of supervisors to employes. The Nursing Supervisors supervise 20 to 60 employes. Also, they are paid 19.2 percent above staff nurses, based on job duties and responsibilities. They are the only management people available to supervise and evaluate performance of nursing staff employes for long time periods. They effectively recommend whether new employes successfully complete probationary periods. They spend only 10 percent of their time in direct nursing care.

The County notes that Nursing Supervisors have the authority to maintain adequate staffing levels, and they may "pull" staff from one unit to another. They exercise independent judgment in determining staffing needs, as there are numerous policies relating to acuity levels and staffing which must be applied by Nursing Supervisors. The allocation of staff resources where needed based on patient census and acuity is a managerial as well as supervisory function. Because Nursing Supervisors must possess a high degree of professional training and experience, they are both supervisory and managerial. The exercise of independent judgment in making staffing decisions and monitoring the provision of nursing care on rounds is the essence of the Nursing Supervisor position, and to denigrate the position as "leadworker" is in conflict with the evidence.

Further, the County asserts that the Nursing Supervisors are aligned with management as to employe discipline matters. They are expected to initiate

disciplinary action when needed according to policy and procedure. The hospital must have someone present at all times to initiate discipline to remain licensed. When investigating allegations of abuse or employe misconduct, Nursing Supervisors must be a management representative. The use of anecdotal notes to management is part of management's investigative process.

Putting Nursing Supervisors in a bargaining unit composed of staff nurses would compromise any investigation and prevent employe discipline. While the Union believes that an employe discipline system could function without a management representative on site, such a conclusion would leave a vulnerable group of patients without adequate protection from misconduct.

Previous Commission decisions support a finding of supervisory status, even where authority possessed by the RN or LPN supervisor was less than that of the five Nursing Supervisors in this case: Columbia County, Dec. No. 12308-D (WERC, 1992) (LPN team leaders supervisory); Dodge County, Dec. No. 11469-A (WERC, 1983) (LPN team leaders supervisory); Ozaukee County, Dec. No. 23464 (WERC, 1986) (RN Supervisors supervisory); Sauk County, Dec. No. 17882-A (WERC, 1981) (LPN supervisory); Shawano County, Dec. No. 20996-A (WERC, 1984) (RN supervisory); Sheboygan County, Dec. No. 21168-A (WERC, 1984) (New positions/RN supervisory); and Walworth County, Dec. No. 9041-C (WERC, 1992) (LPN Unit Nurse supervisory). All the decisions have recognized that an employer must have the ability to direct nursing staff by the use of supervisory nurses. The Sheboygan decision has similar factual circumstances to this case. In several cases, even LPN's were determined to be supervisory, and in this case, the Nursing Supervisors must be registered nurses with staff nursing experience. Supervisory status has also been based on team leader duties; in this case, Nursing Supervisors supervise all seven units, not merely one unit or team. The County also asserts that several NLRB decisions supporting a finding of supervisory status.

The County further contends that the Nursing Supervisors have both supervisory and managerial authority, as they are delegated authority to act in the absence of hospital and nursing home administrators and the overall management of the facility rests with them during nights and weekends. The function of committing the employer's resources in admitting patients is clearly a managerial function. These positions are the alter ego for the hospital and nursing home administrators in their absence and are expected to implement policies and procedures.

In its reply to the Union's brief, the County asserts that the admissions function performed by Nursing Supervisors goes beyond "clinical" decision making and amounts to deciding to allocate the entire resources available to a new patient. Staffing decisions then follow from that decision to admit a client. The deposition of Riegert (Co. Ex. 84) shows that she described her function as managing the hospital in lieu of administration being there.

The County calls the Union's claim that the Nursing Supervisors supervise an activity and not employes misleading and unsupported by the evidence, as the answers to the questionnaire by Gilsdorf indicates that 20 to 60 employes are supervised by a Nursing Supervisor. Further, the testimony of Sachs establishes that the input and recommendations of Nursing Supervisors are sought and used in making personnel decisions. Staffing decisions are made daily by Nursing Supervisors, and they must use a high degree of judgment and discretion in making staffing decisions. The authority and responsibility of Nursing Supervisors differs from registered nurses, and that difference is the entire point of employing Nursing Supervisors who supervise staff registered nurses. The County disputes the Union's claim that Nursing Supervisors are "minor players" in the evaluation process pointing to the testimony of Sachs, LaRose, Ackerman and Cole, and notes that the job description, performance appraisal, and the position description questionnaire all show that Nursing Supervisors evaluate the job performance of nursing staff employes.

