

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of Petition of :  
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 CAROL FLINT : Case 239  
 : No. 42347 ME-2910  
 Involving Certain Employes of : Decision No. 26303  
 :  
 ROCK COUNTY (HEALTH CARE CENTER) :  
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Appearances:

Ms. Yvonne Haney, Representative, appearing on behalf of Petitioner  
 Ms. Carol Flint, 911 North Main Street, Edgerton, Wisconsin 53534.  
Mr. Thomas A. Schroeder, Corporation Counsel, Rock County, County  
 Courthouse, 51 South Main Street, Janesville, Wisconsin 53547, on  
 behalf of the County.  
Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME,  
 AFL-CIO, 1722 St. Lawrence Avenue, Beloit, Wisconsin 53511, on  
 behalf of Local 1258.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER DISMISSING PETITION

Carol Flint having on June 12, 1989, filed a petition with the Wisconsin Employment Relations Commission accompanied by an appropriate showing of interest seeking an election pursuant to Sec. 111.70(4)(d), Stats., to exclude all Licensed Practical Nurses (LPNs) employed by the County from an existing unit of County employes; and a hearing having been held on September 14, 1989 in Janesville, Wisconsin before Examiner Sharon Gallagher Dobish; and in addition to the County and Petitioner appearing and participating in the instant hearing, Wisconsin Council 40, Local 1258, AFSCME, AFL-CIO (hereafter Local 1258 or AFSCME) having appeared, intervened and participated in the hearing as the current collective bargaining representative of the employes in question; and a stenographic transcript having been taken of the proceedings; and the parties having to submitted post-hearing briefs by November 1, 1989; and the Commission having reviewed the entire record including the parties' arguments herein and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Rock County, herein the County, is a municipal employer having its offices at 51 North Main Street, Janesville, Wisconsin 53547; and that among its governmental functions, the County maintains and operates Rock Haven Nursing Home (Rock Haven) which is a part or division of the Rock County Health Care Center (HCC) Complex.

2. That Rock County Employees' Local 1258, AFSCME, AFL-CIO, herein Local 1258 or AFSCME, is a labor organization having its principal offices at 1722 St. Lawrence Avenue, Beloit, Wisconsin 53511; that Local 1258 is the current collective bargaining representative of a bargaining unit of County employes including Licensed Practical Nurses, herein LPNs, described in the following manner in the 1988-89 collective bargaining agreement between the County and Local 1258:

All regular full-time and regular part-time employes of the Rock County Health Care Center, and 51.42 Program, the Developmental Disabilities Board, Rock County Farm, and the Rock County Health Department, but excluding administrators, supervisory, confidential, craft, professional and temporary employes;

and that Local 1258 was initially certified by the Commission on January 12, 1968 (Dec. No. 8243-F (WERC, 1/68)) as the collective bargaining representative of a unit described as:

all regular full-time and regular part-time employes of Rock County Hospital, Rock Haven Home and Pinehurst Sanatorium, Janesville, Wisconsin, excluding the superintendent, supervisory personnel, confidential clerical personnel and temporary employes.

3. That neither the County nor Local 1258 dispute that Petitioner Carol Flint is the representative of the approximately 23 LPNs employed by the County and currently represented by Local 1258 who have formed a labor organization having its principal office at 911 North Main Street, Edgerton, Wisconsin 53534; that Petitioner initially sought an election to determine whether the LPNs are craft employes not properly included in the non-craft unit represented by Local 1258; that at the hearing herein, Petitioner withdrew its assertion that the LPNs are craft employes and asserted instead that the LPNs are para-professional employes not appropriately included in the non-professional unit represented by Local 1258; and that, in addition, Petitioner has asserted that its ultimate desire is for the LPNs to be included in the professional employe bargaining unit currently represented by the Association of Mental Health Specialists (AMHS), which unit contains inter alia the County's Registered Nurses (RNs).

