
In the Matter of the Petition of

WISCONSIN COUNCIL 40,
AFSCME, AFL-CIO

Involving Certain Employees of

OZAUKEE COUNTY

Appearances:

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

Wisconsin Council 40, AFSCME, AFL-CIO, having on July 8, 1985, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain professional employees of Ozaukee County, for the purpose of determining whether those employees wish to be represented by that Union for the purposes of collective bargaining; and hearing in the matter having been conducted on August 28, 1985, at Port Washington, Wisconsin, before Richard B. McLaughlin, an Examiner on the staff of the Commission; and a stenographic transcript having been made of that hearing; and the parties having filed briefs by December 5, 1985; 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, Conclusions of Law and Direction of Election.

1. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices located at 5 Odana Court, Madison, Wisconsin 53719.

2. That Ozaukee County, hereinafter referred to as the County, is a municipal employer having its offices located at 121 West Main Street, Port Washington, Wisconsin; and that the County operates the Lasata Nursing Home, hereinafter referred to as Lasata, which is a facility that provides long term care to elderly residents of the County.

3. That the instant proceeding concerns a petition for election, filed by the Union, seeking an election to determine whether certain professional employees employed by the County at Lasata wish to be represented by the Union for purposes of collective bargaining; that the parties agree that the bargaining unit covering those employees can appropriately be described thus:

All regular full-time and regular part-time professional employees of the Ozaukee County Lasata Nursing Home, excluding managerial employees (including Inservice Directors), supervisory employees, and confidential employees:

No. 23464

4. That Lasata is a two story facility which provides health care for an average resident population of 195 persons; that the facility consists of four separate wings which include separate Nurses' stations designated as 1 East, 1 West, 2 East and 2 West; that Lasata operates on a seven days per week, twenty-four hours per day basis; that the twenty-four hour day is divided into three primary work shifts, the first running from 7:00 a.m. to 3:00 p.m., the second running from 3:00 p.m. until 11:00 p.m. and the third running from 11:00 p.m. until 7:00 a.m.; that employees may, however, work part of these shifts, and the scheduled start of a shift for a given employee may vary from the hours stated above; that Lasata is administratively divided into a number of departments including a Department of Nursing; that the Department of Nursing employs three major classifications of employees: Registered Nurse (RN), Licensed Practical Nurse (LPN), and Nursing Assistant; and that Lasata, as of August 27, 1985, employed 18 employees classified as RN, about 15 employees classified as LPN, and about 110 employees classified as Nursing Assistant.

5. That the RNs play no role in the hire, layoff or recall of personnel at Lasata; that RNs may transfer Nursing Assistants from one station to another in response to staffing needs, to respond to an unexpected absence, or in cases not prearranged by the Nursing Clerk; that the administration of Lasata has delegated certain authority to RNs to respond to incidents in which Lasata has a disciplinary interest as the incidents occur; that in cases not involving suspected patient abuse, the RN can verbally counsel the Nursing Assistant or issue a written counseling form entitled "EMPLOYEE COUNSELING FORM", but further action must be discussed with the RN's supervisor before being effected; that, as an example of the counseling process, Donna Hauser, a second shift RN, issued a written counseling form to a Nursing Assistant who had, after several verbal warnings, failed to accurately measure and record a patient's urinary output; that Hauser discussed the problem with her Shift Supervisor before issuing the form, although she does not believe such prior discussion is necessary regarding a written counseling form; that Hauser, however, views the counseling form as limited to the counseling of an employee, and does not believe the form has any disciplinary impact; that, as another example of the counseling process, Daisye Hollrith, a first shift RN, has issued a written counseling form to a Nursing Assistant for failing to follow instructions regarding the feeding of a patient; but that Hollrith believes the form has a disciplinary impact which is within her authority; that the administration at Lasata has discussed the authority of RNs to respond to incidents involving Nursing Assistants in which the County has a disciplinary interest; that, for example, the minutes of the May, 1982, Nurses' Meeting state:

- 7) Problems on the unit are the responsibility of the nurse in charge of that unit. Too much socialization can undermine authority and supervisory effectiveness.

that the minutes of the March, 1983 Nurses' meeting state:

