

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
KENOSHA COUNTY FEDERATION OF : Case 37
NURSES AND HEALTH PROFESSIONALS : No. 43406 ME-391
Involving Certain Employees of : Decision No. 19435-C
KENOSHA COUNTY (BROOKSIDE CARE CENTER) :
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Appearances:

Mr. Robert Russell, Field Representative, Wisconsin Federation of Nurses and Health Professionals
Mr. Frank Volpintesta, Kenosha County Corporation Counsel, Kenosha County Courthouse, 912 - 56th Street, Kenosha, Wisconsin 53140-3747, appearing on behalf of the County.

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

On December 8, 1989, Kenosha County Federation of Nurses and Health Professionals, Local 5061, AFT, AFL-CIO, hereinafter the Union, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of certain Kenosha County employees represented by the Union. By its petition, the Union sought the inclusion of two positions, the Qualified Mental Retardation Professional Programmer and the Programs Coordinator. At hearing, the Union requested the inclusion of one position, the Qualified Mental Retardation Professional Supervisor. 3/ Kenosha County opposes the inclusion on the grounds that the position is occupied by a supervisory employee. Following lengthy but ultimately unsuccessful efforts by the parties to settle the matter, hearing was held in Kenosha, Wisconsin on June 19, 1990, before Examiner David E. Shaw, a member of the Commission's staff. A stenographic transcript was prepared and received by the Commission on August 7, 1990. The record was closed on November 5, 1990, upon notification that neither party wished to file a post-hearing brief. The Commission, being fully advised in the premises, hereby makes and issues the following

3/ At hearing, it was understood that the Union was prepared to proceed only on the QMRP Supervisor position at that time.

FINDINGS OF FACT

1. Kenosha County Federation of Nurses and Health Professionals, Local 5061, AFT, AFL-CIO hereinafter the Union, is a labor organization with offices at 3725 Roosevelt Road, Kenosha, Wisconsin 53140.

2. Kenosha County (Brookside Care Center), hereinafter the County, is a municipal employer with offices at the Kenosha County Courthouse, 912 - 56th Street, Kenosha, Wisconsin 53140.

3. On April 20, 1982, the Wisconsin Employment Relations Commission, hereinafter Commission, certified the Union as the bargaining representative of the collective bargaining unit consisting of all full-time and regular part-time registered nurses, including graduate nurses, employed by Kenosha County, excluding all supervisory, executive, managerial and confidential employees. 4/

4. Article 1, Recognition, of the parties' 1988-89 collective bargaining agreement contains the following:

Kenosha County (hereinafter referred to as "County") recognizes local 5061, Kenosha County Federation of Nurses and Health Professionals, AFT, AFL-CIO (hereinafter referred to as "Union") as the exclusive collective bargaining agent for all regular full-time and part-time Registered Nurses, including graduate nurses, and Registered Music Therapists, employed by Kenosha County, excluding all supervisory, managerial and confidential employees.

5. On December 8, 1989, the Union filed a petition requesting the Commission to clarify the bargaining unit represented by the Union by including the positions of Qualified Mental Retardation Professional Programmer and the Programs Coordinator. At hearing held on June 19, 1990, the Union sought only the inclusion of the Qualified Mental Retardation Professional Supervisor position. The County opposes the inclusion of the position on the basis that the position is occupied by a supervisory employee.

6. Judith Lenart began her employment with the County on March 21, 1988. From March 21, 1988 until June of 1989, Lenart was employed as an Activity Aide at the County's Brookside Care Center. Lenart has a Bachelor's Degree in Adaptive Physical Education, DPI teacher certification, and has been working with the mentally retarded for approximately fifteen years. In June of 1989, Lenart bid for the position of Qualified Mental Retardation Professional Programmer, hereinafter QMRP Programmer, and assumed the position of "QMRP FT Temporary" on June 26, 1989. From the time that Lenart assumed her new position in June of 1989 until October of 1989, Lenart performed duties of an Activity Aide as well as the duties of the QMRP Programmer. From October of 1989 until March, 1990, Lenart functioned only as the QMRP Programmer. In March, 1990, Lenart assumed the position of Qualified Mental Retardation Professional Supervisor, hereinafter QMRP Supervisor. Prior to Lenart's assumption of QMRP duties, two members of the Union's collective bargaining unit had performed QMRP work on an assignment basis and reported to the Nursing Supervisor, the Director of Nursing and to the Administrator. The Nursing Supervisor to whom they had reported was QMRP qualified. When Lenart assumed the QMRP Programmer duties in June of 1989, her wages were increased from \$9.20 per hour to \$10.00 per hour. In March of 1990, Lenart became a salaried employee and her pay rate was increased to approximately \$28,650 per year or

2/ Kenosha County (Brookside Care Center), Dec. No. 19435 (WERC, 4/82).