4. That in 1974, in Dec. No. 13131 (WERC, 11/74), the AMHS was certified by the Commission as the collective bargaining representative of, among other employes, the RNs employed at Rock Haven and the HCC in a unit described as follows:

all regular full-time and regular part-time Psychologist, Social Workers, Clinical Pastoral Fellow (Chaplin), the Research Librarian, T.V. Grant Coordinator and Assistant T.V. Grant Coordinator, but excluding the Alcoholism and Drug Abuse Counselor, the Volunteer Coordinator, the Admissions Officer, all other employees of Rock County, and supervisory, managerial and confidential employees.

that in the 1989 collective bargaining agreement between the County and AMHS, the bargaining unit was described as follows:

all regular full-time and regular part-time employees in the classifications listed in Appendix A employed by the Rock County Health Center, but excluding supervisors, craft employees, temporary employees and independent contractors;

and that Appendix A lists the following classifications:

Psychologist, PhD  
Psych. MS or MA  
Clinical Pastoral Fellow (Chaplin)  
Social Worker (MA, MS, MSW)  
Voc. Educator  
Com. Ed. Specialist  
Inservice Coordinator  
OTR  
Reg. Record Administrator  
Soc. Worker (BA/BS)  
Admissions Officer  
Inservice Instructor  
Staff Nurse  
Experience BS;

5. That since at least 1971, Local 1258 has represented inter alia LPNs who are employed by the County at its County Health Care Center (HCC) building and at the building across the driveway from the HCC known as Rock Haven Nursing

Home (Rock Haven); that the bargaining unit currently represented by Local 1258, described above in Finding of Fact 2, consists of approximately 300 employes and also includes Nursing Assistants (NAs), Alcohol and Drug Abuse Counselors, Medical Technicians, some Financial Services Department employes and some Maintenance/General Services employes; that, in addition, to the Local 1258 unit and AMHS unit, the County bargains with other labor organizations that represent the employes in the units listed below:

Social Services -- International Association of  
Machinists (IAM)  
Courthouse -- Local 2489 AFSCME  
Highway and Maintenance -- Local 1077 AFSCME  
Juvenile Probation -- Teamsters  
Rock County Youth Home -- Teamsters  
County Sheriff's Supervisors -- Independent Union  
Rock County Attorneys -- Independent Union  
Public Health -- Local 1199.

6. That Rock Haven is a 248 bed facility, having four floors and a basement, which is organized into five nursing units and which employs approximately 15 LPNs on three regular shifts (6:45 a.m. - 3:15 p.m.; 2:45 p.m. - 11:15 p.m.; 11:00 p.m. - 7:00 a.m.) and two swing shifts (5:00 a.m. - 1:30 p.m.; 2:45 p.m. - 9:00 p.m.); that LPNs are not necessarily assigned to each of these shifts, but each LPN has a standard shift assignment that they regularly work; that at Rock Haven, LPNs are assigned by floors, not wings; that Rock Haven residents are grouped according to their medical condition, most importantly, according to their cognitive function; that at Rock Haven, the County cares for three types of patients: (1) long term nursing home residents, (2) terminal patients, (3) those in need of rehabilitation following acute disorders, and (4) developmentally disabled (DD) patients; that the patients in categories (2) and (3) are placed in the 91 Medicare - certified beds at Rock Haven; that the fourth floor of Rock Haven is occupied by a group of 35 patients who are stable, independent or semi-independent long-term residents, cared for by one LPN without an RN being physically present; that LPNs are employed in all other areas of Rock Haven except for the 21 - bed Rock Haven high acuity unit where RNs care only for the terminally ill, for the acutely mentally ill and for those patients who need complex nursing technologies applied to their cases; that generally where LPNs are utilized at Rock Haven, the County normally assigns two RNs and one LPN, or two LPNs and one RN, or two LPNs supported by a Head Nurse or Nursing Supervisor; that at Rock Haven, the organizational hierarchy is as follows:

Associate Administrator - Technological  
and Support Services  
Associate Administrator - Treatment Services  
Director of Nursing  
Head Nurses  
Nursing Supervisor                      Unit Clerk Coordinator  
Staff RN's or Charge Nurse  
LPNs  
NAs

that Rock Haven normally employs two Head Nurses, each of whom supervises two floors of the facility; that the Head Nurses typically work day shifts but can be present in the facility at any time and they are often present during the afternoon and night shifts; that during the afternoon and night shifts and on weekends and holidays, a Nursing Supervisor is physically present in the facility around the clock; that the Head Nurse's responsibilities differ from those of the Nursing Supervisor as follows: that the Head Nurse is expected to provide direction and continuity of care for all staff from shift to shift,

while the Nursing Supervisor accepts the Head Nurse's structure and maintains it throughout the shifts and on the weekends and holidays in the absence of the Head Nurse; that LPNs, according to HSS - 132 of the Wisconsin Administrative Code governing nursing procedures, may act as Charge Nurses; that a Charge Nurse is similar to a team leader on the unit to which he/she is assigned but a Charge Nurse is not the equivalent of a Head Nurse or Nursing Supervisor; RNs may also serve as Charge Nurses but when they do, they have greater authority than an LPN so designated; that LPNs have varying degrees of contact with Head Nurses and Nursing Supervisors -- from intermittent to continuous -- depending upon the nursing unit to which they are assigned; that LPNs may be and have been called into work at Rock Haven when RNs are absent from work; that when this occurs, the Head Nurse and Nursing Supervisors (RNs) work more directly with LPNs and are more attentive to the condition of each patient and LPNs cannot and do not function completely as an RN; that, for example, a Nursing Supervisor or RN must first authorize an LPN to administer an as-needed medication (PRN) to a patient after the RN or Nursing Supervisor (not the LPN) has done an assessment of the patient's condition; that an LPN cannot evaluate a change in patient condition or a patient injury -- this must be done by an RN; that a Nursing Supervisor or RN must directly supervise and check the work of an LPN who is engaged in giving complex care to a patient; and that the Nursing Supervisor or RN must check over, initial or sign off on any nursing plan of care for a patient which has been drafted or amended by an LPN.

7. That as a general rule and pursuant to the Statutes and Board of Nursing regulations, RNs are authorized and expected to provide "complex" health care while LPNs (and Nursing Assistants (NAs)) are authorized to provide only "basic" care under the general supervision of an RN; that if an LPN is needed to provide "complex" care as described in Finding of Fact 6, he/she must be supervised directly by an RN; that complex care is that care which is given in circumstances which are unpredictable, where medications interact, where physical or psychological changes may be occurring and where a nursing assessment must be made with the exercise of clinical nursing judgment; that, in contrast, basic care is that care given in situations that are predictable, unlikely to change, given according to established nursing procedures and which does not require substantial nursing skill, knowledge, training or the application of nursing principles which must be learned at a higher level; that the LPNs normal duties at Rock Haven include the following: the LPN receives a change of shift report from the previous shift and begins his/her assigned duties; depending upon the unit to which the LPN is assigned, the LPN would give medication, perform treatments, respond to requests for assistance from NAs, interact with residents and their families, assist in problem solving, assist physicians with rounds or sick call, attend staffing conferences, assist in ordering supplies (from the internal Supply Department only); that RNs perform many of the above tasks that LPNs perform; that the County's LPN job description reads in pertinent part as follows:

#### JOB RELATIONSHIP

Position: Licensed Practical Nurse  
Department: Nursing Service  
Location: Health Care Center/Rock Haven  
Supervised by: Registered Nurse or Representative  
of Nursing Administration  
Workers Supervised: Nursing Assistants, Unit Clerk

#### JOB DUTIES

Summary: Performs basic nursing activities in the care of clients/residents served by the Rock County Health Care Center, so that they may achieve or regain, and then maintain the maximum possible physical, emotional, and social function. Role functions are governed by "Wisconsin Nurse Practice Act", Chapter HSS-132 of the Wisconsin Administrative Code, JCAHO-Long Term Code Standards, professional procedures for nursing practice, and the corresponding policies and procedures of the Center's Nursing Services Department.

May act as team leader. When in the team leadership role, directs staff activities in the provision of patient care with Registered Professional Nurse or physician consultation in all matters lacking defined procedures. The Licensed Practical Nurse reports directly to the Head Nurse through the Registered Professional Nurse. In the absence of Registered Nurse, the Licensed Practical Nurse reports to the immediate supervisor or responsible nurse.

Tasks: 1. Collects and records data which will be incorporated into nursing assessments. Participates in the development of nursing plans of care which address physical, psychosocial, and intellectual needs.

2. Assures that the identified needs of clients/residents are met through implementation of the nursing plan of care.

3. Participated in the overall implementation of clients'/residents (sic) plans of care.

4. Coordinates and follows through on physicians/psychiatrists orders and treatments as directed.

5. Administers medication prescribed for routine administration; PRN medications with R.N. consultation; observes effects of medications, records and reports to R.N. or physician any unusual or adverse reactions.

6. Performs selected treatments.

7. May function as team leader during fire drills or other emergency situations. Administers simple emergency care.

8. Participates in the evaluation of nursing plans of care and their corresponding modification. May also participate in quality assurance reviews/audits.

9. Is knowledgeable of Patient's Bill of Rights.

10. Interacts with clients/residents on an ongoing basis.

11. Observes, reports, and documents all physical and/or psychiatric changes, and shares pertinent clinical information with immediate supervisor. Assures continuity of care through the intershift exchange of information.

