

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
COLUMBIA COUNTY  
(HOSPITAL AND HOME)  
Involving Certain Employees of  
COLUMBIA COUNTY Represented by  
LOCAL 2698, AFSCME, AFL-CIO  
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Case 13  
No. 38577 ME-167  
Decision No. 25092

Appearances:

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

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

Columbia County having, on March 20, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employees of the Columbia County Home by determining whether certain positions should be excluded from said bargaining unit; and a hearing in the matter having been conducted on October 22, 1987, before Examiner David E. Shaw, and a stenographic transcript of the proceedings having been prepared, and received on November 2, 1987; and at hearing, the parties having been given the opportunity to present oral arguments and witnesses, and the parties having submitted post-hearing briefs by December 4, 1987; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

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

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

3. That AFSCME Local 2698 is the exclusive bargaining representative of the following bargaining unit at the Columbia County Home:

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

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- 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 employees were properly included. Columbia County Home, Dec. No. 13536-A (WERC, 7/75).

4. That the County, on March 20, 1987, 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, referred to herein as LPN's, employed by the Columbia County Home, referred to herein as the Home, as supervisory employees.

5. That, as of the date of the hearing, there were fourteen LPN's employed by the Home, namely, J. Dodge, S. Richter, J. Nelson, A. Angell, C. Kennedy, S. Nelson, K. Keith, L. McGee, D. Childs, M. Edwards, C. Beckett, S. Balkar, D. Meincke, and J. Smith.

6. That the Home is ultimately under the supervision of the Columbia County Board of Supervisors; and that the relevant Home organizational structure revised since April, 1978, is as follows: County Home Committee, Administrator, Director of Nursing, charge nurse, team leaders, nursing assistants.

7. That Gerald Baldwin is the Administrator of the Home, and is responsible for its overall operation; that Baldwin reports to a five-member Home Committee which sets policy for the Home; that Baldwin oversees several departments in the Home, each of which is supervised by a department head; that the department head for the Nursing Department is the Director of Nursing, currently Jean Wadsworth; that Wadsworth is responsible for the care of the 150 patients at the Home, and supervises the three daily nursing shifts; that Wadsworth is responsible for the hiring of all licensed and unlicensed staff in the Nursing Department, purchasing for the Department, conducting staff inservices, and making pre-admission assessments of all prospective residents; that Wadsworth is responsible for all staff scheduling, including daily shifts, vacations, personal time, overtime, and sick leave; that all grievances are brought directly to Wadsworth unless a supervising nurse is acting in her absence; and that Wadsworth reports directly to the Home administrator.

8. That 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; that 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; that 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; that additional hiring of licensed personnel, namely LPN's and registered nurses (RN's), was done on the basis of availability and resulted in more LPN's taking on leadership roles; and that the job description for LPN's as updated as of June, 1981, and reviewed each year through March, 1987, and currently is as follows:

NURSING SERVICE

POSITION TITLE:	Licensed Practical Nurse I
SUPERVISED BY:	Charge Nurse
ASSIGNED TO	
UNIT BY:	Director of Nursing
<u>SUPERVISES:</u>	Nursing Assistants I and II, as requested

BASIC DUTIES:

Performs 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 patient.

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 R.N.
3. Assists Director of Nursing or Nursing Supervisor in Nursing Assistant evaluations.
4. Recommends discharge or termination of Nursing Assistants.
5. May recommend changes in nursing care policies.
6. Assists in admission, transfers, and discharges of residents.
7. Provides care to the acutely ill resident under the direction of the R.N.

8. Administers oral and hypodermic medications upon special training of the institution, if not received within the training program.
9. Prepares written nursing care plans upon identification of resident's needs and revises the plans as indicated under the supervision of the R.N.
10. Actively participates in weekly nursing care conferences (team meetings). May lead these conferences in absence of the R.N.
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. Assists in ward rounds with doctor in absence of an R.N.
14. Is responsible for the collection of laboratory specimens and the recording of these in the chart.
15. Participates in Home inservice education programs, workshops, and seminars, to promote further knowledge and skills that are applicable to the LPN's further development in his/her field.
16. Adhere to the Safety Rules & Regulations of the Columbia County Home.
17. Review Policy & Procedure regarding viewing of Patients' charts.

QUALIFICATIONS:

Required:

1. High school graduation plus graduation from a recognized 1 year practical nurse program.
2. Must pass Wisconsin State Board of Nursing licensing examination and keep license current.
3. Must be able to recognize residents' reaction to medication.
4. Health status necessary to carry out assigned duties.
5. Must have ability to hold confidential, all information regarding residents.

Desirable:

Previous related work experience.

Attendance at classes for continuing education credits.

Dress: Clean, well-fitted appropriate length uniform (Pant suits acceptable).

Clean shoes and hose.

Hair must be kept off of the shoulders.

Jewelry that may injure patient should not be worn.

Caps are optional.

9. That the Home is divided into two units, the Manor and the East Wing; that the Manor consists of a central nursing station and four wings; that the four wings include a Medicare wing, a wing for the developmentally disabled, a skilled care wing, and a wing for least care residents; that there are 118 residents in the Manor, and a ratio of staff to residents of approximately 1 to 6; that the East Wing is physically separated from the Manor by the kitchen and dietary unit; that the East Wing consists of 32 residents, 16 of whom are in a locked unit of the Wing and the rest in a semi-secure unit; that the East Wing has a separate nurse's station; and that the ratio of staff to residents on the East Wing is 1 to 8.

10. That the Home operates on three shifts daily, namely day, p.m., and night; that there are fourteen LPN's employed by the Home of which five are full-time and nine are part-time; that there are twelve RN's, of which three are full-time and nine are part-time; that each shift has a supervising (charge) nurse who is an RN and reports directly to the Director of Nursing; that under state requirements the Home must have an RN in charge and present on every shift; that as a result of said requirement LPN's cannot be supervising nurses on any shift or receive charge pay; that except for the East Wing, LPN's and RN's are assigned to a wing and rotated monthly; that a supervising nurse makes the assignments as to when the nursing assistants and licensed staff will work; that the nursing staff provides a team approach to nursing care; that each wing on each shift has a team leader under the direction of the supervising nurse on that shift; that the team

leader may be an LPN or an RN; that all of the LPN's are team leaders; that there are five team leaders on the day shift, five on the p.m. shift, and at present four team leaders on the night shift and a supervising nurse also acting as a team leader; that 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 life-saving policies and procedures to function adequately in case of an emergency or disaster, and be familiar with all H-32 rules and regulations, Federal codes and residential rights.
4. Will be responsible to Home Supervisor, Director of Nursing.
5. Participate in nursing organizations and attend seminars for continuing education.

DUTIES

1. Make rounds on nursing unit under assigned supervision.
2. Perform all duties related to resident care and other duties assigned when requested by Home Supervisor, or Director of Nursing.
3. Accompany physician on patient visits and review pating (sic) orders with physician or renewal, change or discontinuance.
4. Make out daily assignment sheets for nursing unit and nursing staff.
5. Supervise nursing staff.
6. Pass medications and complete treatments as ordered by the doctor.
7. Complete Utilization Review and Recertification forms, as required by H-32.
8. Audit patient charts monthly.
9. Review and revise patient care plans monthly.
10. Participate in patient staffing.
11. Complete nursing assistant work skill evaluations.

12. Give report to staff at change of shift.

13. Document work rule violations and make specific recommendations of corrective action;

that the Home also employs nursing assistants who are assigned to each work area, are responsible for direct patient care, and report to the team leader; that 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; that the team leader on each shift oversees patient appointments, goes on rounds with each doctor, decides which staff may attend inservices, charts daily for each skilled care patient, and generally is responsible for all patient care on the wing; that 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 supervising nurse; that the team leaders then report back to their assigned areas and communicate any instructions to their teams; that the supervising nurse visits each wing at least once per shift; that the team leader spends approximately 1 1/2 to 2 hours each morning and afternoon administering medications; that state law requires daily charting on skilled care patients and this takes the team leader approximately 30 minutes each day; that the team leader spends the remainder of the shift on designated functions including the monitoring of patient care being administered by the nursing assistants; that LPN team leaders perform the same functions as RN team leaders with the exception that only the RN is licensed to do patient assessments and LPN's do not take telephone calls from doctors; that an LPN team leader may assess a patient's needs, but must obtain the signature of the RN on duty to implement the assessment; that occasionally on a shift all team leaders are LPN's but that is not the norm; that both LPN and RN team leaders prepare taped reports of shift activity for the next shift; that team leaders attend monthly shift meetings with shift staff, including nursing assistants, which are conducted by the supervising nurse; and that LPN and RN team leaders do not attend management meetings of department heads, or supervisory meetings attended by the supervising nurses and Director of Nursing, unless an RN is designated to attend by the Director in her absence.

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 employee 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 employee; 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 employee 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 employee 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.

12. That LPN team leaders have the same authority as RN team leaders to oversee the work of nursing assistants and make corrections in patient care; that each team leader oversees three to six nursing assistants, depending on whether the "bath girls" are working on the wing that day; that team leaders evaluate the nursing assistants on their team; that such evaluations may be probationary or annual; that each team leader evaluates approximately four assistants each year; that LPN evaluations of nursing assistants are often co-signed by an RN, whereas RN evaluations are not; that LPN's and RN's are evaluated by their supervising nurse and the Director of Nursing on the basis of their knowledge of their duties and responsibilities and their skills and role as a team leader; that the starting wage for an RN is \$9.01 per hour, whereas the starting wage for an LPN is \$6.79 per hour; that nursing assistants start at approximately \$1.20 per hour less than LPN's; that RN's may earn an additional charge nurse differential of \$1.00; that weekend differential is the same for RN's and LPN's; and that fringe benefits are the same for RN's, LPN's and nursing assistants.

13. That to the extent that LPN's possess and exercise supervisory responsibilities, they are limited to performing evaluations and recommending counseling and discipline of nursing assistants; and that LPN's in the position of team leader do not possess the requisite indicia of supervisory status in sufficient combination and degree to be supervisory employees.

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

#### CONCLUSIONS OF LAW

1. That the position of Licensed Practical Nurse at the Columbia County Home is not supervisory within the meaning of Sec. 111.70(1)(o), Stats., and therefore, the occupants of said position are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

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

#### ORDER CLARIFYING BARGAINING UNIT 2/

That the position of Licensed Practical Nurse is appropriately included in the collective bargaining unit at the Columbia County Home consisting of all regular full-time and all regular part-time employees (employed 16 hours or more per week), excluding administrative, managerial employees, Medical Records Clerk, supervisory, registered nurses, registered therapist, registered dieticians and all other professional employees, temporary and part-time employees employed less than 16 hours per week.

Given under our hands and seal at the City of  
Madison, Wisconsin this 19th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

A. Henry Hempe  
A. Henry Hempe, Commissioner

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Footnote 2 on page 7.

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- 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.

(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.

## COLUMBIA COUNTY (HOSPITAL & HOME)

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

#### POSITIONS OF THE PARTIES

##### County

The County contends that the position of Licensed Practical Nurse (LPN) at the Columbia County Home is supervisory as evidenced by the increase in supervisory job tasks, by the fact that the Home has a substantially larger nursing staff providing greater skilled care to a larger patient population, and by the fact that LPN's and Registered Nurses (RN's) serve as team leaders with virtually the same responsibilities. Although the County acknowledges that LPN's were originally included in the bargaining unit, and that two LPN II's were included in the unit as a result of a 1975 Commission decision in a unit clarification proceeding, the County argues that changes in the operation of the Home, and the creation of the team leader concept in 1983 necessitate the exclusion of LPN's from the bargaining unit at this time. The County notes that team leaders (LPN's and RN's) spend in excess of 50% of their work shift supervising the work tasks of nursing assistants. Further, the County notes that LPN's participate in written evaluations of nursing assistants, administer oral and written reprimands, may recommend more severe discipline, and make daily work assignments. The County contends that the fact that LPN's perform nursing duties or assist nursing assistants in patient care is not determinative of nonsupervisory status. The County also notes the high number of employees (between 21 and 35) which the charge nurse, an RN, would have to supervise if LPN team leaders were not considered supervisory. The County discounts the fact that LPN's have no role in hiring or grievance procedures since hiring is done by the Director of Nursing, and the grievance procedure is pursuant to contract.

##### Union

The Union contends that LPN's are properly included in the bargaining unit, and that their duties have not changed substantially since the original certification so as to warrant a reconsideration of their status. The Union contends that, in fact, current LPN duties contain fewer supervisory responsibilities than the duties of the two LPN II positions which were found properly includable in the bargaining unit in 1975. In support thereof, the Union points out that current LPN's may not call in work replacements, do not attend monthly supervisory meetings, and do not recommend the disposition of grievances. The Union further notes that the Director of Nursing testified at hearing that written counseling notes prepared by LPN's on the performance of nursing assistants are not considered disciplinary in nature. The Union questions the lack of testimony from the LPN involved in the only instance presented by the County of a situation in which the LPN and the RN on duty formally reprimanded a nursing assistant. The Union contends that no evidence was introduced which supports the County's contention that changes in the operation of the Home and its patient population resulted in an expansion of LPN supervisory duties after 1983. Finally, the Union asserts that LPN's do not have authority to effectively recommend the hiring of employees, promotions, transfers, discipline, discharge or the resolution of grievances, and do not have authority to assign overtime, vacation, replace employees out for illness, or maintain staffing levels.

#### DISCUSSION

The Commission has consistently 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 work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;



4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 3/

The Commission has held that not all of the above factors need to be present, and that if a sufficient number of these factors appear in any given case, the Commission will find an employee to be a supervisor. 4/

Both parties cite prior Commission decisions in support of their positions on whether the LPN's at the Columbia County Home are supervisory employees. The Commission has considered the present case in light of its past decisions on the status of LPN employees, including its prior decision involving LPN II's at the Home in 1975, and has found that the responsibilities of LPN's at the Home are more in the nature of supervising an activity rather than supervising employees.

A comparison of the authority and responsibilities of the current LPN's and the LPN II's demonstrates that the current LPN position has less supervisory responsibility than the LPN II position found to be nonsupervisory by the Commission in its 1975 decision. The current job description for LPN I dated June, 1981 and updated each year through March, 1987, and the job description in effect in 1975 for LPN II's are substantially the same even though the team leader concept was initiated in 1983. In addition to duties currently performed by LPN's, the LPN II was responsible for providing sufficient staff coverage under the supervision of the RN, for re-assigning job duties, and for calling in off duty or part-time employees to fulfill staffing needs. The LPN II attended the monthly supervisors' meeting, whereas current LPN's do not. 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. In spite of these additional responsibilities, we found the primary responsibility of the LPN II position to be the overseeing of patient care at the Home and the supervision of staffing activity as opposed to employees. In the present case, while it is true that LPN's spend a substantial portion of their time supervising the work tasks of nursing assistants, the supervision of such tasks is routine in nature and primarily of patient care activities.

The County cites the Commission's decisions in Sauk County 5/ and Dodge County 6/ as compelling arguments for its contention that the position of LPN at the Home is supervisory in nature. However, both cases are distinguishable on their facts in that the positions in question had greater supervisory authority than the LPN's at the Home. In Sauk County, the unit supervisors could effectively recommend the delay of a wage increase for a nursing assistant, the transfer of an assistant to a nonpatient care position in a different department, or termination. Unit supervisors issued written and verbal warnings to nursing assistants, and were the first step of the grievance procedure for employees. In Dodge County, team leaders were responsible for obtaining replacements for

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3/ Fond du Lac County, Dec. No. 10579-A (WERC, 1/72); and Kenosha County (Brookside Care Center), Dec. No. 19435 (WERC, 3/82).

4/ Kenosha County (Brookside Care Center), Id.

5/ Sauk County (Health Care Center), Dec. No. 17882-A (WERC, 3/81), aff'd Dec. No. 81-CV-1992 (Cir. Ct. Dane, 3/82).

6/ Dodge County (Clearview Home), Dec. No. 11469-A (WERC, 6/83).

absent employees, could recommend transfer, promotion, and hiring, had authority to grant overtime, served as immediate supervisors under Step 1 of the grievance procedure established by contract, had authority to issue written warnings, which was the second step under the discipline procedure of the collective bargaining agreement, and could recommend suspension with intent to discharge.

While the County asserts that changes occurring in 1984 expanded the supervisory authority of the LPN position, there is little evidence in the record to support such a finding. We agree with the County that the performance of nursing duties by LPNs at the Home would not, in and of itself, prevent a finding that LPNs are supervisory employees. 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. They cannot grant requests for vacation, personal days, sick leave, or overtime. Supervision of the work tasks of nursing assistants is routine in nature and does not require the significant exercise of independent judgment. Accordingly, we conclude that the position of LPN at the Columbia County Home does not possess sufficient indicia of supervisory status to warrant a finding that this position is supervisory.

Dated at Madison, Wisconsin this 19th day of January, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

A. Henry Lempe  
A. Henry Lempe, Commissioner