In conclusion, the County argues that the Union fails to acknowledge

that, according to state law, someone with supervisory authority must be physically present at all times to manage and direct the work force. To accept the Union's argument is to accept the illogical argument that a medical care facility can be safely operated without an on-site supervisor of nursing staff.

The Union

The Union asserts that the record does not support a finding that Nursing Supervisors are managerial employes, as none of the indicia of managerial status is present. Under the Commission's rulings on the definition of managerial employes, there is not even a hint of managerial type authority in the Nursing Supervisors' classification. The County has misapplied both the definition of a managerial employe and the applicability of certain duties. For example, admissions decision about individual patients are clinical decisions, and not managerial decisions.

Moreover, the Union contends that the County has not only exaggerated the managerial authority of Nursing Supervisors but has also embellished the supervisory authority of Nursing Supervisors. The Nursing Supervisors are highly trained employes who make independent judgments and exercise discretion as professionals. Their work includes patient intake, discharge, and rounds, all of which are related primarily to the medical care and treatment of patients. The Nursing Supervisors supervise an activity, not employes.

The Union argues that the Nursing Supervisors do not have the authority to discipline, hire, layoff, recall, promote, adjust employe grievances, or to effectively recommend any of the foregoing. Notwithstanding the County's contentions, there is no authority to issue meaningful evaluations.

The Nursing Supervisor's ability to assign and transfer employes is limited by the institution's voluminous policies prepared for every possible contingency. Policies exist for sick calls, overtime, vacations, staffing levels, acuity levels, etc., and the Nursing Supervisors have no discretion as to policy matters and their implementation. Nursing Supervisors use training and skills acquired as professional employes to make clinical decisions regarding patient care. The scope of their authority is clearly defined. An administrative on-call procedure insures that management is immediately informed on any matter of consequence, including personnel matters. Management makes all significant decisions regarding the operation of the facility and handling of personnel, even when not on site.

The Union argues that, contrary to the County's assertion, the State does not require that Nursing Supervisors be present to initiate discipline or effectively recommend it. The only thing expected of them is to file an incident report, and staff nurses can and do serve in the same capacity.

While the ratio of other employes to Nursing Supervisors is high, the more critical factor is the supervisory authority of others in the institution. The Mental Health Center has an in-house personnel department and has created management positions of unit coordinators. The Nursing Supervisors' authority has diminished with the creation of positions such as unit coordinators which effectively hire, discipline, etc.

The Union contends that the Nursing Supervisors are minor players in the evaluation process, as their input is limited to incident reports, anecdotal notes, investigations, and intervention in situations of patient abuse. The role of Nursing Supervisors does not differ dramatically from the authority and responsibility of staff nurses.

The Union believes that the interests of Nursing Supervisors are more aligned with the bargaining unit than with management. Their wages and fringe benefits are established in accordance with the rates and levels negotiated by the Union for staff nurses. The State does not automatically invest Nursing Supervisors with the supervisory authority contemplated in Sec. 111.70(1)(o),

Stats., and the County has not seen fit for grant them the supervisory authority in sufficient degree and combination to qualify as a "supervisor."

DISCUSSION:

Motion to Dismiss:

We see no conflict between Sec. 111.70 and HSS 124.13. HSS 124.13(1)(c) states:

"An adequate number of registered nurses shall be on duty at all times to meet the nursing care needs of the patients. There shall be qualified supervisory personnel for each service or unit to ensure adequate patient care management." (emphasis added)

The purpose of HSS 124 is not to define "supervisory personnel" in terms of who is a "municipal employe" under Sec. 111.70, but to require hospitals to provide supervisory personnel for patient care management. Section 111.70(1)(o), Stats. defines a supervisor for purposes of collective bargaining and bargaining unit determinations.

Stephen Schlough, who is a DHSS representative, defined "supervisory personnel" as contemplated in HSS 124 as follows:

It would be someone who would be responsible in reporting back to management directing the care and services provided to the residents on that particular unit, someone who would be reviewing and observing what's going on and making sure that all procedures and requirements of our administrative rules are being carried out in that unit on that section of the hospital. 2/

Consistent with the wording of HSS 124, the interpretation by the DHSS official is that "supervisory personnel" are supervising care and services to residents or patients.