12. May act as nurse representative in inter-disciplinary staffings.

13. Guides staff in the appropriate use of safe body mechanics in lifting and transfer.

14. Provides direction and supervision to staff in meeting the clients'/residents' personal hygiene needs.

15. Assumes responsibility for the whereabouts of all clients/residents, staff, volunteers and visitors.

16. Promotes the maintenance of a safe environment for clients/residents in the assigned area.

17. Provides direction to staff to assure that clients'/residents' physical environment is orderly and attractive.

18. Directs staff in caring for clients'/residents'/personal effects.

19. May participate in the evaluation of employee performance.

20. Participates in the evaluation of resources and in the maintenance of equipment. Monitors staff in their utilization.

21. Participates on committees as assigned. May participate in the development and review of departmental policies and procedures.

22. Attends and directs staff to attend required inservice programs. Seeks opportunities for continuing education.

23. Participates in fire drills.

24. May participate in disaster evacuations when circumstances exists.

25. Performs related work as required.

#### MACHINES, TOOLS, EQUIPMENT, AND WORK AIDS

Client/resident clinical records, clinical materials, equipment, and devices used to collect data, administer treatments and/or medication ordered by the physician/

psychiatrist and provide general nursing care within the scope of licensed practical nursing.

#### REQUIREMENTS OF WORK

Graduation from an approved program of practical nursing and current licensure in Wisconsin, or immediate eligibility for licensure, as a Licensed Practical Nurse. Such continuing learning as is necessary (sic) to assure the following minimal knowledge and competencies:

1. Knowledge of legal rights of clients/ residents.
2. Knowledge of the legal aspects of nursing and legislation which may affect the practice of licensed practical nursing.
3. Ability to support implementation of the nursing process.
4. Knowledge of the principles and practice of licensed practical nursing.
5. Ability to use equipment and materials efficiently and effectively.
6. Ability to recognize and document predicted effect of prescribed medications, treatments, and diagnostic procedures and report all other responses to the registered nurse and/or the attending physician.
7. Ability to recognize and document changes in clients'/residents' behavioral (sic) patterns and report them to the registered nurse and/or the inter-disciplinary treatment team.
8. Ability to develop skills necessary to afford safe and effective management of behavioral crises.
9. Ability (sic) to participate in the maintenance of complete and accurate clinical records.
10. Ability to direct and supervise others within (sic) the parameters
11. Knowledge of fire and disaster plans and ability to direct the staff response as the need arises.

and that the County's RN job description reads as follows, in pertinent part:

#### JOB RELATIONSHIP

POSITION: Registered Nurse  
DEPARTMENT: Nursing Services  
LOCATION: Rock County Health Care Complex/ 51.42 Speciality (sic) Hospital/C.S.P.  
SUPERVISED BY: HCC Nursing D.O.N./Head Nurse/ Nurse Supr./51.42 D.O.N./ Service Chief C.S.P.  
WORKERS SUPERVISED: LPN, NA, UA, UCC, Psych. Tech.

#### JOB DUTIES

Summary: Performs professional nursing care of clients/residents so that they may achieve or regain, and then maintain the maximum possible physical, emotional and social function.

Comply with established nursing standards. Implement and maintain established policies, procedures, objective, quality assurance, safety, environmental and infection control. Interpret these to subordinate personnel, patients, and public as is appropriate. Follow established routines and utilize supplies/equipment in cost-efficient manner. Maintain a safe, orderly, clean environment for patients and personnel.

#### TASKS

- 1) Collects and records data and incorporates it into nursing assessments/plans of care.
- 2) Directs the overall implementation of clients/residents plans of care. Coordinates the implementation of physician orders. Administers prescribed medications.