\$13.78 per hour. The County's "Non-Represented Pay Equity Plan" lists QMRP Supervisor in Range 17 in June of 1990. Lenart punched a time card as an Activity Aide and continued to do so until March of 1990. Lenart normally works during the first shift and every other weekend. Lenart receives compensatory time for all hours worked over 45 hours per week. As of June, 1990, the four RN shift supervisors at the Brookside Care Center were listed in Range 15 under the "Non-Represented Pay Equity Plan" and had annual salaries of \$31,447. Non-supervisory RN's represented by the Union received a maximum of \$27,449.84 for 1989. The 1988-89 collective bargaining agreement between the Union and the County contained the following provision regarding QMRP assignments:

APPENDIX "C"

QMRP AGREEMENT

1. All hours compensated under the QMRP Assignment will be paid twenty-five cents (\$0.25) per hour over the person's current hourly rate with the following exception:
 - a. Part-time QMRP personnel will be paid twenty-five cents (\$0.25) per hour over the person's current hourly rate for actual hours worked on the assignment.
2. Time off from work for vacation and holidays shall be scheduled among QMRP personnel.
3. Upon completion of the QMRP Assignment, the nurses should be allowed to return to their former position.

7. At the time of hearing, Lenart occupied the position of QMRP Supervisor and functioned under the following position description:

QUALIFIED MENTAL RETARDATION PROFESSIONAL SUPERVISOR

GENERAL STATEMENT OF DUTIES: Plans the total activities of the developmentally disabled so that they can function at their highest level.

DISTINGUISHING FEATURES OF THE CLASS: The QMRP Supervisor is a resident advocate who coordinates the development of Individual Plans of Care and assures the provision of active treatment through ongoing program monitoring, facilitation and evaluation; the documentation of the residents' responses to programming; assisting in the education of staff; and the provision of information and reports. Supervises the staff QMRP's. Work is performed under the general direction of the Director of Developmentally Disabled unit.

EXAMPLES OF WORK: (Illustrative only)

Observes residents for signs of fatigue, irritability or change in social status;
Assesses and evaluates new residents on admission;
Participates in staff meetings and in-service training;

Assures that all staff are assessing and meeting the goals of the Individual Program Plan (I.P.P.);
Hires, fires and disciplines subordinates;
Ensures that the DD unit remains in compliance with State and Federal ICF/MR codes;
Maintains a record of resident activities, writing progress notes on residents;
Meets with residents on a one-to-one basis providing necessary social contact;
Develops goals and approaches for individual residents;
Plans and supervises the work of Activity Aides;
Coordination of the development of the Comprehensive Plan of Care to ensure active treatment for each resident;
Monitoring the delivery of each resident's Individual Plan of Care;
Completes a comprehensive monthly review of assigned resident's Individual Plan of Care; Identifies staff training needs as related to the Individual Program Plan;
Assures the integration of the ICF/MR regulations in Care Plans;

QUALIFICATIONS:

- Knowledge of rules, principals, techniques and equipment used in recreational activity programs;
- Knowledge of resident illnesses, medications and their effects;
- Ability to plan, organize, and supervise activities as they relate to QMRP;
- Ability to understand the social, psychological, and recreational needs of the elderly and handicapped;
- Ability to obtain the cooperation and interest of residents in activity programs;
- Ability to keep records and document resident's progress or decline;
- Ability to assess residents' needs and determine individual goals and approaches;

EDUCATION, TRAINING AND EXPERIENCE:

Has at least one year of experience working directly with persons with mental retardation or other developmental disabilities; and possesses one of the following: A registered nurse and/or Bachelor's Degree in occupational therapy, an occupational therapy assistant, a physical therapist, a physical therapy assistant, a psychologist, a social worker who holds a Bachelor of Social Work degree from an accredited college or university or a speech-language pathologist or audiologist, or a Bachelor's Degree in recreation or in a specialty area such as art, dance, music or physical education; a professional dietitian, or any combination of training and experience which provides the required skills. A Bachelor's Degree in sociology, special education, rehabilitation counseling and psychology.

The "DISTINGUISHING FEATURES OF CLASS" section of the QMRP Programmer position description signed by Lenart also included the following: "Hires, fires and disciplines subordinates." The job description for Qualified Mental Retardation Professional signed by the Music Therapist earlier when she was doing QMRP work did not include such a statement.