Moreover, the type of "supervisory" authority and responsibility envisioned by DHSS -- including the authority to intervene to protect clients or patients and to initiate discipline -- is the type already held by staff RN's in the bargaining unit to which the Union now seeks to accrete five positions.

We are denying the County's Motion to Dismiss. We have jurisdiction to determine whether the five Nursing Supervisors are "supervisors" within the meaning of Sec. 111.70(1)(o) or whether they are "municipal employes" within the meaning of Sec. 111.70(1)(i). Thus, we will proceed to determine whether the Nursing Supervisors are supervisory, or in the alternative, managerial employes on the factual record in this case.

Supervisory Employes:

In determining the supervisory status of a position, the Commission, in recognition of the statutory definition in Sec. 111.70(1)(o)1, Stats., considers the following criteria:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised and the number of other employes exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for her skill or for her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether she spends a substantial majority of her time supervising employes; and

7. The amount of independent judgment and discretion exercised in the supervision of employes. 3/

The Nursing Supervisors have a high degree of professional responsibility and use a considerable amount of independent judgment in carrying out their professional duties, such as overseeing the institution as a whole and admitting clients to the psychiatric hospital units. In our view, their pay level reflects their professional responsibility. However, they use very little independent judgment when it comes to supervising employes. For example, the record is clear that while Nursing Supervisors have the responsibility to issue a Notice of Investigation to employes charged with abuse, they do not do so until directed by an administrator. There is no evidence on the record that any Nursing Supervisor ever issued the lowest level of discipline, an oral reprimand, to an employe. The Health Center administrators have intentionally kept them out of the disciplinary process in order to achieve consistency both within the institution and within the County.

In prior cases where we have found RN's, charge nurses, LPN's, or other personnel in hospitals and nursing homes to be supervisory employes, the level of authority given to those employes was greater than in this case.

For example, in Sheboygan County, 4/ Nurse Supervisors were deemed to be supervisory employes where they were responsible for hiring employes, involved in issuing verbal and written reprimands, had the power to recommend suspensions and terminations, and were being trained to conduct performance evaluations. Nurse Supervisors in Sheboygan were involved in the suspensions and terminations of probationary employes.

In contrast, Nursing Supervisors in Brown County are not involved in the hiring process or in conducting performance evaluations. While the County argues that the input of Nursing Supervisors is critical to the evaluation function, their input is limited to the use of anecdotal notes. Other staff use

3/ Jackson County, Dec. No. 17828-E (WERC, 3/91); City of Mauston, Dec. No. 21424-B (WERC, 10/86); Northland Pines School District, Dec. No. 27154 (WERC, 2/92).

4/ Dec. No. 21168-A (Examiner Knudson, 3/84).

anecdotal notes to report matters, good or bad, about employes. Further, there is no evidence on the record that Nursing Supervisors have any meaningful role in evaluations. 5/

Also in contrast to the Sheboygan case, Nursing Supervisors in Brown County do not issue any reprimands, either verbal or written, and are not involved in suspensions or terminations of regular or probationary employes. Nursing Supervisors in Brown County have a very limited role in disciplinary matters and then only in cases of alleged abuse where some action needs to be taken immediately, no matter who is on duty. In those cases, Nursing Supervisors may give an employe a Notice of Investigation but only when directed to do by an administrator, and they may take part in investigating allegations of client abuse, particularly where they may need to take statements from other personnel who work nights or weekends when administration personnel are not usually on duty.

In Ozaukee County, 6/ registered nurses were found to be supervisory employes due to the authority they exercised over nursing assistants. They transferred nursing assistants from station to station without any oversight, they directed and assigned nursing assistants in the performance of their duties, and they had the authority to issue verbal and written reprimands without any supervisory oversight. On the other hand, the RN's played no role in the hire, layoff or recall of personnel and spent the bulk of their time attending personally to the health care needs of residents in the facility. Within that balance, the RN's role in the evaluation process was the determining factor. They took an active role in evaluations with little oversight, and those evaluations determined wage rates for nursing assistants.

The RN's in Ozaukee exhibit a greater degree of supervisory indicia than those in Brown County both in the evaluation process and in the authority to issue verbal and written reprimands without any oversight. Nursing Supervisors in Brown County have no such authority in the disciplinary scheme and no comparable role in an evaluation process.

In Columbia County (Hospital and Home), 7/ we found Licensed Practical Nurse/Team Leaders to be supervisory employes because they had the authority to effectively recommend the suspension and termination of nursing assistants and certified medication assistants. They conducted the first levels of discipline, both oral and written. In matters such as patient abuse, LPN Team Leaders had the ability to suspend employes without pay pending an investigation. The LPN Team Leaders completed evaluations on nursing assistants, and nursing assistants

5/ As we noted in Village of Stoddard, Dec. No. 27358 (WERC, 8/92), the fact that an employe assists an employer in the evaluation of probationary employes and provides information to the employer does not confer supervisory status on that employe.

6/ Dec. No. 23464 (WERC, 3/86).

7/ Dec. No. 12038-D (WERC, 10/92).

could be promoted to the position of certified medication assistant based in part on their annual evaluations. Therefore, the LPN Team Leaders played an important role in promotional opportunities for nursing assistants.

Similarly in Walworth County (Lakeland Nursing Home), 8/ unit nurses functioned much like the LPN Team Leaders in Columbia County. Most LPN unit nurses evaluated nursing assistants and played a role in promoting them to certified medication assistant (CMA) positions. Nursing assistants needed recommendations of two unit nurses to take part in the training to become CMA's, and unit nurses had withheld recommendations in the past when they felt a nursing assistant was not suitable for the promotion. Unit nurses also evaluated potential nursing assistant candidates through a tracking period for 10 days, and then recommended whether or not the candidate was to be hired on a regular basis. We found their involvement in this tracking period extremely significant and indicative of supervisory status, whether deemed to constitute effective hiring recommendation or effective evaluation authority. We also noted that on several occasions, unit nurses recommended against the re-employment of individuals due to past performance problems.

The record before us in the instant case contains no such examples of the authority seen in Columbia County or Walworth County. Nursing Supervisors in Brown County are very limited in their role in the disciplinary process, as noted previously. They make no recommendations about discipline, and do not use any independent judgment in disciplinary matters involving other employees.

Moreover, the Nursing Supervisors in Brown County do not have the same type of team leadership duties as in Columbia County or Walworth County. They are not involved in evaluations or promotional opportunities.

In Sauk County (Health Care Center), 9/ LPN's who regularly worked as Unit Supervisors were deemed to be supervisory employees where they issued verbal and written warnings and recommended more severe disciplinary action, including transfers, terminations and withholding wage increases. They also represented the employer in the grievance procedure, recommended employees for promotions, and made written evaluations of the performance of nursing assistants. None of those factors is present in the case before us in Brown County.

Team leaders, who could be either RN's or LPN's, were excluded from a bargaining unit in Dodge County (Clearview Home), 10/ because they issued oral and written warnings, had the authority to recommend or take more severe disciplinary action, and made written evaluations of employees under their supervision.

8/ Dec. No. 9041-C (WERC, 3/92).

9/ Dec. No. 17882-A (WERC, 3/81).

10/ Dec. No. 11469-A (WERC, 3/83).

In all of the cases cited above, the employes excluded from bargaining units as supervisory employes had more authority in the disciplinary scheme than the Nursing Supervisors in Brown County, and in most of the cases, those who were found to be supervisory actively evaluated other employes.

The cases in which we have included employes in the bargaining unit have more similarities to the instant case.

For example, in Kenosha County (Brookside Care Center), 11/ we found that RN's were primarily responsible for the supervision of patient care, an activity, and that the direction of aides and LPN's was incidental to providing adequate care. While they would reassign employes on a day-to-day basis, grant overtime, or call in employes to insure minimum manning levels, those actions were carried out within procedures established by the Director of Nursing and did not require the use of independent judgment. They evaluated probationary employes but their recommendations appeared to have questionable value, since some were retained despite poor performance evaluations from the RN's.

Similarly, in Brown County, Nursing Supervisors can reassign employes but there is little independent judgment to be used, since policies and procedures established by the institution establish staffing ratios as well as the reasons for deviations from such ratios. The reassigning or staffing takes place mainly in the two hospital units where the census changes rapidly, and the function of overseeing the staffing needs is more in line with the Nursing Supervisors' professional responsibilities than in line with supervision of employes. Like the RN's in Kenosha County, the Nursing Supervisors in Brown County are primarily responsible for the supervision of patient care, which is an activity. Their direction of other employes in carrying out that responsibility does not rise to the level of supervising employes in a manner sufficient to exclude them from the bargaining unit.