- 3) Observes, documents and monitors all psychiatric and/or physical changes and responses to treatment and brings to attention of physician. Intervenes and provides leadership and supervision to insure dignity, learning and/or well-being. Assess the need for PRN medication.
- 4) Provides direct care as individuals' conditions warrant. Performs treatment, including those which are complex.
- 5) Evaluates outcome of nursing care and modify accordingly. Participate in quality assurance reviews/audits.
- 6) Acts as client/resident advocate and responds to complaints per Patient Bill of Rights.
- 7) Participates in client/resident education on an individual/group basis.
- 8) Interacts directly with clients/residents, their significant others, and representatives of other agencies on an ongoing basis.
- 9) Shares pertinent information with immediate supervisor. Assures continuity of care through the inner shift exchange of information.
- 10) Notifies all designated parties of pertinent changes in clients/residents status, and accepts responsibility for assuring follow through.
- 11) Assures safe environment for clients, residents, staff, volunteers. Implements security measures as warranted.
- 12) Administers emergency care as circumstances warrant.
- 13) Supervise direct care staff in the following:
  - a) Response to emergency situations.
  - b) In the provision of delegated care.
  - c) To insure that clients'/residents' physical environment is orderly and attractive.
  - d) In caring for client/resident personal effects.
  - e) In use of safe body mechanics in lifting/transfer.
- 14) Communicates pertinent employee performance information to immediate supervisor. Participates in formal evaluation of employee performance (sic).
- 15) Participate in the development and review of department policy and procedure.
- 16) Participate in evaluation of resources, maintenance of equipment. Monitor staff in utilization of same.
- 17) Participates in client staffings, acts as liaison between the client/resident, the physician and other members of the staff team to meet client/resident needs.
- 18) Participate in emergency codes, fire and/or disaster evacuations.

- 19) Participates on committees as assigned.
- 20) Attends and directs staff to attend required inservice programs. Seeks opportunities for continuing education which will enhance professional growth.
- 21) Responsible for check of all controlled drugs and counts drugs with oncoming RN or LPN.
- 22) Performs other professional duties as required or assigned.

WORKING CONDITIONS

Occasional (sic) lifting or moving patients/equipment.  
Frequent bending, stooping, pushing and pulling.  
Prolonged periods of standing and walking. Exposed to all patient elements.

MACHINES, TOOLS, EQUIPMENT, AND WORK AIDS

Client/resident clinical records, clinical materials, equipment, and devices used to collect data and provide professional nursing care.



REQUIREMENTS OF WORK

Graduation from an approved school of nursing or an approved four year college or university with a degree in nursing and current Wisconsin licensure as a Registered Professional Nurse.

Such continuing learning as is necessary to assure the following minimal knowledge and competencies:

- 1) Knowledge of legal rights of clients/residents.
- 2) Ability to differentiate between the dependent, inter-dependent and independent components of nursing practice and to practice the profession accordingly.
- 3) Knowledge of the nursing process and its application.
- 4) Knowledge and ability to apply the principles and practices of nursing and competence in nursing care of assigned residents/clients.
- 5) Knowledge of the legal aspects of nursing and legislation which may affect the practice of professional nursing.
- 6) Knowledge of interdependence of members of the health discipline.
- 7) Ability to use equipment and material efficiently and effectively.
- 8) Ability to assess both expected and untoward effects of prescribed medications, treatments and diagnostic procedures and accurately record and report related observations to attending physicians.
- 9) Knowledge of fire and disaster plans and ability to direct para-professional staff as need arises.
- 10) Ability to develop skills necessary to afford safe and effective management of behavioral crisis.
- 11) Ability to interpret (sic) changes in clients' behavioral patterns and plan, direct, and evaluate appropriate nursing care and maintain accurate clinical records.
- 12) Ability to plan, assign and supervise the work of others.
- 13) Ability to effectively communicate verbally and in writing.

Enumerated Task List of additional responsibilities is provided for each Unit.

8. That, by way of contrast, the County's NA job description reads in pertinent part as follows:

JOB RELATIONSHIP

Position: Nursing Assistant  
Department: Nursing Services  
Location: Health Care Center Complex  
Supervised by: LPN, RN, Nursing Supervisor or Head Nurse  
Workers Supervised: None

JOB DUTIES

Summary: Performs various patient care activities and related non-professional services necessary in caring for the physical and psycho-social needs and comfort of the clients/residents. All tasks are performed under nursing direction according to individual plans of care.

- Tasks:
1. Collects and records data for use in monitoring clients'/residents' conditions.
  2. Assists clients/residents in meeting their nutritional needs.
  3. Provides care related to the process of elimination.
  4. Responsible for meeting clients/residents exercise and rest requirements.
  5. Assists clients/residents in meeting personal hygiene needs.
  6. Provides simple treatment.
  7. Lifts, moves and transfers clients/residents as required.
  8. Applies safety and comfort devices.
  9. Takes measures to support and maintain the intellectual function.
  10. Interacts with clients/residents to address their psycho-social and intellectual needs.
  11. Monitors behavior and intervenes to assure dignity, learning and well-being.
  12. Takes all necessary precautions and observes all safety rules to prevent injury to clients/residents.
  13. Assumes responsibility for the whereabouts of assigned clients/residents.
  14. Accompanies clients/residents to other areas.
  15. Maintains clients'/residents' environment in a safety, orderly and attractive manner.
  16. Cares for clients'/residents' (sic) personal effects.
  17. Attends inservices, staffings and other meetings as required and assigned. May be appointed to committees.
  18. Participates in fire drills.
  19. Participates in disaster evacuations when circumstances exists.
  20. Uses materials and supplies resource-fully. Participates in the maintenance of equipment.
  21. Performs related work as required. Related work as outlined in the enumerated task list.