8. Lenart works in the Developmentally Disabled Unit, which is also known as Willow Brook. The Developmentally Disabled Unit, hereinafter the DD Unit, is headed by Director Marie Garwood. Garwood is supervised by Juanita Wethington, the Administrator of the County's Brookside Care Center. Prior to October of 1989, the Brookside Care Center was a single unit which cared for both geriatric and developmentally disabled residents. In 1987 and 1988 Brookside Care Center was cited for deficiencies in areas for which the QMRP was responsible. These problems ultimately resulted in a restructuring of the management of the DD Unit and the QMRP work. In October of 1989, the Developmentally Disabled Unit received a separate license and now functions as a separate unit. Currently, there are 194 residents in the geriatric unit and 31 residents in the DD Unit of the Brookside Care Center. With the exception of Garwood, who has an RN license, the DD Unit does not employ any RN's. The DD Unit currently employs LPN's, direct care staff and activity aides, all of whom are members of Kenosha County Institutions Employees, Local 1392, AFSCME, AFL-CIO. Unlike the Activity Aides at Brookside, the Activity Aides in the DD Unit do not report to the Activity Director. There are three other employees in the DD Unit, i.e., Garwood, Lenart and Tom LaDuke, the Program Coordinator. Lenart and LaDuke are each supervised by Garwood and report directly to her. Garwood is considered to be on the same supervisory level as the Director of Nursing. Lenart and LaDuke are considered to have equivalent authority, and both are responsible for the direct supervision of direct care staff and activity aides in the DD Unit as to QMRP-related activities. At the time of hearing, there were approximately 20 direct care staff (which includes nursing aides and assistants) and activity aides in the DD Unit. Normally, one LPN is assigned to each shift. The LPN's primary function is to dispense medication. While all of the DD unit staff have a responsibility to implement each resident's Individual Program Plan, hereafter IPP, it is the direct care staff who have the primary responsibility to implement the IPP. Although Lenart will assist other staff members when there is a shortage of staff or she perceives that an employee or resident needs assistance, she does not normally provide direct care to residents. Lenart is designated to provide intervention as necessary. Lenart's primary work responsibility is to assist in developing the Individual Program Plan for residents, ensure that the Individual Program Plan is implemented and ensure that the Developmentally Disabled Unit meets applicable State and Federal code requirements. While trained staff needs little direct work supervision, Lenart devotes between one-quarter and one-third of her work time to supervising employees, and provides staff training as needed. If Lenart notices that employees are talking to one another and neglecting the residents, or not following the IPP, she counsels the employees. Lenart conducts annual performance evaluations of employees. The employees' wages are not determined by this evaluation, but rather, are negotiated in the collective bargaining process. Lenart has staffing responsibility and calls in employees as needed. When additional staffing is needed, Lenart attempts to staff by calling in employees who will not incur overtime. When this is not possible, Lenart has the authority to call in employees to work overtime. Lenart would be responsible for other employees assigned to do QMRP work, including RN's in the bargaining unit represented by the Union. Lenart is the only employee doing QMRP work at the time of hearing.

9. The Local 1392 employees under Lenart's supervision earn between \$6.00/hour and \$10.75/hour under the 1989-91 Agreement between the County and Local 1392. Lenart has disciplinary authority over the Local 1392 employees who

work at the DD Unit. In instances other than suspected patient abuse, if Lenart decided that it was appropriate to impose discipline, she would follow a policy of progressive discipline i.e. verbal warning, written warning, suspension and termination. Lenart considers herself to have the authority to discipline or discharge subordinates; however, prior to discharging any employee, Lenart would discuss the matter with Wethington to ensure that she had complied with the "just cause" requirement in the Local 1392 contract and Wethington's policies. Lenart would not discharge any employee if the decision to discharge was opposed by Wethington. Lenart has exercised her authority to discipline on several occasions. On one occasion, Lenart determined that a nursing attendant, one of the direct care staff, had too many call-ins. Lenart called the employee into her office, asked the employee if the employee wished to have union representation, discussed the employee's attendance problem with the employee, prepared the verbal discipline form and distributed the form to the appropriate individuals. Garwood was present during this discussion, but did not participate in the discussion. On one occasion, Lenart requested a nurse to assist her in the dining room. When the nurse responded with a snide remark, Lenart counseled the nurse and the nurse provided the requested assistance. On another occasion, when Lenart concluded that employees were engaging in horseplay on the intercom, Lenart approached the employees and, in the presence of the charge nurse, told the employees to stop the horseplay, which they did.