- 9) The nurse in charge is responsible for the aides and resident care on her unit. She should attempt to correct problems herself at the time the problem arises. If this is not successful, it should then be reported to the Supervisor or the Director of Nursing. Remember to record problems in the book. (Don't forget good comment also)

that the minutes of the March, 1984 Nurses' meeting state:

It is the RESPONSIBILITY of the nurses to supervise the aides.
Respect is earned and rudeness should not be allowed.

that regarding suspected cases of patient abuse, the administration of Lasata has informed the RNs that they should confront the employee involved, escort the employee to the time clock, instruct the employee to "punch out" and leave the facility, and then should prepare a written report to the Director of Nursing; that Hauser was, approximately two years ago, informed by a Nursing Assistant that another Nursing Assistant had threatened a patient; that Hauser wrote an account of the incident for Lasata's records and called the Director of Nursing the following day; that the Director of Nursing did not seek, and Hauser did not offer, any recommendation regarding what discipline should be imposed on the Nursing Assistant; and that incidents in which the County has a disciplinary interest are an infrequent occurrence at Lasata.

6. That the Nursing Clerk, from a list of available employees, assigns Nursing Assistants to a particular Nurses' station; that the assignment of an individual Nursing Assistant to provide care for individual patients is made on a prepared sheet which lists various blanks for the patient's and the Nursing Assistant's name as well as for "Break and Lunch" times for the Nursing Assistant; that an RN from the particular Nurses' station, or an LPN if an RN is not present, fills in the blanks thus matching the Nursing Assistant to patients, and assigning break and lunch times; that in matching Nursing Assistants to patients, the RN will consider the skills of the Nursing Assistant and the care needs of the patient; that, for example, RNs take measures to assure that an inexperienced Nursing Assistant is not assigned to a patient requiring extensive care; that in certain cases the assignment of a Nursing Assistant to a particular patient requires little exercise of judgment by the RN; that a Nursing Assistant may request to switch responsibility for a particular patient with another Nursing Assistant, and in such cases the Nursing Assistant will consult the RN at the Nurses' station; but that on the second shift, contrary to the practice on the first shift, such switches have occurred without prior approval of an RN; that no one oversees the RNs' matching of patients to Nursing Assistants; that the assignment of break and lunch times on the second shift involves little judgment since Nursing Assistants take their breaks at the same time unless work duties preclude it; that Nursing Assistants report to the RN at the Nurses' station when they are going on break if the break is other than the scheduled time; that Nursing Assistants come before an RN at the start of the Nursing Assistants' shift for "report"; that an RN, during "report", advises the Nursing Assistants of the care required for their particular patients and of any new or developing circumstances relevant to a patient's condition; that the Nursing Assistants inform the RNs, as necessary, of complications or relevant changes in a patient's condition; that if Nursing Assistants complete their scheduled duties before the end of a shift, the Nursing Assistant will consult an RN for the assignment of additional duties, although this is an infrequent occurrence and the additional duties to be assigned may have been discussed by the RN with her Shift Supervisor; that the duties of an RN may require their presence beyond the scheduled close of a shift; that in such cases the RN will stay beyond the scheduled close of the shift without seeking prior approval; that first shift RNs authorize overtime for Nursing Assistants without obtaining the approval of their Shift Supervisor; that such overtime authorization does not typically exceed ten to fifteen minutes; that second shift RNs obtain the signature of their Shift Supervisor, Joann Wauda, before authorizing such overtime; that second shift RNs sought the same prior approval from Wauda's predecessor, Donna Ubbink; but that Lasata's Director of Nursing, Marjorie Leach, was unaware that Wauda or Ubbink was requiring such prior approval and does not consider such prior approval to be the policy of Lasata; that Wauda was hired as Shift Supervisor in April of 1985, and Ubbink served as Shift Supervisor for about three months; that Wauda's and Ubbink's predecessor as Shift Supervisor for the second shift was Vicki Jones, who was so employed by Lasata for three and one-half years; that Jones did not require the RNs to obtain her prior approval before authorizing a Nursing Assistant to stay beyond the scheduled shift; that call-ins due to employee absence are handled by a receptionist, but a first shift RN will make such call-ins if the receptionist is unable to do so, and will call in whatever employee the RN can contact; and that RNs may readjust the work station assignments of Nursing Assistants without any prior approval if an employee absence cannot be covered.

7. That the Nursing Department at Lasata is headed by a Director of Nursing who reports to the Administrator of Lasata, and two Shift Supervisors, one for the first, and one for the second shift, who report to the Nursing Director; that the Director of Nursing is scheduled to work forty hours per week on a Monday through Friday basis, typically from 7:30 a.m. until 4:00 p.m.; that the Shift Supervisors mentioned above are scheduled to work on a Monday through Friday basis at the hours of their respective shifts; that the four Nurses' Stations are typically staffed thus:

	<u>1 East</u>	<u>1 West</u>	<u>2 East</u>	<u>2 West</u>
First Shift	1 RN or 1 LPN; 2 Nursing Assts.	1 RN or 1 LPN; 3 Full Shift Nursing Assts. and 1 Part Shift Nursing Asst.	2 RNs or 1 RN & 1 LPN; 9 Nursing Assts.	2 RNs or 1 RN & 1 LPN; 9 Nursing Assts.
Second Shift	1 RN or 1 LPN; 1 Full Shift Nursing Asst. & 1 Part Shift Nursing Asst.	1 RN or 1 LPN; 2 Full Shift Nursing Assts. & 1-2 Part Shift Nursing Assts.	2 Rns or 1 RN & 1 LPN; 4 Full Shift Nursing Assts. & 2 Part Shift Nursing Assts.	2 RNs or 1 RN & 1 LPN; 4 Full Shift & 2 Part Shift Nursing Assts.
Third Shift	1 Nursing Asst. (reports to RN on 2 East)	2 Nursing Assts. (report to RN on 2 West)	1 RN; 4 Nursing Assts.	2 RNs or 1 RN & 1 LPN; 4 Nursing Assts.

that the Nurses' stations at 2 East and 2 West are more intensively staffed because the patients cared for from those stations require more care, with the station at 2 West caring for a four bed intensive care unit; that the above-noted schedule describes an over-all staffing pattern, since individual RNs, LPNs, and Nursing Assistants rotate from station to station; that first and second shift RNs rotate stations on an eight to twelve week basis; that third shift RNs rotate stations on a monthly basis; that Nursing Assistants rotate stations about every two weeks; that the rotation system is designed to move personnel from stations requiring more intensive patient care to stations requiring less intensive care, and back again; that RNs and Nursing Assistants are not matched, but rotate as individuals; that where more than one RN is assigned a particular Nurses' station, the RNs exercise the same authority; that there is no Shift Supervisor for the third shift, and no Shift Supervisor on weekends for any of the three shifts; that the RN assigned to work at 2 West is designated Charge Nurse and assumes the role of Shift Supervisor for the third shift and for any shift on which a Shift Supervisor is not present; that any RN employed by Lasata may be the Charge Nurse if and when assigned to the station at 2 West; that depending on the individual designated as Charge Nurse and on the type of decision involved, the Charge Nurse may or may not seek the advice of a Shift Supervisor; and that the RNs are responsible for overseeing the work of the Nursing Assistants, and for assuring that their work is completed including any necessary charting.

8. That the RNs employed by Lasata as of August 27, 1985, worked the following average number of hours over a two week period:

AHLERS, DORIS	80
BOHL, SUSAN	32
BRUSKEWITZ, KATHLEEN	48
DEUTSCHMANN, DONNA	48
FELLENZ, MARYJANE	32
HAUSER, DONNA	80
HOLLRITH, DAISYE	80
JENSEN, JOAN	40
KASTEN, FLORENCE	16
KULINSKI, SHIRLEY	80
MATHEWS, MARION	48
NOVAGRODSKY, JUDITH	64
PALLEON, MARJORIE	48
PAPENFUS, PENNY	32
PEREZ, NANCY	48
RITTER, NANCY	32
USELMAN, SHARON	48
WOLF, JUDITH	48

that a Nursing Assistant or an RN may receive an overtime pay rate of one and one-half times the actual time worked if, and only if, that employee is scheduled to, and does, work more than forty hours in a week; that the 1985 salary schedule for the Nursing Department provides the following:

	GRADE	MINIMUM STARTING	1 YEAR	2 YEARS	3 YEARS	4 YEARS	5 OR MORE YEARS	MIDPOINT	MAXIMUM
. . .									
Registered Nurse	9	8.70	8.87	9.04	9.21	9.38	9.55	10.42	12.13
Licensed Practical Nurse	7	7.51	7.66	7.81	7.96	8.11	8.26	8.61	9.70
Nurse Supervisor	10	9.57	9.76	9.95	10.14	10.33	10.52	11.45	13.33
Nursing Assistant Trainee	1	4.41	-	-	-	-	-	4.84	5.26
Nursing Assistant	3	5.09	5.19	5.29	5.39	5.49	5.59	5.83	6.56

9. That an employee at Lasata can earn a wage increase by successfully completing a probation period, by receiving an annual increase reflecting the cost of living, or by receiving a merit increase; that the annual cost of living increase is directly applied to the minimum, the midpoint, and the maximum rates of Lasata's salary schedule (see Finding of Fact 8 above) before any merit increases are calculated; that a merit increase is applied based on an individual employee's performance as assessed in an evaluation which takes place annually in

July or August, with any merit increases to take effect the following January 1; that the annual evaluation is recorded on a printed form; that the printed evaluation form for employees classified as Nursing Assistant is divided into four separately stated "major job responsibilities" which are divided into fifteen separately stated "performance measurement criteria" which are divided into fifteen separately stated "objective standards" next to which appear blank spaces which are to be completed by the evaluator who is to insert a score from 0 - 2 expressed as a whole number or as an increment of .25; that, as an example of the printed form, the "major job responsibility" stated as "Task Achievement" includes the "performance measurement criteria" stated as "Resident Appearance" which contains the "objective standard" of "Appearance of all residents maintained in line with charge nurse's standards on daily basis"; that, to complete the form, an evaluator would place a score in the blank box adjacent to the "objective standard" and to the fourteen other "objective standards"; that when the form is completed, the fifteen separately stated scores are totalled and divided by fifteen to yield an average score; that an employee's merit increase is obtained by multiplying this average score times a constant; that the constant is four percent of the midpoint for an employee's pay grade after that midpoint is adjusted for the cost of living increase; that this increase, when added to the annual cost of living adjustment to the employee's salary is the individual wage rate to be earned by that employee starting January 1 of the year following the evaluation; that this salary calculation for an employee's 1986 salary can be expressed thus where the employee's average score from the evaluation was 1.3 and the cost of living adjustment for 1985 was 3 percent:

$$1986 \text{ wage rate} = 1985 \text{ wage rate} \times 1.03 + (1.3 \times .24^*)$$

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- * the .24 is the constant obtained by multiplying .04 times the 1986 midpoint for the pay grade. The 1986 midpoint is the 1985 midpoint for the pay grade times the 3 percent cost of living adjustment. For a Nursing Assistant, which is pay grade 3, the calculation is $1.03 \times$ the 1985 midpoint of 5.83, which equals 6.00. The 6.00 midpoint multiplied by four percent equals .24, which is the constant to be applied against the employee's score on the evaluation.

that an employee's merit increase cannot result in a pay rate exceeding the maximum for the pay grade; that a score of 1 represents adequate performance and any score progressively in excess of 1 represents progressively superior job performance while scores below 1 represent progressively more inadequate job performance; that the form contains, beside the column of blank boxes for the employee's numerical score, a column of blank boxes headed "JUSTIFICATION" which is to allow the evaluator to explain any score above or below a score of 1; that, in 1985, the average score for evaluated employees at Lasata was 1.1; that the evaluation forms for employees classified as Nursing Assistant are completed by RNs; that, to effect this evaluation, the Director of Nursing divides the Nursing Assistants by shift and allocates the Nursing Assistants among the RNs who work the same shift; that Florence Kasten, who is classified as an RN, does not participate in the evaluation of Nursing Assistants because of the limited number of hours that she works; that the Nursing Assistant evaluation form completed by an RN is ultimately reviewed by the RN's Shift Supervisor or the Director of Nursing; that if the RN's and the reviewing supervisor's opinions differ, they will meet and discuss the area of disagreement; that one area of concern to the reviewing supervisor is whether the evaluating RN is routinely giving a high or low score which does not reflect the individual performance of the Nursing Assistant; but that no reviewing supervisor has ever discovered such a problem; that the evaluation form typically is signed by the RN and by the reviewing supervisor, but the signature of the reviewing supervisor is not a necessary precondition to the review of the evaluation with the evaluated employee; that the evaluation form is ultimately reviewed with the evaluated Nursing Assistant by the RN or by the RN's supervisor; that Hollrith, who has been employed at Lasata for eight years, reviews her evaluation of a Nursing Assistant with the individual Nursing Assistant before discussing the evaluation with her Shift Supervisor or the Director of Nursing; that Susan Bohl, a second shift RN, who has been employed by Lasata since June of 1984, and who has participated in only one evaluation process, gave her evaluation form to her Shift Supervisor who totalled and

averaged the scores, and then reviewed the form with the evaluated Nursing Assistant; that none of the four RNs who testified at the August 28, 1985, hearing on this matter identified any instance where a reviewing supervisor substantively changed an evaluation form completed by an RN; but that a reviewing supervisor may have, in certain cases, added their own comments to the evaluation form to supplement the form; that the evaluation process is also used when a Nursing Assistant is approaching the completion of a probationary period; that when used to evaluate the performance of a probationary employee, the Director of Nursing will select at random an RN who has worked with the employee to be evaluated; that neither the Director of Nursing nor a Shift Supervisor has ever changed an evaluation completed by an RN reviewing the performance of a probationary employee; but that if the reviewing RN recommends the termination of such an employee, the Director of Nursing will not take any action against the employee without first consulting the employee.

10. That the evaluation process described in Finding of Fact 9 is used to assess the work performance of RNs; that either a Shift Supervisor or the Director of Nursing evaluates the RN; that the evaluation form on which an RN's work performance evaluated is divided into four "major job responsibilities", fourteen "performance measurement criteria", and eighteen "objective standards"; that the "major job responsibility" of Task Achievement" includes the "performance measurement criteria" of Supervision", which includes the "objective standard" of "Assigns, instructs and supervises work of nursing team on unit"; that although other of the eighteen "objective standards" may bear on the supervision of Nursing Assistants, this is the only "objective standard" which expressly addresses the supervision of Nursing Assistants; that the position description for "Registered Nurse" reads as follows;

GENERAL STATEMENT OF DUTIES: Performs professional nursing services in the care and treatment of the resident; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: Work involves responsibility for giving professional nursing treatment and care to residents according to established rules and regulations and standard practices of the profession. Immediate supervision is exercised over the functions of the L.P.N. and the work performance of other para-professional personnel.

EXAMPLES OF WORK: (Illustrative only)

- Performs duties essential to meet the total needs of the residents;
- Makes daily resident visits to assess and evaluate physical and emotional status;
- Administers and records all medications and treatments as prescribed;
- Reviews medications and medix for completeness of information, accuracy of transcription of physicians orders and adherence to stop order policies;
- Develops and reviews patient care plans for appropriate resident problems, goals and approaches. Makes revisions based on resident needs;
- Accompanies doctors on resident rounds, confers with other professionals regarding resident multidisciplinary plan of care, needs and goals;
- Notifies doctors and families of changes in resident conditions;
- Delegates responsibilities for direct care of specific residents to the nursing staff based on needs of resident, physical arrangement of facility and capability of staff;

- Arranges schedule to allow time for supervision and evaluation of performance of all nursing personnel on unit, advising and assisting as necessary;
- Keeps Director of Nursing or Supervisor informed of status of residents and other related matters through written or verbal communication;
- Orders supplies and drugs for unit when needed;
- Communicates (sic) with residents and families regarding requests, complaints and information. Does patient/family teaching as needs arise.
- Provides direct resident care as needed.

REQUIRED KNOWLEDGES AND ABILITIES: Good knowledge of the principles, standards and methods of professional nursing; knowledge of modern sterilization, immunization, diagnostic and other medical and laboratory procedures, tests and analysis, and of bedside nursing methods, knowledge of the dangers inherent in and the precautions to be taken in the administration of narcotics and other medications; ability to give suitable assignments and instructions to other nursing and ancillary personnel and to supervise the performance of their work; ability to maintain accurate records; good physical and emotional health.

. . .

that RNs do not evaluate LPN's; that the amount of time an RN spends in directly assigning and overseeing the work of Nursing Assistants varies and will increase when an RN must train a newly hired Nursing Assistant; but that an RN, in a typical day, spends the bulk of her working time attending to the care of patients.

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time professional employees of the Ozaukee County Lasata Nursing Home, excluding managerial employees (including Inservice Directors), supervisory employees, and confidential employees constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(1)(b), and Sec. 111.70(4)(d)2(a), Stats.

2. That each of the employees listed in Finding of Fact 8, classified as Registered Nurse, with the exception of Florence Kasten, is a "Supervisor" within the meaning of Sec. 111.70(1)(o), Stats., and therefore, shall be excluded from the unit described in Conclusion of Law 1 above; and that Florence Kasten is a "municipal employee" within the meaning of Sec. 111.70(1)(i), Stats., and therefore, shall be included in the unit described in Conclusion of Law 1 above.

3. That a question of representation, within the meaning of Sec. 111.70(4)(d), Stats., has arisen among the municipal employees in the collective bargaining unit set forth in Conclusion of Law 1, above.

DIRECTION OF ELECTION

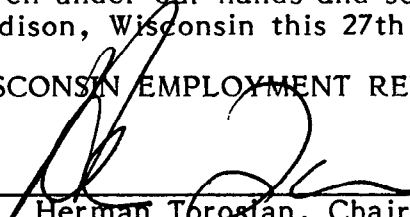
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employees of the Ozaukee County Lasata Nursing Home, excluding managerial employees (including Inservice Directors), supervisory employees, and confidential employees, who are employed by the Ozaukee County Lasata Nursing Home on March 27, 1986, 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 said employees desire to be represented by

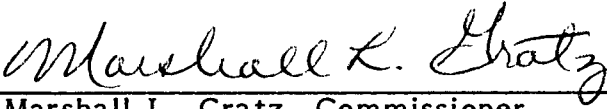
Wisconsin Council 40, AFSCME, AFL-CIO, for the purpose of collective bargaining with the Ozaukee County Lasata Nursing Home on wages, hours and conditions of employment.

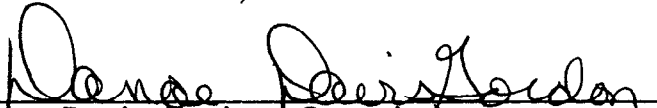
Given under our hands and seal at the City of
Madison, Wisconsin this 27th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

OZAUKEE COUNTY

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

POSITIONS OF THE PARTIES

The Union, citing the Commission's established seven factor test regarding the determination of supervisory status, asserts that none of the RNs can be considered a supervisor. The County has, according to the Union, centered its allegation of supervisory status on the RNs' participation in the evaluation process. The Union asserts five reasons establish that the RNs lack enough independent judgment to be considered to play a supervisory role in the evaluation process. First, the RNs do not act independently since all evaluations must be reviewed and counter-signed by the evaluating RN's supervisor. Second, the RNs and Nursing Assistants are not permanently teamed and the RNs are called upon to evaluate employees they share little working time with. Third, the RNs exercise no control on the amount of the Nursing Assistants' merit increases. Fourth, evaluations are minimal, occurring on an annual basis. Fifth, the RNs have little independent authority over the review of a probationary employee. Assignment of work and the scheduling of break times at Lasata are, according to the Union "a mechanical duty" evincing no supervisory authority on the RN's part. Reviewing the RNs pay rates and work assignment duties, the Union concludes: "The Registered Nurses function as working experts in the area of patient care. They are paid for this expertise." In addition, the Union urges that the RNs play an insignificant, if any, role in the hire of employees, the scheduling of employee days off, the call-in of employees, and the placement of Nursing Assistants at a particular Nurses' station. In addition, the Union notes that whatever supervisory authority exists when the Shift Supervisors and the Nursing Director are not present, as on week-ends, is lodged in whichever RN occupies the 2 West Nurses' station.

The County contends that a review of the facts of the present matter in light of established Commission case law demonstrates that all of the RNs presently employed at Lasata must be considered supervisors. Citing Dodge County (Clearview Home) 1/, and Sauk County (Health Care Center) 2/, the County urges that "the Commission has placed great weight on the ability of the so-called supervisor to evaluate the performance of Nursing Assistants and whether or not that performance evaluation has an impact on the employee's salary." Focusing initially on the RN's participation in performance evaluations, the County contends that the RNs independently evaluate the Nursing Assistants and exercise independent judgment which, though reviewed by their supervisors, is not questioned. The County asserts that the RNs' performance of supervisory functions plays a significant role in the evaluation form by which the RNs themselves are evaluated, offering further proof that they must be considered supervisors. A review of the record establishes, according to the County, that the RN's evaluation of a Nursing Assistant can directly control the Assistant's pay rate, or successful completion of a probationary period. In addition, the County argues that the job description for the RNs establishes that "the nurses themselves, in participating in the development of this job description, recognize their responsibilities and authorities with respect to supervision of Nursing Assistants and other nursing personnel . . . and the Employer, by including these statements within the job description, (is) indicating to the Registered Nurse what their responsibilities are and the expectations of the Employer with respect to those responsibilities." The County further argues that the "record is replete with evidence of the substantial authority of the Registered Nurse to supervise employees through the assignment of their work, the movement of Nurses Aides throughout the facility, and the calling in of Aides to fill in in the case of staff shortages." That the RNs can authorize overtime offers, in the County's estimation, further support for the conclusion that they function as supervisors. The testimony of one RN that the evening supervisor requires the RN to obtain permission prior to authorizing overtime does not, according to the County,

1/ Dec. No. 11464-A (WERC, 3/83).

2/ Dec. No. 17882-A (WERC, 3/81).

undermine that conclusion. That testimony establishes only that the evening supervisor is new to the position, and "is merely getting a lay of the land and an understanding of the judgment of the Registered Nurses that report to her." Further support for the conclusion that the evening supervisor's practice is not Lasata policy is found, according to the County, in testimony indicating that one of the prior evening supervisors did not require the RNs to obtain her approval before authorizing overtime. Acknowledging that the RNs have not been delegated "full disciplinary authority", the County contends that "the Registered Nurses . . . have been given substantial authority with respect to discipline and are an integral process of the Employer's disciplinary system." The County grounds this conclusion on the testimony of the Nursing Director, plus the published employee counseling forms used by RNs, the minutes of staff meetings where disciplinary concerns have been discussed, and by past examples involving the immediate termination of employees suspected of patient abuse. The County further argues that the amount of time actually spent by RNs in supervising Nursing Assistants is not a controlling factor in the present matter; that the RN pay rate reflects their supervisory authority; and that the number of Nursing Assistants employed by Lasata precludes a conclusion that the Nursing Director or Shift Supervisors can function as Nurse Assistant's supervisors.

DISCUSSION

The issue presented in the present matter centers on the alleged supervisory status of the RNs presently employed by the County.

The Commission has repeatedly considered the following factors in determining if a position is supervisory in nature:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the workforce;
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/her skills or for his/her supervision of employees;
5. Whether the supervisor is 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 his/her time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees.

The Commission has held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, the Commission will find an employee to be a supervisor. 3/

The RNs supervisory status presents a close issue and turns on the authority the RNs exercise over employees classified as Nursing Assistants. As the Union argues, several of the factors considered by the Commission to determine supervisory status indicate that the RNs supervise an activity rather than supervising employees. The RNs play no role in the hire, lay-off or recall of personnel. A review of the staffing patterns indicates that at certain Nurses' Stations during certain shifts, an RN may oversee as few as two Nursing Assistants. In addition, the RNs spend the bulk of their time attending personally to the health care needs of Lasata residents.

3/ Shawano County (Maple Lane Health Care Facility), Dec. No. 20996-A (WERC, 1/84).

The RNs do, however, possess certain significant indicia of supervisory status. The RNs transfer Nursing Assistants from station to station in response to staffing needs without any oversight. RNs do direct and assign Nursing Assistants in the performance of their duties, though the assignment of these duties sometimes involves relatively little independent judgment. In addition to this, the RNs have the authority to issue verbal and written reprimands without any supervisory oversight, and to respond to suspected cases of patient abuse. Hauser testified that she regards her authority to issue such warnings as a form of counseling without disciplinary overtones, but this does not apply at all to Hollrith's experience. In addition, the minutes of the various Nurses' meetings set forth above indicated that RNs are expected to respond to incidents in which the County has a disciplinary interest. Thus, although the RNs' role in disciplinary matters is limited, the RNs do exercise independent judgment in handling certain matters in which the County has a disciplinary interest. The RNs can authorize overtime without any oversight, although second shift RNs presently seek the advance approval of their Shift Supervisor. This advance approval is, however, not a function of Lasata policy, but is traceable to a relatively recently hired Shift Supervisor. As noted above, staffing patterns can result in an RN overseeing the work of only a few Nursing Assistants. Against this fact, however, is the fact that RNs routinely rotate and thus will eventually be in charge of a more intensively staffed Nurses' Station. Indeed, the rotation system assures virtually every RN will, at some time, be the Charge Nurse who oversees the operation of every shift for which a Shift Supervisor or the Director of Nursing is not present. Moreover, it must be noted that if the RNs are not considered supervisors, the Director of Nursing and the two Shift Supervisors would function as the sole supervisors of 110 Nursing Assistants in addition to the 18 RNs and 15 LPNs. This is compounded by the fact that the Director and the Shift Supervisors are not present for the third shift on any day or for any shift on the weekends. Although the salary schedule set forth above demonstrates a significant differential between the RNs' and the LPNs' wages rates, whether this differential is due in part to the RNs' performance of supervisory duties or exclusively to their higher level of training is not apparent on the present record.

On balance, even though the record indicates the RNs do exercise some indicia of supervisory status, their exercise of that authority, in the absence of their role in the evaluation process, reflects as much the supervision of an activity as the supervision of employees. Against this background, the RNs' role in the evaluation process is the determinative point in the present matter, and their role in that process establishes that the RNs who participate in the evaluation process must be considered supervisory employees.

The RNs' role in the evaluation process is, in a sense, limited since the Nursing Assistants are divided among the evaluating RNs and because the absence of permanent pairings between the RNs and the Nursing Assistants assures that each RN has a limited role in the evaluation process. Nevertheless, each RN, with the exception of Kasten, does participate in the process which, through the mechanics of the merit system, establishes the wage rate for each Nursing Assistant. In addition, the evaluation process plays a significant role in the process by which a Nursing Assistant moves through the probation period. Significantly, little oversight is exercised over the RNs' judgment in the evaluation process. There was no persuasive evidence that a Shift Supervisor or the Director of Nursing has ever assumed a more significant role than to supplement a form completed by the RN. RNs with considerable experience with the evaluation process, such as Hollrith, even discuss their evaluation with the evaluated employee before any review of the evaluation by a Shift Supervisor or the Director of Nursing. The direct impact of the evaluation on a Nursing Assistant's wage rate or on a Nursing Assistant's successful completion of a probation period grants the RNs a role that aligns them far more closely to the management of Lasata than to non-supervisory employees.

The RNs' role in the evaluation process is sufficient to distinguish the present matter from Shawano County (Maple Lane Health Care Facility) 4/, in which the Director of Nursing performed the actual evaluation, as well as from

4/ Dec. No. 20996-A (WERC, 1/84).

Kenosha County (Brookside Care Center) 5/, in which performance evaluations made by RNs were given questionable weight by the Director of Nursing. The situation in the present matter more closely resembles that of Dodge County (Clearview Home) 6/, in which LPN "Team Leaders" were excluded from the bargaining unit in spite of the fact that they spent a majority of their time in patient care activities. The RNs in the present matter appear to exercise somewhat less authority in disciplinary matters, but somewhat greater authority in the evaluation process. Ultimately, however, the significance of the cited cases is limited to underscoring the importance of the evaluation process 7/, since the facts of the present matter are unique.

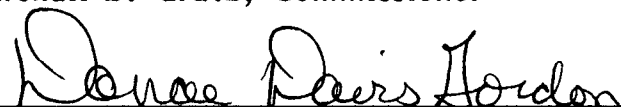
In sum, the RNs presently employed at Lasata who participate in the evaluation process possess sufficient indicia of supervisory status to warrant their exclusion from the bargaining unit set forth in Conclusion of Law 1. Kasten, who does not participate in the evaluation process, has been included.

Dated at Madison, Wisconsin this 27th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

5/ Dec. No. 19435 (WERC, 3/82).

6/ Dec. No. 11469-A (WERC, 3/83).

7/ Additional cases focusing in part on the significance of the evaluation process are: Columbia County Home, Dec. No. 13536-A (WERC, 7/75); Eau Claire County (Health Center & Mount Washington Home), (WERC, 12/79); and Sauk County (Health Care Center), Dec. No. 17882-A (WERC, 3/81).