MACHINES, TOOLS, EQUIPMENT AND WORK AIDS

Clinical records. Clinical instruments and mechanical devices (i.e., thermometers, wheelchairs, lifts, etc.), necessary to providing care and meeting needs of the clients/residents. Some recreational equipment.

JOB DUTIES

Current placement on Wisconsin Nursing Assistant Registry with successful completion of a Certified Nursing Assistant Program with a minimum of 180 hours (90 hours theory and 90 hours supervised clinical experience) in a VTAE (vocational technical adult education) system or completion of a 120 hour CNA VTAE program plus two years recent experience as a nursing assistant in a long-term care facility with a strong inservice education program which reinforces the following knowledge, abilities, and skills:

1. Some knowledge of the theory and practice of patient care.
2. Some knowledge of the more common physical and mental illnesses, their more obvious symptoms and appropriate medical terminology.
3. Some knowledge of the physiological changes in aging and their implication for care.
4. Some knowledge of human anatomy as it relates to the treatment and therapies typical of assignments.
5. Ability to follow oral and written directions of a technical and professional person in exact detail.
6. Ability and willingness to attend to the personal needs of clients/residents.
7. Ability to deal with clients/residents emphatically and respectfully.
8. Ability to maintain and interpret certain nursing records and reports.
9. Skill in application of required non-professional nursing techniques.
10. Knowledge of Fire and Disaster Plan and is able to implement if necessary.

9. That LPNs are required to be licensed by the State of Wisconsin which issues their licenses upon successful completion of an examination; that County LPNs are required as a condition of their hire to have a High School diploma (or equivalent) plus they are required to have one year of vocational training beyond high school; that, in contrast, RNs educational backgrounds (qualifying them for County employment) may vary as follows: some RNs hold an associate degree (two years) from a vocational school, others hold a degree from a three-year hospital-operated school of nursing, and some RNs hold a B.S. degree from a university or college in the field of nursing; that all County RNs must sit for and pass the RN licensure examination and maintain their license in the State of Wisconsin; that the State licensure examination for LPNs is much less complex and difficult than that required of RNs; that the County carries malpractice insurance covering the practice/work of all Rock Haven staff; that County NAs must be certified by the State of Wisconsin that they have completed a 180 hour vocational/technical course for NAs and no licensure or examination are required of NAs by the County or the State.

10. That County wages and fringe benefits covering RNs and LPNs (and other Local 1258 members) vary; that LPN wages range from \$6.75 to \$8.66 per hour while RN wages range from \$10.30 per hour to \$12.93 per hour; that the 1988-89 collective bargaining agreement provides for that following Local 1258 classifications shall be paid as follows:

WAGE SCHEDULE							
Effective 1/1/88 through 12/31/89							
<u>RANGE</u>	<u>CLASSIFICATION</u>	<u>STEP A</u>	<u>STEP B</u>	<u>STEP C</u>	<u>STEP D</u>	<u>STEP E</u>	<u>STEP F</u>
1	After Care Wkr. Staff Ass't to	7.6600	8.1600	8.6565	9.2643	9.6501	9.9888

Dev. Disabilities  
 Director  
 Volunteer Coord.

2	Ass't Mech. Mtnce. Man Supervisor	7.7400	8.2400	8.7430	9.1081	9.4806	9.8072
3	Mech. Mtnce. Man III	7.7100	8.2100	8.7065	9.0787	9.4368	9.7618
3a	Senior Office Associate	7.1600	7.6600	8.1571	8.4811	8.8163	9.1196
4	Alcohol & Drug Abuse Counselor Minority Specialist	6.9200	7.4200	7.9194	8.2956	8.6729	8.9712
5	Accountant	6.4600	6.9600	7.4567	7.9897	8.6252	8.9218
6	Psych. Tech Medical Tech.	6.9000	7.4000	7.9028	8.2607	8.6188	8.9152
7	LPN	6.7500	7.2500	7.7500	8.0600	8.3900	8.6600
8	Herdsman	5.6300	6.1300	6.6247	6.8657	7.1140	7.3577
9	Farm Worker	5.4500	5.9500	6.4538	6.7045	6.9673	7.2059
10	Mech. Mtnce. Man II Radiologic Tech.	6.4300	6.9300	7.4327	7.7548	8.0815	8.3591
11	Sanitarian Aide	6.2500	6.7500	7.2474	7.5634	7.8869	8.1577
12	Acc't Clerk III Com. Counselor	6.1500	6.6500	7.1520	7.3591	7.5444	7.8032
13	Account Clerk II COTA Dairy Plant Worker Food Service Supr. Lead Beautician Lead Building Ser. Worker Storekeeper	5.9300	6.4300	6.9315	7.1724	7.4135	7.6677
14	Admin. Ass't	5.9700	6.4700	6.9672	7.1134	7.3324	7.5838
15	Act. Therapy Assistant Ass't Laundry Supr. Beautician Clk-Steno III Med. Record Clerk Med. Transcriber	5.6300	6.1300	6.6247	6.8657	7.1140	7.3577

	Nurses Aide Store Clerk Transportation Aid Unit Clerk Coord.						
16	Health Aide	5.6200	6.1200	6.6166	6.8575	7.1059	7.3494
16a	Bldg. Serv. Worker	5.5600	6.0600	6.5613	6.7914	7.0397	7.2808
17	Acc't Clerk I Cook II Laundry Wkr II Seamstress	5.5100	6.0100	6.5113	6.7414	6.9897	7.2291
18	Clk-Receptionist Clk-Steno II Clk-Typist II Cook I Transportation Clerk	5.3600	5.8600	6.3617	6.5440	6.7271	6.9573
19	Food Ser. Wkr. Laundry Wkr.	5.3400	5.8400	6.3387	6.5212	6.7039	6.9333
20	Linen Supply Clerk Outreach Wkr. Seamstress I	5.2900	5.7900	6.2887	6.4712	6.6539	6.8815
21	Unit Aide	5.1000	5.6100	6.1022	---	---	---

that RNs receive two floating holidays, professional educational tuition reimbursement, time and one-half pay if called in on an off day with less than 24 hours' notice, paid individual malpractice insurance and shift differential while LPNs do not; and that LPN and RN fringe benefits are similar to those of other County employes in the areas of health and life insurance and retirement.

11. That for purposes of direct supervision of LPNs, the Head Nurse or Nursing Supervisor are authorized to orally warn or counsel LPNs but if further discipline is necessary, such would be recommended to the Associate Administrator for Technological and Support Services by the Associate Administrator for Treatment Services following the latter's independent investigation of the matter; that only the Associate Administrator for Technological and Support Services can issue such disciplinary actions; that it is County policy to encourage all Rock Haven and HCC employes to report improper practices or procedure they witness to their Head Nurse or Nursing Supervisor; that this reporting procedure may or may not result in disciplinary action being taken by the Associate Administrator for Technological and Support Services; and that there is no evidence of record to show that RNs, LPNs and NAs have taken disciplinary actions on their own.

12. That the County's HCC is a five floor facility with a basement which is separated from the Rock Haven facility by a driveway and is connected to Rock Haven by an underground tunnel; that the HCC Building houses other County services as well as the HCC: the Department of Social Services, Section 51.42 Systems, the County's Psychiatric Hospital (occupying the third and fourth floors of the HCC) and the Staff of the DD Board; that the County's Psychiatric Hospital is a 140 bed special nursing home facility for approximately equal numbers of adolescent and adult patients who are chronically mentally ill; that the approximately five LPNs currently employed at the HCC building are employed only in the Psychiatric Hospital; that LPN and RN duties and responsibilities at the HCC are essentially the same as LPN and RN duties and responsibilities at Rock Haven; that the work shifts, organizational hierarchy, supervisory, nursing and disciplinary procedures are also the same at the HCC as they are at

Rock Haven; that there are 12 RNs employed at the HCC to approximately 5 LPNs at the HCC; and that the County strives to maintain a 2/3 to 1/3 ratio of RNs to LPNs at both Rock Haven and the HCC.

13. That physically, HCC and Rock Haven employes may and do travel across the driveway or through the tunnel between these facilities, to mingle in the basement lunchrooms and breakrooms located in both facilities; that the meals for Rock Haven residents and staff are prepared in the basement kitchen of the HCC; that although County RNs, LPNs and NAs are normally assigned to work at either Rock Haven or the HCC, RNs, LPNs and NAs may work and they have in fact occasionally worked at both facilities on different days as well as on the same day during the same shift.