10. Since June of 1989, the DD Unit has hired two activity aides through their having posted into the DD unit from other units at Brookside. Garwood interviewed and selected the successful applicants. Lenart did not participate in these interviews, but did review resumes and, following the interviews, discussed the applicants with Garwood. LaDuke and Lenart developed questions for an oral test which was administered to the applicants by Garwood. Lenart had voiced her reservations to Garwood concerning one of the applicants; however, Garwood selected the applicant regardless of Lenart's concerns, as the applicant was the only one who had passed the oral test. This applicant was subsequently temporarily suspended by Wethington. Lenart was present when LaDuke discussed the suspension matter with Garwood. The information was then passed to Wethington who made the decision. Lenart had recommended that the employee be fired. Wethington considers Garwood to have the responsibility to determine whether or not there is a need to hire into the DD Unit. Lenart considers herself to have authority to transfer employees within the DD Unit to other positions, but has not exercised such authority. The direct care staff and the activity aides are able to perform each other's assignments and do perform each other's assignments on an as needed basis. Since Lenart assumed her QMRP duties, one of the Union's bargaining unit employees, the Music Therapist, who had done QMRP work on a part-time basis, has been laid off. Lenart did not participate in the decision-making which resulted in the layoff. Lenart, Garwood and LaDuke, working as a team, have developed a job description for the position of Activity Aide, which description has been presented to Wethington. Lenart is unsure of the procedure for filing grievances, but believes that grievances would be filed with Garwood. Lenart would accept a grievance if she were the only supervisor in the building.

11. Judith Lenart, the employee occupying the position of QMRP Supervisor, possesses and exercises supervisory authority in sufficient combination and degree so as to be deemed a supervisory employee.

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

CONCLUSION OF LAW

Judith Lenart, the occupant of the position of QMRP Supervisor, is a supervisory employe within the meaning of Sec. 111.70(1)(o), Stats.

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

The position of QMRP Supervisor shall be, and hereby is, excluded from the bargaining unit described in Finding of Fact 4.

Given under our hands and seal at the City of
Madison, Wisconsin this 23rd day of September,
1991.

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

3/ 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.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(Footnote 3/ continues on page 9.)

(Footnote 3/ continued from page 8.)

(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 respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(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.

KENOSHA COUNTY (BROOKSIDE CARE CENTER)

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

POSITIONS OF THE PARTIES

Union:

The Union maintains that the QMRP work performed by Lenart is bargaining unit work. The Union's claim rests upon the assertion that the work has historically been performed by bargaining unit employees and that the parties have bargained the duties and compensation of the position. The Union asserts that the County unilaterally assigned QMRP work to Lenart when she was a member of the AFSCME bargaining unit. The Union denies that the County has the right to unilaterally transfer work out of the bargaining unit and denies that Lenart is a supervisory employee. The Union maintains that Lenart's position is appropriately included in the bargaining unit represented by the Union.

County:

The County does not deny that Lenart is performing QMRP work which was previously performed by members of the Union's collective bargaining unit. The County, however, maintains that as the QMRP Supervisor, Lenart is performing supervisory duties which were not previously performed by members of the Union's collective bargaining unit. The County maintains that Lenart is a supervisory employee and, therefore, not appropriately included in the collective bargaining unit represented by the Union.

DISCUSSION

The statutory and case law definitions of supervisory employee are clear and well-established. A supervisory employee is one with the authority to "hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action. . ." Section 111.70(1)(o)1, Stats. Our case law has interpreted the statutory provision to set the following as relevant indicia of supervisory status:

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

4/ Jackson County, Decision No. 17828-E (WERC, 3/91); City of Mauston, Dec. No. 21424-B (WERC, 10/86).

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employee to be a supervisor; further, even though an employee may spend a majority of his/her time doing non-supervisory duties, the Commission has found supervisory status where sufficient responsibilities and authority are present. 6/

There had not been any new employees hired in the DD Unit at the time of hearing. When an employee has posted into the DD Unit, it has been Garwood, and not Lenart, who interviewed applicants and selected the successful applicant. Lenart participated in the process by reviewing resumes, developing test questions, and discussing the applicants with Garwood, along with LaDuke. The fact that Garwood selected an applicant when Lenart had expressed reservations about the applicant, indicates that Garwood does not necessarily defer to Lenart's judgment in hiring matters; however, it appears that Garwood felt constrained to select the applicant because she was the only applicant that passed the test. Lenart's job description expressly states that the incumbent has the authority to hire employees, and both Wethington and Lenart testified they consider Lenart to have such authority. The record, however, does not establish that Lenart has authority to hire employees on her own, and in the instances to date, has not exercised the authority to effectively recommend the hiring of employees. Rather, the record establishes that Garwood, Lenart's supervisor, has retained such authority.

It is not evident that Lenart has any authority to promote or to effectively recommend the promotion of any employee. While Lenart considers herself to have authority to transfer employees within the DD Unit, she has not had occasion to exercise such authority.

Lenart's job description expressly states that the incumbent has authority to discipline employees. Additionally, Lenart and Wethington testified they consider Lenart to have such authority. According to Lenart, she has authority to impose progressive discipline, i.e., verbal warning, written warning, suspension and termination for just cause. Lenart has exercised disciplinary authority. Lenart determined that a nursing attendant, one of the direct care staff, had too many call-ins. Lenart called the employee into her office, asked the employee if the employee wished to have union representation, discussed the employee's attendance problem with the employee, prepared the verbal discipline form and distributed the form to the appropriate individuals. Garwood was present during this discussion, but did not participate in the discussion. On another occasion, when LaDuke felt it was necessary to suspend an employee, Lenart joined LaDuke in discussing the matter with Garwood, although her recommendation to fire the employee was not accepted by Wethington who subsequently suspended the employee. While it is not evident that Lenart has participated in any other formal discipline, she has informally corrected employee conduct. On one occasion, Lenart requested a nurse to assist her in the dining room. When the nurse responded with a snide remark, Lenart counseled the nurse and the nurse provided the requested assistance. On another occasion, when Lenart concluded that employees were engaging in horseplay on the intercom, Lenart approached the employees and, in the presence of the charge nurse, told the employees to stop the horseplay, which they did. The record demonstrates that Lenart and LaDuke are considered to have equivalent supervisory authority. While Lenart has not had an occasion to suspend an employee, LaDuke's involvement in the suspension of an employee supports Lenart's assertion that she has authority to impose or effectively recommend a disciplinary suspension.

Lenart's testimony demonstrates that, prior to discharging any employee, Lenart would discuss the matter with Wethington to ensure that she had complied with the Local 1392 contract and Wethington's policies. Lenart further stated that she would not discharge any employee if Wethington opposed the discharge. It is not evident from the record that Wethington would defer to Lenart's judgment in a discharge situation, and in fact did not follow Lenart's recommendation to discharge the employee in the DD Unit on suspension at the time of the hearing. Hence, we are not persuaded that Lenart has the authority to effectively recommend discharge. We are, however, persuaded that Lenart has authority to impose, or effectively recommend the imposition of, other types of disciplinary action such as verbal warning, written warning, and suspension.

Lenart's primary function is to ensure that the staff of the DD Unit implement the residents' IPP and comply with applicable State and Federal Codes. Lenart has the responsibility to train staff to implement the IPP and to monitor the staff's work performance to ensure that the staff implements the IPP. While it appears that trained staff need little direct supervision, we are persuaded that Lenart provides direction as needed. Lenart's supervisory authority is also evidenced by the fact that Lenart has staffing responsibilities and has authority to call-in employees as needed. While Lenart attempts to call-in staff who will not incur overtime, she has the authority to call-in employees to work on an overtime basis. There is nothing in the record to contradict Lenart's assertion that she devotes between one-third and one-quarter of her work time to supervisory duties. While some of this supervisory duty involves the supervision of an activity, Lenart is also involved in the supervision of approximately 20 employees at the DD Unit, and she would also be responsible for supervising anyone else assigned to do QMRP work in the future.

Appendix "B" of the contract establishes that at the time of the hearing, employees in the classifications supervised by Lenart have a wage rate ranging from \$6.00 per hour to \$10.75/hour. We consider Lenart's wage of \$13.78 per hour to be significantly higher than the wage rate of the employees under her supervision. We are unable to determine whether this difference is due Lenart's supervisory authority or the professional nature of Lenart's QMRP duties; however, it is also somewhat higher than the maximum received by the non-supervisory RN's in the bargaining unit represented by the Union.

As the Union argues, the professional QMRP work being performed by Lenart is the same type of work which had been previously performed by Union bargaining unit employees. However, unlike the prior employees assigned QMRP work, Lenart has been assigned supervisory duties and given supervisory authority in sufficient combination and degree to require her exclusion from the bargaining unit on that basis.

Dated at Madison, Wisconsin this 23rd day of September, 1991.

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

