

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

: In the Matter of the :
: Petition of :
: :
: KENOSHA COUNTY FEDERATION : Case XXXVII
: OF NURSES AND HEALTH : No. 28424 ME-2034
: PROFESSIONALS, AFT, AFL-CIO : Decision No. 19435
: :
: Involving Certain Employes of :
: :
: KENOSHA COUNTY (BROOKSIDE :
: CARE CENTER) :
: :
: -----

Appearances

Mr. Richard H. Schwarz, Field Representative, Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO, 625 W. Bluemound Rd., Milwaukee, Wisconsin 53213, on behalf of the Petitioner.
Mulcahy & Wherry, S.C., by Mr. John M. Loomis, 815 East Mason Street, Suite 1600, Milwaukee, Wisconsin 53202, on behalf of Kenosha County.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DIRECTION OF ELECTION

Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO having, on July 28, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, among certain professional employes in the employ of Kenosha County (Brookside Care Center), to determine whether said employes desired to be represented for the purpose of collective bargaining by the Petitioner; and hearing in the matter having been conducted on September 8 and 23, 1981 in Kenosha, Wisconsin, before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff; and a stenographic transcript of said hearing having been made; and Kenosha County having submitted a post-hearing brief and the Commission, having reviewed the evidence and arguments of the parties, and being fully advised in the premises makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices located at 625 W. Bluemound Road, Milwaukee, Wisconsin 53213.

2. That Kenosha County, hereinafter referred to as the County, is a municipal employer which operates Brookside Care Center, hereinafter referred to as Brookside, a twenty-four hour, 3 shift, seven days a week health care center at 912 56th Street, Kenosha, Wisconsin; and that a three member Board of Trustees has statutory authority over the operational control of Brookside.

3. That Brookside is physically located on several acres of land and contains four buildings: West, which has two floors and houses seventy-eight (78) patients; East, which has forty (40) beds; Annex 1, which has forty-six (46) residents; and Annex 2, which has twenty (20) beds; that there are approximately two hundred and eighty (280) employes at Brookside in the following departments: Nursing, Dietary, Housekeeping and Laundry, Maintenance, Activities, Social Work, Office, Music Therapist and Administration; that there are approximately 166 employes in the Nursing Department in the following classifications:

	<u>No. of Employees</u>
Director of Nursing	1
Assistant Director of Nursing	1
In-Service Training Coordinator	1
Plan of Care Coordinator	1
Supervisory Registered Nurse	18
Licensed Practical Nurse	30
Nursing Attendent	114;

that ultimate supervision of Brookside is exercised by the Administrator, Roland Gregory; that in the classification of Supervisory Registered Nurse, hereinafter referred to as RN, the County employs the following full-time and part-time employees:

	<u>Minimum Work Week</u>		<u>Minimum Work Week</u>
D. Abig	40 hrs.	J. Matera	32 hrs.
C. Hirsch	40 hrs.	M. Lalor	24 hrs.
S. Kunath	40 hrs.	A. Nicki	24 hrs.
R. Norville	40 hrs.	J. Suter	24 hrs.
M. Priddis	40 hrs.	M. Toboyek	24 hrs.
M. Wich	40 hrs.	H. Walsh	24 hrs.
L. Wood	40 hrs.	D. Martin	16 hrs.
G. Kapplehoff	32 hrs.	M. Yound	16 hrs.
B. Malzahn	32 hrs.	J. O'Connell	15 hrs.

that of the thirty Licensed Practical Nurses, hereinafter referred to as LPN, fifteen work a minimum of 40 hours per week, ten work 24 hours per week, four work 16 hours per week and one works 15 hours per week; that of the one hundred and fourteen Nursing Attendants, hereinafter referred to as Aides, fifty six work a minimum of 40 hours per week, eleven work 32 hours per week, twenty-five work 24 hours per week, six work 23 hours per week, five work 20 hours per week, two work 16 hours per week and nine work 8 hours per week; that the LPNs and Aides are currently included in a bargaining unit represented by Kenosha County Institutions Employees, Local 1392, AFSCME, AFL-CIO, hereinafter referred to as Local 1392; that when the County negotiates with Local 1392, the Board of Trustees negotiates language issues and the County negotiates wage issues; that the County operates a Division of Health and Social Services wherein it employs a County Nurse, Ester Alexanian, two Assistant County Nurses, D. Stafford, and M. A. Eggerlund, both of whom are registered nurses, and one Clerk Typist III, Ann Klug; that said four employees are physically located at Brookside.

4. That on May 28, 1981 the Union filed a petition requesting the Commission to determine whether a majority of "registered nurses, including graduate nurses, employed by Kenosha County at Brookside Care Center, excluding the Director of Nursing and all other employees" desire to be represented for the purpose of collective bargaining by the Union; that the County has employed graduate nurses at Brookside; that graduate nurses are individuals who have completed educational requirements toward the acquisition of a license as a registered nurse; that the County does not at the present time employ any graduate nurses; that the parties stipulated to the inclusion of graduate nurses in the bargaining unit; that the Union contends that a bargaining unit consisting of all registered nurses employed by the County at Brookside excluding supervisory, managerial, confidential and executive employees is an appropriate bargaining unit; that the County and the Union contend that the County Nurse and the Assistant County Nurses employed in the Division of Health and Social Services should be excluded because these employees lack a community of interest with the RNs in the Brookside Nursing Department; that the creation of a bargaining unit consisting of only the RNs employed in the Brookside Nursing Department while excluding the RNs in other departments would result in undue fragmentation of bargaining units; that a 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 constitutes an appropriate bargaining unit of employees who are in the same profession, thereby sharing a community of interest; and that the establishment of such a bargaining unit avoids undue fragmentation.

5. That at the hearing the parties stipulated to the following: that the Director of Nursing, Loretta Gutowski, the Assistant Director of Nursing, Bernice Wikstrom, and the Nursing In-Service Coordinator, Phyllis Lundholm, are supervisory and/or managerial employees; that the Director of Nursing administers the Brookside Nursing Care Program, has the effective authority to hire, transfer, suspend or discharge employees; that the Assistant Director of Nursing has the effective authority to hire employees and assists the Director of Nursing in administering the Brookside Nursing Care Program; that the Nursing In-Service Coordinator teaches clinical skills to nursing personnel and plans, develops and implements on-going educational programs; and, that the occupants of the positions of Director of Nursing, Assistant Director of Nursing and the Nursing In-Service Coordinator perform supervisory responsibilities in sufficient combination and degree so as to make them supervisory employees.

6. That the County currently employs Shirley Plovanick in its Plan of Care Coordinator position, hereinafter referred to as Coordinator; that the County contends that Plovanick is a managerial/supervisory employee and should be excluded from said bargaining unit; that the Union contends Plovanick is a registered nurse and is not a managerial/supervisory employee and should be included in said unit; that Plovanick formulates, updates and revises individualized holistic plans of care for all residents of Brookside; that such plans of care contain the following components: nursing procedure, psychological counsel, social advocacy, safety maintenance, diversional activity, nutritional sustenance and restorative/rehabilitational process; that Plovanick develops or alters plans of care by obtaining information from direct observation of the residents, interviewing the resident/family, transfer forms, history and physical forms, physician's orders/progress notes, nurses notes, conducting one to one consultation with personnel involved with the resident, and attending interdisciplinary care plan meetings; that Plovanick is a registered nurse; that Plovanick does not have the effective authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline employees; that Plovanick does not have the effective authority to adjust grievances; that Plovanick does not exercise supervisory responsibilities in sufficient combination or degree so as to make her a supervisory employee; that Brookside's management policy is to have individualized plans of care for all residents; that Plovanick is responsible for the development and implementation of said plans of care; and, that Plovanick participates to a significant degree in the formulation and implementation of management policy.

7. That the County contends that the eighteen RNs employed in the Brookside Nursing Department are supervisors and should be excluded from the bargaining unit; that the RNs exercise only limited supervision over nursing teams of LPNs and aides which include: (1) directing and assigning the work of LPNs and Aides in relation to patient care, (2) evaluating the work performance of the LPNs and Aides both during and after probationary periods, and (3) reassigning LPNs and Aides on a day-to-day basis to meet minimum manning levels; that the size and makeup of each nursing team varies from shift to shift and day to day and is established and scheduled by the Director of Nursing who also established the minimum manning level for each nursing team; that the smallest nursing team consists of one RN and two Aides and the largest nursing team consists of two RNs, four LPNs and thirteen Aides; that evaluations of probationary employees made by RNs are used by the Director of Nursing and Assistant Director of Nursing in determining whether to retain probationary employees; that evaluations of probationary employees made by RNs do not contain a specific recommendation by the RN as to whether the employee should be retained; that on at least five occasions RNs gave probationary employees poor performance evaluations and subsequently the probationary employees were discharged; that there have been instances where probationary employees received poor performance evaluations and subsequently were retained by the County; that the Director of Nursing and Assistant Director of Nursing utilize other criteria, such as sick leave usage, tardiness and unexcused absenteeism in determining whether to retain probationary employees; that the County contends the RNs have the effective authority to adjust grievances; that the first step of the grievance procedure between the County and Local 1392 requires an employee who has a grievance to discuss it orally with his/her immediate supervisor; that there is no record of an RN having ever adjusted or resolved a grievance; that all written grievances concerning LPNs or Aides are filed with the Director of Nursing; that RNs do not have the effective authority to recommend the hiring, discharge, promotion or transfer of employees; that RNs do not approve vacations, sick leave or other forms of absences; that the rate-of-pay

per hour for an RN is: Start - \$10.45, 6 Month - \$10.69, 1 year - \$10.83, 2 years - \$10.97; that the rate-of-pay for an LPN is: Start - \$9.27, 3 month - \$9.37, 1 year - \$9.53, 2 years - \$9.65; that the rate-of-pay for an Aide is: Start - \$8.45, 1 year - \$8.75, 2 years - \$8.83; that the difference in pay between an RN, an LPN and an Aide is a function of the certification requirements for RNs and their greater degree of job responsibility; that the RNs are primarily responsible for the supervision of patient care responsibilities; that the RNs spend the majority of their workday in the following activities: (1) planning, developing and implementing patient care plans, (2) administering treatment, medication and diagnostic procedures as ordered by physicians, (3) handling admission, transfer and discharge of patients, (4) assisting staff with major nursing problems, and (5) cooperating with in-service education of nursing personnel; and that the occupants of the RN positions do not exercise supervisory responsibilities in sufficient combination or degree so as to make them supervisory employees.

8. That both the County and the Union contend that the position of County Nurse, occupied by Ester Alexanian, is a managerial and/or supervisory position; that the County Nurse is responsible for planning, organizing, administering and evaluating nursing service of the County's public health nursing program and recruits and directs Public Health personnel; and, that the County Nurse, exercises supervisory responsibilities in sufficient combination or degree so as to make her a supervisory employee.

Upon the basis of the above and foregoing Findings of Fact the Commission makes the following

CONCLUSIONS OF LAW

1. That a question of representation exists within the following collective bargaining unit deemed appropriate within the meaning of Section 111.70(4)(d)2.a of the Municipal Employment Relations Act (MERA): all full-time and regular part-time registered nurses, including graduate nurses, employed by Kenosha County excluding all supervisory, executive, managerial and confidential employees.

2. That the occupants of the Director of Nursing position, Loretta Gutowski, the Assistant Director of Nursing position, Bernice Wikstrom, the In-Service Coordinator position, Phyllis Lundholm, and the County Nurse, Ester Alexanian, are supervisory employees within the meaning of Section 111.70(1)(o) and therefore are appropriately excluded from the collective bargaining unit set forth in Conclusion of Law 1.

3. That the occupant of the Plan of Care Coordinator position, Shirley Plovanick, is a managerial employee within the meaning of Section 111.70(1)(b) of MERA and is appropriately excluded from the collective bargaining unit set forth in Conclusion of Law 1.

4. That the occupants of the Supervisory Registered Nurse positions, D. Abig, C. Hirsh, S. Kunath, R. Norville, M. Priddis, M. Wirch, L. Wood, G. Kapplehoff, B. Malzahn, J. Matera, M. Labor, A. Nicki, J. Suter, M. Toboyek, H. Walsh, D. Martin, M. Yound, and J. O'Connell, are municipal employees within the meaning of Section 111.70(1)(b) of MERA, and are appropriately included in the bargaining unit set forth in Conclusion of Law 1.


5. That the occupants of the Assistant County Nurse positions, D. Stafford and M. A. Eggerlund, are municipal employees within the meaning of Section 111.70(1)(u) of MERA, and are appropriately included in the bargaining unit set forth in Conclusion of Law 1.

employed by Kenosha County on March 3, 1982, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the Wisconsin Federation of Nurses and Health Professionals, AFT, AFL-CIO for the purposes of collective bargaining with the above named Municipal Employer on questions of wages, hours and conditions of employment.

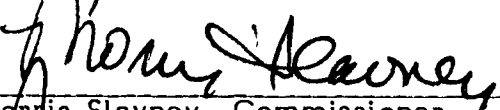
Given under our hands and seal at the City of Madison, Wisconsin this 3rd day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

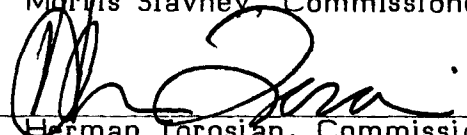
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DIRECTION OF ELECTION

The parties in the instant matter do not dispute the exclusion of the Director of Nursing, Assistant Director of Nursing, In-Service Training Coordinator and the County Nurse from the bargaining unit as supervisory employees. As the record supports the parties' stipulation that said positions are supervisory, it is unnecessary to further discuss their status.

