

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXIX  
No. 26072 ME-1832  
Decision No. 17882-A

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positions of Licensed Practical Nurse and Medical Records Supervisor, 1/ in that the Employer, contrary to the Union, contended said positions were supervisory; that, prior to the election the parties agreed that the ballots of the employees in the disputed positions would be challenged if the employees presented themselves to vote; that thirteen of said employees did appear to vote and their ballots were challenged; that said challenged ballots did not affect the results of the election; and, that through the instant petition, the Union requested the Commission to determine the employee status of the positions of Licensed Practical Nurse and Medical Records Supervisor.

4. That during the hearing in this matter, the parties stipulated that the position of Medical Records Supervisor was of a supervisory or managerial nature, and therefore, should be excluded from the collective bargaining unit.

5. That the Employer operates a health care center which consists of seven separate patient care units with separate nursing stations; that on both the day and evening shifts each unit is under the direction of a Unit Supervisor; that on the night shift a Unit Supervisor is usually responsible for more than one unit; that on each of the shifts there is a Supervisory Nurse, who must be an RN, to whom the Unit Supervisors report; that on the day shift the Supervisory Nurse is the Assistant Director of Nursing, or, in her absence the Director of Nursing; that the Unit Supervisors are either RNs or LPNs; that the Employer employs approximately twenty (20) Licensed Practical Nurses (herein LPNs), eighteen (18) Registered Nurses (herein RNs) and one hundred sixty (160) Nursing Assistants (herein NAs); that two of the RNs are the Director of Nursing and the Assistant Director of Nursing; that four RNs work part-time, as do four of the LPNs; that the number of nursing assistants assigned to each unit range from three to six on the day shift, from three to five on the evening shift, and, from three to four on the night shift; that the Unit Supervisors spend a majority of their time in patient care, which involves some different duties for RNs than are performed by LPNs; that each Unit Supervisor, irrespective of whether the employee is an LPN or an RN, on a daily basis assigns and oversees the patient care work of NAs and schedules breaks for NAs; that Unit Supervisors have issued verbal and written warnings to NAs; that Unit Supervisors evaluate the performance of each NA prior to the completion of their probationary periods for the purpose of recommending continued employment or termination of employment for those NAs, and, that such recommendations usually are followed by the Employer; that Unit Supervisors annually evaluate the performance of all non-probationary NAs and review those written evaluations with the NAs; that, if an NA's performance is unsatisfactory, the Unit Supervisor can, and has, recommended either the delay of the NA's movement on the merit wage progression schedule, the transfer of the NA to a nonpatient care position in a different department, or, the termination of the NA's employment; that Unit Supervisors have effectively recommended a promotion for an NA to a nonposted position on at least one prior occasion in the past year; that Unit Supervisors represent the Employer at the first step of the grievance procedure which procedure is part of the Employer's personnel policies; that the Employer's Personnel

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1/ Although the petition referred to the position of Medical Records Technician, the position in dispute was the Medical Records Supervisor.

Department centrally administers the interviewing and hiring of new employees, the job posting procedure, and, the staffing levels and the scheduling of work for employees, including the replacement of absent employees; that the maximum hourly wage rates (after eighteen months of employment) are \$7.19 for a Supervisory Nurse, \$6.85 for an RN, \$5.36 for an LPN, and, \$4.44 for an NA; and, that the hourly night shift premium is 75¢ for RNs and LPNs, and, 20¢ for NAs.

6. That, although the LPNs spend a majority of their time in patient care activities, the LPNs regularly occupy the position of Unit Supervisor, during which occupancies the LPNs issue verbal and written warnings to NAs, effectively recommend more severe discipline, including termination or delayed wage progression, evaluate the performance of NAs, control daily work decisions, including assignment of work and scheduling of breaks, and, on at least one recent occasion, effectively recommended an employee's promotion; and, that based on such factors, the position of LPN is found to be supervisory in nature.

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

#### CONCLUSION OF LAW

1. That, since the positions of Medical Records Supervisor and Licensed Practical Nurse are supervisory within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act (MERA), the individuals occupying said positions are not municipal employees within the meaning of Sec. 111.70(1)(b) of MERA, and therefore, the occupants of said positions are excluded from the bargaining unit.

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

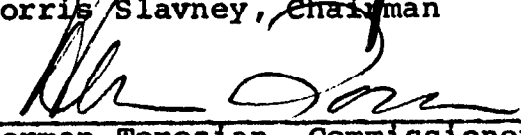
That the individuals employed as Medical Records Supervisor and Licensed Practical Nurse shall be, and hereby are, excluded from the bargaining unit described above in Finding of Fact No. 3.

Given under our hands and seal at the  
City of Madison, Wisconsin this 19th  
day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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

The record clearly demonstrates that the LPNs as well as RNs, regularly occupy the Unit Supervisor positions. Although the Unit Supervisors spend the majority of their time performing patient care duties, they also direct the day-to-day activities of the NAs under their supervision. Furthermore, the Unit Supervisors have issued verbal and written warnings and have effectively recommended more severe disciplinary actions, including transfers, terminations and the withholding of wage increases. Unit Supervisors also actively participate in the grievance procedure as a representative of the Employer, have effectively recommended an employee for promotion, and, make written evaluations of the performance of the NAs under their direction. Based on such factors, the Commission concludes that the position of LPN is supervisory, and therefore, excluded from the bargaining unit.

Dated at Madison, Wisconsin this 19th day of March, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner