STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

::

:

:

:

:

:

	•				-		-		-	-	-	-	•
In	the	Mat	:ter	of	the	Pei	tit	ion	o	E			
			COUI EMPI							L-(CIC	2	

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

Involving Certain Employes of

SAUK COUNTY (HEALTH CARE CENTER)

<u>Appearances:</u> <u>Mr. Darold Lowe</u>, District Representative, WCCME, 5 Odana Court, <u>Madison</u>, Wisconsin 53719 for the Petitioner. DeWitt, Sundby, Huggett & Schumacher, Attorneys at Law, by <u>Mr. Robert M. Hesslink</u>, Jr., 121 South Pinckney Street, <u>Madison</u>, Wisconsin 53703 for the Employer.

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

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having filed a petition on October 8, 1980 requesting the Wisconsin Employment Relations Commission to determine whether certain employes should be included in, or excluded from, an existing certified bargaining unit consisting of all employes of the Sauk County Health Care Center, but excluding supervisory, managerial, professional, confidential, craft and seasonal employes, and, residents; and hearing on said petition having been conducted on November 13, 1980 at Baraboo, Wisconsin by Douglas V. Knudson, Examiner; and posthearing briefs having been received on December 8, 1980; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying the Bargaining Unit.

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin 53719.

2. That Sauk County (Health Care Center), hereinafter referred to as the Employer, is a municipal employer and has its administrative offices at Reedsburg, Wisconsin 53959.

3. That following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of all employes of the Sauk County Health Care Center, but excluding supervisory, managerial, professional, confidential, craft and seasonal employes, and, residents; that, in the proceeding leading to said election and certification, the Union and the Employer could not agree as to the status of the

No. 17882-A

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 employes in the disputed positions would be challenged if the employes presented themselves to vote; that thirteen of said employes 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 employe 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.

That the Employer operates a health care center which con-5. sists 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 employe 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

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

١

Department centrally administers the interviewing and hiring of new employes, the job posting procedure, and, the staffing levels and the scheduling of work for employes, including the replacement of absent employes; 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 employe'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)(0)1 of the Municipal Employment Relations Act (MERA), the individuals occupying said positions are not municipal employes 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

1710 By Morri Slavney, chairman n Commissioner Torosian, Herman, - A 121 Gary L./Covelli, Commissioner

No. 17882-A

SAUK COUNTY (HEALTH CARE CENTER), XXIX, Decision No. 17882-A

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 employe 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 Mor Slavney Chairman Herman Commissioner Torosian, Gary L, Cóvelli, Commissioner