Unit Composition:

Both the Union and the County contend that the bargaining unit should consist of only registered nurses employed in Brookside's Nursing Department. However, when establishing bargaining units pursuant to Section 111.70(4)(d)2.a of MERA, the Commission is statutorily obligated to avoid fragmentation by maintaining as few units as practical in keeping with the size of the total municipal work force. 1/ Here the County employs 18 registered nurses as Supervisory Registered Nurses and 2 registered nurses as Assistant County Nurses. As the exclusion of the Assistant County Nurses would create the potential for undue fragmentation and as these employees are all engaged in the same profession, they properly belong in a single bargaining unit. 2/

Plan of Care Coordinator

The County, contrary to the Union, contends that the Plan of Care Coordinator is a managerial/supervisory employee and should be excluded from the unit.

The Commission has consistently held that in order for an employee to constitute a managerial employee, said employee must participate in the formulation, determination and implementation of policy to a significant degree 3/ or must have the effective authority to commit the municipal employer's resources. 4/

In the instant matter the record demonstrates that the Plan of Care Coordinator is responsible for formulating, updating and revising individual plans of care for all residents of Brookside. As it is said Coordinator's responsibility to determine the level of service provided by Brookside to all of its residents, the Coordinator is therefore responsible for formulating, developing and implementing management policy in a degree and manner sufficient to warrant the conclusion that the Plan of Care Coordinator is managerial employee who is therefore excluded from the unit.

Supervisory RNs

The County, contrary to the Union, contends that the eighteen (18) RNs employed in the Brookside Nursing Department are supervisors and therefore should be excluded from the bargaining unit.

Section 111.70(1)(o) of MERA defines the term "supervisor" as follows:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

1/ Eau Claire Public Library (10789) 2/72; LaCrosse Jt. School District No. 5 (10980) 5/72; Appleton Area School District (18203) 11/3/80.

2/ Eau Claire County (17488-A) 3/20/81.

3/ St. Croix County (11930-A) 6/73; City of Milwaukee (11971) 7/73.

4/ City of Cudahy (Fire Department) (18502) 3/81.

In its interpretation of the above definition, the Commission has on numerous occasions listed the following factors as those to be considered in the determination of an individual's 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 persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 5/


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. 6/

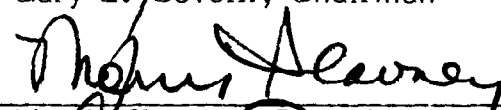
The RNs at Brookside exercise a limited degree of supervision over the LPNs and Aides with whom they work. The record establishes that they primarily supervise an activity and not employees. Finding of Fact 7 details the patient care duties of the RNs and reflects that a great majority of their time is spent performing these duties. RNs do not have the authority to grant vacations, sick leave or other forms of absences. They do not have the authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees. While they can reassign employees on a day-to-day basis, grant overtime or call in employees to insure minimum manning levels are met, such actions are carried out within procedures established by the Director of Nursing and do not require the use of independent judgment. While the RNs evaluate probationary employees and said evaluations are considered by the Director of Nursing and Assistant Director of Nursing in determining whether to retain the probationary employees, the record demonstrates that some probationary employees who received poor performance evaluations from RNs were retained. Thus the weight given to the RNs evaluations seems open to question. The County contends that the RNs have the authority to discipline and to resolve grievances of LPNs and also Aides. However, there is no record of an RN ever having disciplined an LPN or Aide other than by verbally requiring the employee to repeat a task or to return to work from a break nor is there evidence of their ever having resolved a grievance. RNs do not participate in the grievance procedure once a grievance has reached the written stage.

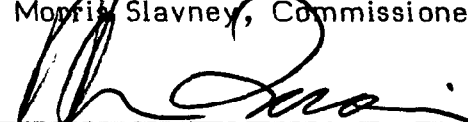
In summary the record demonstrates that the RNs are primarily responsible for the supervision of patient care, an activity. The direction of Aides and LPNs is incidental to providing adequate care. As the foregoing discussion indicates, the record does not establish that the RNs possess and exercise supervisory duties and responsibilities in sufficient combination and degree to warrant their exclusion from the unit as supervisors.

Dated at Madison, Wisconsin this 3rd day of March, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

5/ Fond du Lac County, (10579-A) 1/72; St. Croix County (Health Care Center), (14518) 4/76; City of Lake Geneva (Police Department) (18057) 3/81.

6/ City of Lake Geneva (Police Department) Ibid.