

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
SHEBOYGAN FEDERATION OF NURSES	:	
AND HEALTH PROFESSIONALS,	:	
LOCAL 5011, AFT, AFL-CIO	:	Case LXVIII
	:	No. 32357 ME-2292
Involving Certain Employes of	:	Decision No. 21168-A
	:	
SHEBOYGAN COUNTY	:	
	:	

Appearances:

- Mr. Dean Dreiblatt, Field Representative, Wisconsin Federation of Nurses and Health Professionals, 6525 West Bluemound Road, Milwaukee, WI 53213, for the Union.
- Mr. Alexander Hopp, Corporation Counsel, 601 North Fifth Street, P.O. Box 128, Sheboygan, WI 53081, for the County.

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

The Sheboygan Federation of Nurses and Health Professionals, Local 5011, AFT, AFL-CIO having filed a petition on October 28, 1983, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of employes of Sheboygan County by including in said unit the position of Nurse Supervisor; and a hearing on said petition having been conducted in Sheboygan, Wisconsin on December 8, 1983 by Douglas V. Knudson, an Examiner duly appointed by the Commission to conduct said hearing and issue a final decision in accordance with the provisions of Sec. 227.09(3)(a), Stats.; and a stenographic record of the hearing having been made, a transcript of which was received by the Examiner on December 22, 1983; and the parties having submitted written arguments the last of which were received on February 1, 1984; and the Examiner, having considered the evidence and arguments of the parties, makes and issues the following

FINDINGS OF FACT

1. That Sheboygan County, hereinafter referred to as the County, is a municipal employer with offices at the Sheboygan County Courthouse, 615 North Sixth Street, Sheboygan, Wisconsin.
2. That the Sheboygan Federation of Nurses and Health Professionals, Local 5011, AFT, AFL-CIO, hereinafter referred to as the Union, is a labor organization with offices at 6525 West Bluemound Road, Milwaukee, Wisconsin.
3. That the County and the Union are parties to a collective bargaining agreement covering all graduate nurses, registered nurses and program coordinators employed by Sheboygan County at the Rocky Knoll, Sunny Ridge and Comprehensive Health Center, excluding the Director of Nursing Services, the Assistant Director of Nursing Services at Rocky Knoll, Sunny Ridge and the Comprehensive Health Center, and all other employes.
4. That the Union initiated the instant proceeding by filing a petition on October 28, 1983, wherein the Union contends, contrary to the County, that the position of Nurse Supervisor is not supervisory in nature, and therefore, should be included in the bargaining unit which it represents.
5. That the position of Nurse Supervisor exists at Sunny Ridge, which is a 398 bed skilled care facility operated by the County; that the number of skilled care patients, as a part of the total number of patients, has been increasing, for example, from 112 to 207 in the past year, which increase requires a more intensive level of care on a labor basis; that the number of scheduled nursing hours has increased from approximately 3,400 per week in 1981 to approximately 5,200 per week in June of 1983; that in August of 1983 the County approved the following revised table of organization for the Nursing Department at Sunny Ridge;

	<u>July 1983</u>		<u>August 1983</u>	
	<u>Full</u>	<u>Part</u>	<u>Full</u>	<u>Part</u>
Medical Director	1		1	
Director of Nursing	1		1	
Assistant Director of Nursing	2		2	
Nurse - Supervisor	0		6	
Registered Nurse	9	20	10	15
Patient Care Coordinator	1		0	
Licensed Practical Nurse	10	8	15	15
Nurses Aide	74	60	84	70
Nurse Aide (student)		15		15
Ward Clerk	2		1	
Medical Records Librarian	0		1	

that at the time of the hearing, four employes had been classified as Nurse Supervisors; that three of the Nurse Supervisors had been assigned to the day shift, which is from 6:45 a.m. to 3:15 p.m. and one Nurse Supervisor had been assigned to the p.m. shift which is from 2:45 to 11:15 p.m., and that of the two vacant positions, one will be on the day shift and one will be on the night shift, which runs from 10:45 p.m. to 7:00 a.m.; that the Director of Nursing normally works from 8:00 a.m. to 4:30 p.m., Monday through Friday, and that the Assistant Director of Nursing, Mary Schuett, works three days per week from 8:00 a.m. to 4:30 p.m.; that the normal complement of registered nurses, licensed practical nurses and nurse assistants at Sunny Ridge are as follows:

Day Shift	44
P.M. Shift	31
Night Shift	21

that the three Nurse Supervisors assigned to the day shift are Edith Ehrenreich, who previously was employed by the County at Sunny Ridge as a staff nurse, an Assistant Director of Nursing, an Acting Director of Nursing, and an Assistant Director of Nursing, and who on October 1, 1983 was reclassified as a Nurse Supervisor, LaVerne Brandt, who was hired on November 1, 1983 as a Nurse Supervisor, and, Karen Veling, who was hired as a Nurse Supervisor on October 1, 1983; and, that the Nurse Supervisor on the p.m. shift is Carol Worth, who was hired by the County as an Assistant Director of Nurses on August 2, 1983 and was reclassified as a Nurse Supervisor in September of 1983.

6. That there is no evidence to show the Medical Director is involved in the direct supervision of employes in the Nursing Department; and that the Assistant Administrator, inter alia, is responsible for directing the Nursing Department, which responsibility includes the review of any employe suspensions or terminations, but does not involve the day-to-day supervision of employes in the Nursing Department.

7. That the Nurse Supervisors spend approximately 90% of their work time on duties which are different than those performed by the staff registered nurses who are in the bargaining unit represented by the Union; that said staff registered nurses spend approximately 80% of their time in direct patient care and the remaining time primarily in documentation relating to patient care; that the wage rate for a staff registered nurse is currently \$9.82 per hour and the wage rate for the Nurse Supervisor is currently \$10.63 per hour; that a charge nurse, which is a position filled by a staff registered nurse, receives an additional \$5.00 per shift; that the primary responsibility of the Nurse Supervisor is to oversee employe performance in both the area of patient care and the maintenance of records related to such patient care; that the Nurse Supervisors will have the power to issue both verbal and written reprimands to other employes and to recommend suspensions and terminations to their supervisors, the Director of Nursing and the Assistant Director of Nursing; that both Brandt and Veling have issued verbal warnings for tardiness with the approval of the Director of Nursing; that Worth has issued four written reprimands to employes for their failure to use certain equipment when exercising patients, which reprimands were issued from two to four weeks following the occurrence of said incidents; that Worth was involved in the suspension of a probationary employe for five days for absenteeism either through the recommendation for, or the implementation of, said suspension; that Worth also was involved in the termination of a probationary employe for poor performance and, along with Brandt, in the termination of another probationary employe for absenteeism; that such terminations of probationary employes were

either recommended, or implemented, by the Nurse Supervisors; that the Nurse Supervisors have issued medication error reports, which consist of a review of the situation and the issuance of instructions to the employe concerning said error, followed by a forwarding of the report to the Director of Nursing; that said reports previously had been completed by a staff registered nurse; that medication error reports do not appear to constitute verbal reprimands; that the Nurse Supervisors are being trained to conduct interviews with applicants for employment at Sunny Ridge; that the Director of Nursing and the Assistant Director of Nursing had previously conducted such employment interviews; that Brandt, Worth and Veling have been involved in such employment interviews with the Assistant Director of Nursing; that the Nurse Supervisor and the Assistant Director of Nursing discuss the applicants, select those whom they wish to interview, interview said applicants and select one of the applicants for employment, subject to the approval of the Director of Nursing, that it is anticipated the Nurse Supervisors will in the future conduct such employment interviews alone, without the involvement of the Assistant Director of Nursing; that the Nurse Supervisors will be trained to conduct performance evaluations of employes; that Worth has performed evaluations of probationary employes on three occasions, which evaluations were reviewed with the employe prior to submission to the Director of Nursing; that the Nurse Supervisor will also do the annual performance evaluations of non-probationary employes under their direction, in addition to the performance evaluations of probationary employes; that staff registered nurses previously had completed performance evaluations for the employes under their direction; that the Nurse Supervisor will conduct in-service training programs for other employes and that Worth has already conducted such programs; that the Nurse Supervisor will authorize overtime and early departures for employes within the criteria established by the Director of Nursing; that staff registered nurses have in the past had the authority to authorize overtime in the same manner; that the Nurse Supervisor will be expected to investigate problems, such as an allegation of patient abuse, which investigations previously had been conducted by either the Director of Nursing or an Assistant Director of Nursing; that the Director of Nursing conducts weekly meetings with the Nurse Supervisors; and that the charge nurse has not had the authority to discipline employes in the past, but rather, reported any problems to the Director of Nursing for investigation and action.