Finally, in Shawano County (Maple Lane Health Care Facility), charge nurses were leadworkers rather than true supervisors where their supervision over nursing assistants was primarily supervision of activities rather than of employes. They did not participate in the hiring or grievance process and exercised little independent discretion in the administration of discipline. Again, the case before us is closer to the situation in Shawano County or Kenosha County than cases noted previously.

In order to find that the Nursing Supervisors have sufficient supervisory functions to be excluded from a bargaining unit, we would have to rest such a finding on lower indicia of supervisory responsibility than we have in the past. Without evidence that they are more involved in discipline, 12/ evaluations of others, or possess other significant supervisory authority such as hiring, these employes are not supervisors under Sec. 111.70(1)(o), Stats.

11/ Dec. No. 19435 (WERC, 3/82).

12/ From the testimony of Schlough, it can be argued that DHSS would require that Nursing Supervisors be given greater disciplinary authority than we have found exists. We base our determination as to supervisory status on existing disciplinary authority.

Managerial Employees:

The Commission has found that managerial employes are excluded from coverage under Sec. 111.70(1)(i) of the Municipal Employment Relations Act because their relationship to the employer gives them interests significantly at variance with those of other employes. 13/ Such a divergence of interests has been found where the employe participates in the formulation, determination and implementation of management policy or has the effective authority to commit the employer's resources. 14/ To find that an employe has managerial status, his or her involvement with the employer's policies must be at a relatively high level of responsibility and to a significant degree. 15/ The effective authority to commit the employer's resources can be shown by significant involvement in establishing an original budget or by allocating funds for program purposes which differ from the original budget. 16/ The preparation of a budget, per se, is not sufficient to establish managerial status. To confer managerial status, an individual's budget preparation duties must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. 17/ The authority to significantly affect the nature and direction of the employer's operations includes, among other things, the authority to determine the following: the kind and level of services to be provided; the kind and number of employes to be used in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including the

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- 13/ Price County, Dec. No. 11317-B (WERC, 9/89); Village of Saukville, Dec. No. 21670 (WERC, 9/89).
- 14/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Door County, Dec. No. 14810 (WERC, 7/76).
- 15/ City of Milwaukee, Dec. No. 11971 (WERC, 7/73); City of Milwaukee, Dec. No. 12035-A (WERC, 6/73), aff'd Dane Co.Cir.Ct. No. 142--170 (2/74); City of New London, Dec. No. 12170 (WERC, 9/73).
- 16/ Kewaunee County v. WERC, 141 Wis.2d 347 (1987); Milwaukee v. WERC, 71 Wis.2d 709 (1976).
- 17/ DePere Unified School District, Dec. No. 26572 (WERC, 8/90).

use of outside contractors. 18/

18/ Jackson County, Dec. No. 17828-B (WERC, 10/86); Taylor County, Dec. No. 24261-D (WERC, 1/91).

The County believes that the Nursing Supervisors commit the employer's resources by their role in admitting clients to the hospital, which in turn, commits the County's resources to provide adequate staff to care for such clients. However, the County has already committed its resources by determining to operate a psychiatric hospital and by allocating funds for that purpose, and the Nursing Supervisors' role in admitting clients to that hospital does not give them the authority to establish an original budget, to allocate funds for program purposes, or to affect the nature and direction of the County's operations through resource allocation choices. The County has determined the staffing needs and ratios of clients to staff members, and the Nursing Supervisors' role in changing staffing levels is limited to insuring adequate staffing levels depending on the census and acuity levels of clients and employe absences.

Nursing Supervisors may interpret policies developed by others and apply those policies in certain situations. However, they do not take part in forming or determining the 600 plus policies developed for the Health Center. They attend monthly meetings to keep updated on changes in policies or procedures. There is no evidence that Nursing Supervisors are involved in policy decisions in any significant manner.

Given the foregoing, the Nursing Supervisors are not managerial employes.

In conclusion, because the Nursing Supervisors are not supervisory or managerial employes, they are to be included in the bargaining unit represented by the Petitioner.

Dated at Madison, Wisconsin this 21st day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner