

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:

In the Matter of the Petition of :

:

COLUMBIA COUNTY :

(HOSPITAL AND HOME) : Case 13

: No. 38577 ME-167

Involving Certain Employes of : Decision No. 25092-A

:

COLUMBIA COUNTY Represented by :

LOCAL 2698, AFSCME, AFL-CIO :

:

Appearances:

Hesslink Law Offices, S.C., by Mr. Robert M. Hesslink, Jr. Attorneys at Law, 6200 Gisholt Drive, Madison, Wisconsin 53713, appearing on behalf of Columbia County.
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of Local 2698, AFSCME, AFL-CIO.

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

On January 19, 1988, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit in the above-entitled matter wherein it concluded that Licensed Practical Nurses (LPNs) employed by Columbia County at the Columbia County Home were not supervisory employes within the meaning of Sec. 111.70(1)(o)1, Stats. and thus were appropriately included in a collective bargaining unit represented by Local 2698, AFSCME, AFL-CIO.

The County thereafter sought judicial review of the Commission Order. On March 16, 1990, Columbia County Circuit Judge Donn H. Dahlke issued an Order which reversed the Commission's decision and remanded the matter to the Commission with instructions that an order be issued excluding the LPNs from the bargaining unit represented by Local 2698.

On March 7, 1991, the Court of Appeals, District IV modified Judge Dahlke's Order by remanding the matter to the Commission "for further consideration." On remand, the Court of Appeals directed the Commission to examine Commission findings regarding the LPNs' disciplinary authority and to compare the LPNs' job description from 1975 with the current "Team Leader" job description.

Upon receipt of the remand, the Commission gave the parties the opportunity to state their positions as to how the Commission should proceed. By letter dated June 16, 1991, the County suggested that a new hearing be conducted so the supervisory issue would be resolved based on the LPNs' current responsibilities. Local 2698 opposed the County's suggestion in a letter dated June 7, 1991. The County then responded with a letter dated June 18, 1991 in which it argued that the remand Order does not expressly limit the Commission's authority to deciding the LPNs' status based on the existing record.

Having considered the parties' positions, the Commission concluded it was appropriate to conduct additional hearing regarding any changes in the LPNs' duties and responsibilities since the original October 1987 hearing which relate to supervisory status. On February 19, 1992, the Commission conducted the additional hearing in Madison, Wisconsin. The parties filed additional

written argument by March 24, 1992. Having reviewed the record from both hearings and the Court of Appeals instructions to us on remand, we make and issue the following

FINDINGS OF FACT

1. Columbia County, herein the County, is a municipal employer having its offices at 400 DeWitt Street, Portage, Wisconsin 53901.

2. Wisconsin Council 40, AFSCME, AFL-CIO, and its affiliated Local 2698, herein the Union, are labor organizations having their offices at 5 Odana Court, Madison, Wisconsin 53719.

3. The Union is the exclusive bargaining representative of the following bargaining unit at the Columbia County Home:

all regular full-time and all regular part-time employes (employed 16 hours or more per week), excluding administrative, managerial employes, Medical Records Clerk, supervisory, registered nurses, registered therapist, registered dieticians and all other professional employes, temporary and part-time employes employed less than 16 hours per week. 1/

4. On March 20, 1987 the County filed a unit clarification petition with the Commission wherein it sought to exclude from the bargaining unit described in Finding of Fact 3 all Licensed Practical Nurses (LPNs) employed by the Columbia County Home (the Home) as supervisory employes.

5. The Home is ultimately under the supervision of the Columbia County Board of Supervisors; and that the relevant Home organizational structure is as follows: County Home Committee, Administrator, Director of Nursing, Charge Nurse, Team Leaders, Nursing Assistants and Certified Medical Assistants (CMAs).

6. Gerald Baldwin is the Administrator of the Home, and is responsible for its overall operation. Baldwin reports to a five-member Home Committee which sets policy for the Home and oversees several departments in the Home, each of which is supervised by a department head. The department head for the Nursing Department is the Director of Nursing, currently Jean Wadsworth. Wadsworth is responsible for the care of the patients at the Home, and super-vises the three daily nursing shifts. Wadsworth is responsible for the hiring of all staff in the Nursing Department. Wadsworth is ultimately responsible for all staff scheduling, including daily shifts, vacations, personal time, overtime, and sick leave. Grievances are brought directly to Wadsworth unless a Charge Nurse is acting as Director of Nursing in her absence. Wadsworth reports directly to the Home Administrator.

1/ Local 2698, AFSCME, AFL-CIO was certified as the exclusive bargaining representative of this unit in 1972, Case XIII, No. 16916, ME-958, Dec. No. 11068 (WERC, 7/72). The classification of LPN was originally included by stipulation in the certified unit. A unit clarification petition was filed by Local 2698 in 1975, seeking the inclusion of the position of LPN II in the unit. The Commission held that said employes were properly included. Columbia County Home, Dec. No. 13536-A (WERC, 7/75).

7. The method of providing services to residents in the Home has changed since approximately 1983 when state directives brought residents to the Home who required a higher degree of skilled care. As a result of that change, the levels of care became more acute and the upgrading of staffing patterns resulted in the hiring of more licensed personnel. In 1984, 32 beds were added to the Home for residents over age 65, and the developmentally disabled unit was converted into a unit for residents with Alzheimer's disease. Additional hiring of licensed personnel, namely LPNs and Registered Nurses (RNs), was done on the basis of availability and resulted in LPNs taking on additional responsibility for patient care. Since 1987, the level of care and the degree of state and federal regulation has increased even further.

8. The Home is divided into two units, the Manor and the East Wing. The Manor consists of a central nursing station and four wings. The East Wing is physically separated from the Manor by the kitchen and dietary unit and has a separate nurse's station.

9. The Home operates on three shifts daily, namely day, p.m., and night. Each shift has a supervising (Charge) nurse who is an RN and reports directly to the Director of Nursing. Each wing on each shift has a Team Leader under the direction of the Charge Nurse. The Team Leader may be an LPN or an RN. All of the LPNs serve as Team Leaders on a regular basis.

10. The current job description of a Team Leader is as follows:

POSITION: TEAM LEADER

QUALIFICATIONS:

1. Must be an R.N. or L.P.N., currently licensed in the State of Wisconsin.
2. Must be experienced in areas such as: nursing service administration, restorative nursing, geriatric nursing and psychiatric nursing, or acquire such experience through staff development programs.
3. Must be physically and mentally capable of performing duties.

RESPONSIBILITIES:

1. Direct supervision of the total nursing staff for care of all residents during the assigned tour of duty, following current approved written procedures and policies.
2. Have the ability to recognize significant changes in the condition of residents and take necessary action.
3. Must be thoroughly familiar with emergency and lifesaving policies and procedures to function adequately in case of an emergency or disaster, and be familiar with all HSS-132 rules and regulations, Federal codes and resident rights.
4. Will be responsible to Nursing Supervisor,

Director of Nursing.

5. Participate in nursing organizations and attend seminars for continuing education.
6. Review Policy and Procedure regarding viewing of resident charts.
7. CPR certified

DUTIES

1. Make round (sic) on nursing unit under assigned supervision.
2. Perform all duties related to resident care and other duties assigned when requested by the Nursing supervisor, or Director or (sic) Nursing.
3. Accompany physician on patient visits and review patient orders with physician for renewal, change of discontinuance. Inform physician for (sic) condition changes; receive order and check order after transcription.
4. Make out daily assignment sheets for nursing unit and nursing staff.
5. Supervise nursing staff: Nurse Tech, Certified medication aide, Nursing assistants on the assigned unit.
6. Cover the CMA when assigned according to protocol of CCH: Nurse and CMA responsibilities.
7. Pass medications and complete treatments as ordered by the doctor.
8. Audit patient charts monthly, update on Nurse's aides care plan with changing orders.
9. Review and revise patient care plans monthly and communicate any changes of care plan to care planning nurse.
10. Complete nursing assistant and CMA skill and work performance annually.
11. Give report to staff at change of shift.
12. Document work rule violations and make specific recommendations of corrective action.
13. Adhere to the Safety rules and regulations of the Columbia County Home.