8. That the position of Nurse Supervisor possesses supervisory duties and responsibilities in sufficient combination and degree to be found a supervisor.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

That since the position of Nurse Supervisor is supervisory in nature, the occupant of said position is not a municipal employe within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Nurse Supervisor is excluded from the bargaining unit set forth in Finding of Fact No. 3 above.

Dated at Madison, Wisconsin this 20th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Douglas V. Knudson*
Douglas V. Knudson, Examiner

1/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial (Footnote One Continued on Page Four)

1/ (Continued)

review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

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.

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

POSITIONS OF THE PARTIES

The Union contends that the position of Nurse Supervisor does not possess supervisory authority at the present time. The Commission in numerous cases has concluded that a position cannot be supervisory in nature, unless it possesses and exercises supervisory authority. Potential authority, which is unexercised, cannot be found to constitute a basis to find a position to be supervisory. In the instant matter, the Nurse Supervisors have not exercised authority in sufficient degree and combination so as to constitute themselves as supervisors. Although the Nurse Supervisors have participated in interviews, they have neither conducted such interviews alone nor hired employees on the basis of the interviews. The Nurse Supervisors are not involved in either promotions or transfers of employees, the preparation of work schedules, or the independent exercise of authority to grant overtime. At best, the Nurse Supervisor delegates job assignments in the same manner as charge nurses have done. The higher pay for the Nurse Supervisor position is based on the experience and expertise of the incumbents, rather than their possession of supervisory authority. The Nurse Supervisors do not exercise independent authority with respect to discipline, but rather, act as a conduit for the Director of Nursing and the Assistant Director of Nursing who have retained the authority to implement disciplinary actions. The issuance of reprimands is insufficient to establish a position to be supervisory. Further, the creation of six additional supervisory positions would result in a large number of supervisors, particularly on the day shift, thereby resulting in a very low supervisor to employee ratio.

The County contends that the decision to add supervisory positions at the Sunny Ridge facility was based on an increasing need for skilled care of patients. The increase in supervisory positions was necessary to insure that the patient care duties would be adequately performed. The difficulty for the County, in establishing that the Nurse Supervisor position is supervisory in nature, results from the fact that the position is new and the employees in said positions have had very short periods of employment during which they have primarily been engaged in training. Consequently, they have not had the full opportunity to exercise supervisory responsibilities as will occur upon the completion of their training. The record demonstrates that the Nurse Supervisor will be responsible for overseeing employee performance, which will include orientation and training, interviewing and hiring of applicants, the issuance of verbal and written warnings, the recommendation for suspensions and terminations, the completion of performance evaluations, the direction of the work force, and the investigation of situations previously handled by the Director of Nursing or the Assistant Director of Nursing. Such activities will encompass supervisory authority. Further, the Nurse Supervisor will have little involvement in direct patient care, which is substantially different from the activities in which the staff registered nurses are involved.

DISCUSSION

In its brief the Union cited prior Commission cases in which employees were found not to be supervisors because the employees were alleged to possess supervisory authority but had not yet exercised such authority. Those cases can be distinguished from the instant matter in which, although much of the supervisory authority alleged to have been assigned to the position of Nurse Supervisor has not yet been exercised in full by all of the incumbents, the record reveals the incumbents are being trained to exercise such authority. The Nurse Supervisors are participating in employment interviews of applicants and in the hiring process. The Nurse Supervisors, upon completion of their training, will be responsible for the hiring of employees, subject to the approval of the Director of Nursing. Further, the Nurse Supervisors have been involved in the discipline of other employees. While the Nurse Supervisors may not have exercised independent judgement with respect to instituting disciplinary actions as of the time of the hearing, such is not uncommon when most of the incumbents are relatively new to their supervisory position. The fact that the Nurse Supervisors have been involved in the issuance of verbal reprimands, written reprimands, a suspension and terminations, supports the County's position that the Nurse Supervisors will have authority for instituting disciplinary actions following the completion of their training. The written reprimands issued by Worth with respect to the lack

of use of proper equipment in four instances would indicate that the initiative for discipline in said cases resulted from someone other than herself based on the lapse of time between the occurrence of the incidents and the resulting written reprimands. However, such does not negate the apparent possession of authority to take such action as evidenced by the participation in the discipline process. Further, while the charge nurses were previously involved in employe performance evaluations and direction of the work force, it is clear that the Nurse Supervisor will be expected to carry a heavier responsibility with respect to such functions than did the charge nurses. For example, the charge nurse would merely report problems, such as alleged patient abuse, to the Director of Nursing without conducting an independent investigation, where as the Nurse Supervisors will be expected to investigate and recommend action in such situations. Such a distinction reveals the additional authority residing in the position of Nurse Supervisor.

The duties of the position of Nurse Supervisor appear to be a combination of duties previously performed by both staff registered nurses, who were in the bargaining unit represented by the Union, and non-bargaining unit employes, such as Director of Nursing. The record establishes that the Nurse Supervisors will spend the vast majority of their work time in the performance of duties different than those performed by the staff registered nurses, so that only a small portion of their time will involve direct patient care, as opposed to the staff registered nurses who spend the majority of their time in direct patient care. The record supports the County's contention that the primary responsibility for the Nurse Supervisors will be to oversee the performance of other employes in both patient care and maintenance of related records.

The Examiner is not persuaded that if the Nurse Supervisors are found to be supervisory employes, the result would be too many supervisors for the number of employes in the Nursing Service Department. There is no evidence in the record to show that the Medical Director of Sunny Ridge is involved in the direct supervision of other employes. Although the Administrative Assistant does have responsibility for the review of certain actions taken by the supervisors in the Nursing Services Department, e.g., disciplinary actions, such does not detract from the fact that said actions can be initiated prior to their review by the Administrative Assistant. Accordingly, in viewing the ratio of supervisors to employes at Sunny Ridge, it would be inappropriate to consider the Medical Director and Administrative Assistant as direct line supervisors. The Union primarily bases its argument on the number of day shift employes where, when the position of Nurse Supervisor is fully staffed, there will be six supervisory employes, i.e., the Director of Nursing, a part-time Assistant Director of Nursing and four Nurse Supervisors with forty-four other employes normally assigned to the day shift. Such numbers would result in a ratio of approximately one supervisor per seven employes, although said factor assumes that all six supervisory employes would be present on each day along with the forty-four non-supervisory employes. That assumption is not accurate in an institution which operates seven days a week, thereby resulting in a rotation of the Nurse Supervisors to achieve coverage for each of said days. The p.m. shift with one Nurse Supervisor and thirty-one bargaining unit employes clearly would not support the Union's argument in this matter. The fact that there may be a relatively low ratio of employes per supervisor on the day shift does not negate the fact that the supervisors have exhibited the possession of supervisory authority. Additionally, each Nurse Supervisor on the day shift will be assigned responsibility for different units of the institution and different groups of employes.

The Examiner is aware that the hearing was held approximately four months after the creation of the position of Nurse Supervisor and that at the time of the hearing some of the Nurse Supervisors had held their position for only one or two months. Thus, the Examiner's decision is, of necessity, based on limited evidence regarding the actual exercise of supervisory responsibilities by the Nurse Supervisors. The Examiner is persuaded that the record does contain adequate evidence to show that the Nurse Supervisors are engaged in the exercise of supervisory duties and responsibilities in sufficient combination so as to constitute the position of Nurse Supervisor as supervisory.

Dated at Madison, Wisconsin this 20th day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Douglas V. Knudson, Examiner

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