Signature: _____ Date: _____

11. The current job description for an LPN is as follows:

POSITION: STAFF L.P.N.

QUALIFICATIONS:

1. Graduation from an accredited school of Practical Nurse Program and currently licensed by the State of Wisconsin.
2. Health status necessary to carry out assigned duties.
3. Must be able to recognize resident's reaction to medication.
4. Must have ability to hold confidential, all information regarding residents.

BASIC DUTIES:

1. Performs (sic) under the supervision of the professional nurse in charge, those functions which implement the nursing department's philosophy and the nursing care goals for the residents.
2. Supervised by charge nurse, DON. Assigned to unit by charge nurse.
3. Supervises nursing staff: nursing assistants, certified medication aides.

SPECIFIC DUTIES AND RESPONSIBILITIES:

1. Performs nursing care procedures within the scope of the practical nurse training program.
2. Functions as a team leader, under the direction of an R.N., supervising nursing assistants, and certified medication aides.
3. Supervises the CMA under the direction of the charge R.N. to achieve continuity of care for all residents under her delegation.
4. Complete annual evaluation on skill and work performance of nursing assistants and CMA.
5. Recommends discharge or termination of nursing assistants, CMA.
6. Recommends changes in nursing care plans and staffing.
7. May admit, transfer, and discharge residents

under supervision.

8. Provides care to the acutely ill resident under the direction of the R.N. and supervises those individuals providing direct care.
9. Administers oral and hypodermic medications upon special training of the institution, if not received within the LPN program.
10. Notify physician of any condition changes and receive order, according to protocol.
11. Is responsible for charting all administered medications and treatments, as well as changes in resident's condition.
12. Reports all changes in the resident's condition to the R.N. in charge.
13. Accompany physician with rounds.
14. Is responsible for the collection of laboratory specimens and the recording of these in the chart and flow sheet.
15. Participates in house inservice, educational programs, workshops, and seminars, to promote further knowledge and skills that are applicable to the LPN's further development in his/her field and for management of staff.
16. Adhere to the Safety Rules and Regulations of the Columbia County Home.
17. CPR certified.
18. Review Policy and Procedure regarding viewing of resident's chart.

Signature: _____ Date: _____

12. The Home employs Nursing Assistants who are assigned to each work area, are responsible for direct patient care, and report to the Team Leader. The Team Leader assigns and oversees the work activity of the Nursing Assistants, although the Nursing Assistants generally know what is to be done and go about doing it. The Team Leader on each shift oversees patient appointments, goes on rounds with each doctor, decides which staff may attend inservices, charts the status of each skilled care patient, and generally is responsible for all patient care on the wing. The Team Leaders initially report to their assigned wings and then go to the central nursing station to receive the report from the prior shift and to receive any additional information from the Charge Nurse. The Team Leaders then report back to their assigned areas and communicate any instructions to their teams. The Charge Nurse visits each wing several times per shift. The Team Leader spends the majority of a shift monitoring patient care being administered by the Nursing Assistants. Team Leaders attend monthly shift meetings with shift staff, including Nursing Assistants, which are conducted by the Charge Nurse. LPN and RN Team Leaders do not attend management meetings of department heads, or

supervisory meetings attended by the Charge Nurses and Director of Nursing, unless an RN is designated to attend by the Director in her absence.

13. Since 1987, the County has created a Certified Medication Assistant (CMA) position. The CMAs dispense medications to patients under the supervision of Team Leaders. These positions require special training and are filled from the pool of Certified Nursing Assistants. In order to qualify as a CMA, a Nursing Assistant must obtain recommendations from licensed staff. Annual evaluations are considered in making decisions about promotions to the CMA position. With the creation of the CMA position, the amount of time spent by LPN Team Leaders in dispensing medication has been reduced.

14. All members of the patient care team, including Nursing Assistants, are expected to report any deviation from standard patient care or inappropriate behavior that they observe. The Team Leader assesses the information and investigates, which normally includes talking to the employe who is the subject of the report, to determine whether there is a problem. If the Team Leader decides there is a problem, the Team Leader reports the matter to the Charge Nurse on that shift and makes a recommendation as to what should be done. The Charge Nurse reviews the matter and if the subject Nursing Assistant is to be verbally counseled, that is done by the Charge Nurse with the Team Leader also being present. If there is a recurrence of the conduct that led to the verbal counseling, the Team Leader reports it to the Director of Nursing and discusses the matter with her and a written counseling record is issued to the employe. A counseling record is always signed by the Team Leader, the employe and the Home's Administrator and is sometimes signed by the Charge Nurse on the shift and the Director of Nursing. Although counseling is not considered discipline, it can lead to discipline if the employe repeats the behavior that led to the counseling. The initial step in the formal disciplinary process is the issuance of a "disciplinary notice" and this can be the next step following a written counseling record. Team Leaders have the authority to issue, and have issued, disciplinary notices after reporting and discussing the matter with the Charge Nurse. The Charge Nurse is generally present when the notice is given to the employe. The disciplinary notice is signed by the Team Leader, the Charge Nurse, the Nursing Assistant and by the Home's Administrator. Team Leaders can effectively recommend suspension and discharge of employes. Team Leaders can independently suspend an employe without pay in cases of suspected patient abuse. Team Leaders perform annual and probationary evaluations of Nursing Assistants and CMAs. Team Leaders cannot effectively recommend that an employe be denied a transfer to another unit, forfeit a pay raise, or be disciplined as part of the annual or probationary evaluation, although a probationary employe who receives a poor evaluation will not be retained and satisfactory evaluations are necessary to receive a CMA position. Based on the recommendation of an LPN/Team Leader, a probationary employe was terminated. Team Leaders are not involved in the interviewing or hiring process for Nursing Assistants or CMAs. Team Leaders cannot grant requests for vacation, personal days, sick leave or overtime. When Nursing Assistants or CMAs call in sick, they call either the Director of Nursing or the Charge Nurse who decides whether to call someone in to replace them. Team Leaders do not have direct access to the personnel files of Nursing Assistants or CMAs. Only RNs are hired by the Home as Charge Nurses, or may act as Charge Nurses, because of their ability under state regulations to assess patients.

15. Each Team Leader oversees the work of four to ten Nursing Assistants and CMAs. With the creation of the CMA position, Team Leaders spend less time dispensing medication and a majority of their time directing the work of employes. The starting wage for an LPN is \$8.27 per hour while Nursing Assistants start at \$5.90 per hour. CMAs receive an additional \$0.50 per hour

over the applicable Nursing Assistant rate.

16. The LPN/Team Leaders possess the requisite indicia of supervisory status in sufficient combination and degree to be supervisory employes.

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

CONCLUSION OF LAW

The Licensed Practical Nurse/Team Leader's at the Columbia County Home are supervisory employes within the meaning of Sec. 111.70(1)(o)1, Stats. and there-fore are not municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 2/

That the position of Licensed Practical Nurse/Team Leader is appropriately excluded from the collective bargaining unit at the Columbia County Home.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of October, 1992.

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

2/ Footnote 2/ found on pages 10 and 11.

2/ 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.

(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.

Continued

2/ Continued

(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.

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

The procedural history of this case has already been recited earlier herein. The Court of Appeals has directed us to give the alleged supervisory status of LPN/Team Leaders further consideration. We have done so with particular emphasis on the Court's specific comments that:

- (1) The County claims that WERC's decision is erroneous because the LPN's have authority to impose discipline and recommend higher levels of discipline. WERC specifically found that "(t)he current LPN job description states that LPN's may recommend the discharge or termination of nursing assistants, however, there was no evidence that this has in fact occurred." Gerald Baldwin testified that an LPN, Lisa McNamee, effectively recommended that an aide, Charlotte Clark, be let go for failing to satisfactorily perform her job. (An exhibit indicates that it was, in fact, LPN, Clara Kennedy, who wrote the disciplinary warning.) WERC's finding that the LPN's do not have authority to effectively recommend termination lacks a substantial basis in the record.
- (2) The County argued to WERC that the changes which occurred at the Home beginning in 1983 impacted on the LPN's job duties, changing those duties from what they had been when the LPN II's were previously included in the bargaining unit. WERC could rely on the prior decision to determine whether the County's argument was accurate. However, WERC did not compare the team leader job description with the LPN II job descriptions from 1975. It should do so on remand because all of the LPN's function as team leaders.

As to the matter of the LPN/Team Leader's disciplinary authority, in our 1988 decision we made the following Findings of Fact:

11. That all members of the patient care team, including nursing assistants, are expected to report any deviation from standard patient care or inappropriate behavior that they observe; that nursing assistants report any such problems to their team leader; that the team leader assesses the information and investigates, which normally includes talking to the nursing assistant who is the subject of the report, to determine whether there is a problem; that if the team leader decides there is a problem or that something wrong has been done, the team leader reports the matter to the Director of Nursing or the

supervising nurse on that shift and makes a recommendation as to what should be done; that the supervising nurse reviews the matter and if the subject nursing assistant is to be verbally counseled, that is done by the supervising nurse with the team leader also being present; that if there is a recurrence of the conduct that led to the verbal counseling, the team leader reports it to the Director of Nursing and discusses the matter with her and a written counseling record is issued to the nursing assistant; that a counseling record is always signed by the team leader, the subject nursing assistant and the Home's Administrator and is sometimes signed by the supervising nurse on the shift and the Director of Nursing; that although counseling is not considered discipline it can lead to discipline if the employe repeats the behavior that led to the counseling; that the initial step in the formal disciplinary process is the issuance of a "disciplinary notice" and this can be the next step following a written counseling record; that team leaders have the authority to issue, and have issued, a disciplinary notice after reporting and discussing the matter with the supervising nurse and the supervising nurse is present when it is given to the employe; that the disciplinary notice is signed by the team leader, the supervising nurse, the nursing assistant and by the Home's Administrator; that team leaders have recommended follow-up corrective action, as well as discipline, to the supervising nurses and the Director of Nursing; that team leaders perform annual and probationary evaluations on nursing assistants; that team leaders cannot effectively recommend that an employe be denied a transfer to another unit, forfeit a pay raise, or be disciplined as part of the annual or probationary evaluation, although a probationary employe who receives poor evaluation will not be retained; that LPN's and RN's are not involved in the interviewing or hiring process for nursing assistants; that LPN's and RN's as team leaders cannot grant requests for vacation, personal days, sick leave or overtime; that when nursing assistants call in sick they call either the Director of Nursing or the supervising nurse who decides whether to call someone in to replace them; that team leaders do not have direct access to the personnel files of nursing assistants; and that only RN's are hired by the Home as supervising nurses, or may act as charge nurses, because of their ability under state regulations to assess patients.

In our Memorandum, we discussed the matter of disciplinary authority as follows:

. . .

The current LPN job description states that LPN's may recommend the discharge or termination of nursing assistants, however, there was no evidence that this

has in fact occurred. The LPN II was also able to make recommendations regarding the disposition of grievances, and disciplinary action.

. . .

However, the performance of these tasks in addition to the supervision and performance of other patient care activities and the limited discretion they exercise as to discipline paints a picture of the LPN as a lead worker rather than supervisor.

In summary, the record establishes that while the LPN's at the Columbia County Home do perform some tasks which are supervisory in nature such as participating in the evaluation of nursing assistants, giving verbal and written counseling, and recommending disciplinary action, they do not have authority to effectively recommend transfer, promotion, suspension, termination or hiring.

As concluded by the Court, our statement in the Memorandum that LPN/Team Leaders lack the authority to effectively recommend termination lacks a substantial basis in the record. The LPN job description in existence in 1987 states in pertinent part that an LPN "Recommends discharge or termination of Nursing Assistants." The current LPN job description also contains this language, as updated to include CMAs. While this authority had apparently only been exercised as to a probationary employe, there is no countervailing evidence upon which we can conclude that the apparent effectiveness of the LPN/Team Leader's recommendation in that specific instance was not representative of the LPN/Team Leader authority in general. While we will more fully address the evidence regarding the current disciplinary authority later in our decision, that evidence reflects the ongoing ability to effectively recommend discipline. Thus our Findings herein reflect the authority of the LPN/Team Leaders to effectively recommend all levels of discipline including suspension and discharge.

The Court also directed us to compare the existing Team Leader job description with the LPN II job description from 1975 when evaluating the County argument that LPN's supervisory authority had increased. The Team Leader job description from 1987 states in pertinent part:

. . .

RESPONSIBILITIES:

1. Direct supervision of the total nursing staff or care of all residents during the assigned tour of duty, following current approved written procedures and policies.

. . .

DUTIES

. . .

5. Supervise nursing staff.
 . . .
11. Complete nursing assistant work skill evaluations.
 . . .
13. Document work rule violations and make specific recommendations of corrective action.

The 1975 LPN II job description states in pertinent part:

. . .
Directs the activities of the Licensed Practical Nurse I and all levels of nursing assistants. Prepares work assignments for the nursing assistants and L.P.N. I under his/her supervision. Is responsible for providing sufficient staff coverage when in charge under the supervision of a registered nurse. Assists nursing supervisor with nursing assistant and L.P.N. I evaluations.

When we compare the supervisory attributes of the 1975 LPN II with those of the 1987 LPN/Team Leader, on balance we find little change. The LPN/Team Leader does not have the staffing responsibility and authority possessed by the LPN II. While the Team Leader and LPN job descriptions make more explicit reference to disciplinary responsibilities, the LPN II's we found non-supervisory in 1975 were also responsible for making disciplinary recommendations. Thus, on balance, we find this comparison to be of limited use when resolving the issue before us.

After the February 19, 1992 hearing where additional evidence was adduced as to changes in Team Leader duties since our initial hearing, the parties took the following positions.

The County

The County points to the Court of Appeals decision which identified that LPN Team Leaders can effectively recommend the termination of employes. The County also contends that the Commission's reliance on the LPN I job description rather than the Team Leader job description resulted in an inappropriate conclusion. The County argues that the disciplinary process has become more formalized within the last five years. Further, the evidence clearly establishes that the LPN Team Leaders are more extensively involved in discipline, including the ability to effectively recommend suspensions and dismissal when necessary. The County contends that LPN Team Leaders have the ability to suspend employes without consulting higher authority in severe matters. In 1987, LPN Team Leaders supervised between three and six employes. Now they routinely supervise at least four employes, and sometimes as many as ten. At the present time, in addition to supervising Nursing Assistants, they are also supervising CMAs. The differential between LPN Team Leader and Nursing Assistant wage rates has increased from approximately 21 percent to 40 percent. This differential exists because of supervisory duties and

responsibilities. In 1987, LPN Team Leaders spent approximately 50 percent of their time overseeing the work of their subordinates. Since 1987, the time spent supervising bargaining unit employes has increased, while the amount of time spent in dispensing medication and providing patient care has decreased. While the LPN Team Leaders have always evaluated Nursing Assistants, these evaluations are even more meaningful now because they are considered when Nursing Assistants apply for CMA positions.

The Union

The Union contends that the LPN Team Leader does not and never has had the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or adjust grievances, or to effectively recommend same. The Administrator of the Home makes an independent judgment as to whether or not an employe should be terminated. This is done after he reviews the record and meets with the employe personally to hear the employe's explanation. The LPN Team Leaders are supervising an activity rather than employes. The creation of the CMA is not significant. The LPN Team Leaders do not select or recommend the promotion of CMAs. Regarding the pay differential which the County represents as a result of the increase in supervisory duties, the Union contends that the increase in rates is due to a shortage of nurses and market-place impacts.

DISCUSSION

As noted in our first decision, we consider the following factors when determining whether an employe is a supervisor:

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

3/ City Firefighters Union v. City of Madison, 48 Wis.2d 262 (1970); City of Two Rivers, Dec. No. 21959-A (WERC, 2/91).

After considering the record in its entirety, including the changes that have occurred since the initial hearing, we conclude that the position of LPN at the Columbia County Home does possess sufficient indicia of supervisory status to warrant the finding that this position is supervisory.

The subsequent hearing provided additional evidence about disciplinary authority that was important to consider. Within the last five years the disciplinary process has become more formalized. LPN Team Leaders conduct the first levels of discipline, both oral and written. In serious matters, such as patient abuse, LPN Team Leaders have the ability to suspend employees without pay pending an investigation. The Administrator, who makes final decisions about termination, testified that he would give great weight to the recommendation provided by the LPN Team Leader. Based upon the entire record, we conclude that LPN Team Leaders have the authority to effectively recommend the suspension and termination of Nursing Assistants and CMAs.

Several other changes have occurred that support our supervisory status conclusion. The County has created the CMA position. Under the supervision of the LPN Team Leader, CMAs distribute medication to patients. In order to become a CMA, a Nursing Assistant must apply. Part of the selection decision is based upon a review of the Nursing Assistants annual evaluations. These evaluations, which are completed by the LPN Team Leader, play an important role in this promotional opportunity.

LPN Team Leaders now supervise a larger number of employees. In 1987, LPN Team Leaders supervised between three and six Nursing Assistants. Currently they supervise between four and ten employees. These employees are either Nursing Assistants or CMAs. During the last five years, the role in providing direct patient care by LPN Team Leaders has diminished, while the time involved in supervising Nursing Assistants and CMAs has increased.

The pay differential between the LPN Team Leader and the Nursing Assistant has increased greatly since the earlier hearing in 1987. At that time LPN Team Leaders were paid approximately \$1.20 an hour more than Nursing Assistants. Currently the differential is approximately \$2.37 per hour which represents an increase from approximately 20 percent to approximately 40 percent above the Nursing Assistant pay rate. Since this increase has occurred during a time when direct patient care responsibilities have been reduced and supervisory responsibilities have been increased, we conclude that this differential exists primarily because of the responsibilities inherent in supervising employees. A part of this increase may be a result of nursing shortages and market conditions, as pointed out by the Union. While market conditions and shortages have no doubt played a role, we conclude that the supervisory responsibilities form the primary basis for the differential.

Our conclusion in this case is the same as we reached in a similar dispute over LPN unit nurses in Walworth County. 4/ In that case unit nurses functioned in a similar manner to the LPN Team Leaders in Columbia County. The unit nurses supervised from three to six Nursing Assistants as well as CMAs.

4/ Decision No. 9041-C (WERC, 3/92).

They assigned work and monitored performance of the Nursing Assistants. LPN unit nurses were able to effectively recommend discipline, and in some circumstances, independently imposed discipline. Most LPN unit nurses evaluated Nursing Assistants and played a role in Nursing Assistant promotions to CMA positions. While LPN unit nurses had a more significant role in the hiring process because of the employer's reliance on the "tracking period," both the LPN Team Leaders (Columbia County) and LPN unit nurses (Walworth) have the same roles during the Nursing Assistants probationary period.

While the LPN Team Leader positions do not exhibit all of the factors we consider in determining supervisory status, they exhibit a sufficient combination of these factors for us to find them to be supervisory. For the reasons stated, we conclude that the position of LPN Team Leader at Columbia County Hospital and Home is supervisory and excluded from the bargaining unit.

Dated at Madison, Wisconsin this 9th day of October, 1992.

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