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

#### CONCLUSIONS OF LAW

1. That the LPNs presently included in the Local 1258 bargaining unit set forth in Finding of Fact 2 are not professional employes within the meaning of Sec. 111.70(1)(L), Stats.

2. That a collective bargaining unit consisting of the LPNs presently included in the Local 1258 bargaining unit is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. Stats.

3. That the existing non-professional collective bargaining unit represented by Local 1258 continues to be an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. Stats.

4. That no question concerning representation within the meaning of Sec. 111.70(4)(d), Stats., exists within the Local 1258 bargaining unit set forth in Finding of Fact 2.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

#### ORDER 1/

That the petition for election is hereby dismissed.

Given under our hands and seal at the City of  
Madison, Wisconsin this 26th day of January,  
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner

Chairman A. Henry Hempe did not participate in this case.

1/ 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.

(Footnote 1/ continued on page 15)

1/ continued

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.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER DISMISSING PETITION

POSITIONS OF THE PARTIES

Petitioner's Position:

In her petition, Petitioner asserted that Licensed Practice Nurses (LPNs) employed at the County's Rock Haven Nursing Home and its Health Care Center, should be allowed to vote on the question of whether they wished to remain in or be removed from the bargaining unit currently represented by Local 1258 on the basis that LPNs were craft employes. At the instant hearing, however, Petitioner withdrew this position and argued only that the LPNs were entitled to the above election on the grounds that they are para-professional employes not appropriately included in Local 1258's non-professional unit.

In this regard, Petitioner argued that the LPNs' educational background, their day-to-day work and responsibilities, the requirement that they be licensed by the State of Wisconsin as a condition of their employment and that they be covered by the County's malpractice insurance, and the fact that LPNs often fill-in for County-employed Registered Nurses (RNs) demonstrates the LPNs' similarity to professional employes and their dissimilarity from other Local 1258 bargaining unit members whose classifications include clerks, maintenance employes, food service workers and farm workers. Petitioner stated that the LPNs desire ultimately to be placed in the County bargaining unit known as the Association of Mental Health Specialists (AMHS) which contains professional employes, including RNs also employed at Rock Haven and the County's Health Care Center.

In addition, the Petitioner argued that both scheduling and discipline of County Health Care staff would flow more smoothly and efficiently were the LPNs included in the bargaining unit represented by the AMHS. Finally, Petitioner argued that based upon the Wisconsin Administrative Code, H.S.S. 132, similarities between County job descriptions for LPNs and RNs and the frequency with which LPNs "replace" County RNs or are assigned to areas where no RN is physically present, County LPNs do not properly belong in the non-professional bargaining unit currently represented by Local 1258.

Local 1258's Position:

Although it did not object or move for dismissal of the petition at the instant hearing, Local 1258 argued in its brief that the petition for an election is not an appropriate vehicle to raise the real question in this case -- whether LPNs should be included in the professional bargaining unit now represented by AMHS. Furthermore, Local 1258 argued that such a question should be resolved through a unit clarification petition, which Local 1258 contended may only be filed by the employer or a collective bargaining representative. Local 1258 thus argues Petitioner here lacks standing to raise a unit clarification issue before the WERC.

In addition, Local 1258 argued that the Petitioner failed to show a sufficient lack of community of interest among LPNs and other Local 1258 bargaining unit members to justify the establishment of a separate unit of LPNs. Local 1258 noted that it had responded to LPN concerns in the last collective bargaining agreement by gaining a 50 cents per hour increase for the LPNs (while other unit employes suffered a wage freeze during the term of that agreement), by gaining for all Local 1258 unit members a measure of job security, and by agreeing to grant the County the ability to hire LPNs at a higher pay rate during the term of that agreement.



Local 1258 argued against further fragmentation of County bargaining units. Specifically, it urged that by creating a separate unit of LPNs, the WERC would thereby create a third bargaining unit (AMHS, Local 1258 and a unit of Social Workers represented by the IAM) employed at the same worksite (Rock Haven and the HCC), for a total of 11 bargaining units, County-wide.

Finally, Local 1258 pointed out that while Nursing Assistants (NAs) have different responsibilities than LPNs, so do NA and LPN duties and responsibilities differ from those of the RNs. Thus, Local 1258 urged that there were insufficient grounds to support a Commission decision allowing the establishment of a separate LPN unit. Local 1258 sought dismissal of the petition "with prejudice".

#### County's Position:

The County opposed the petition requesting that it be dismissed for the following reasons. First, the County pointed out that in 1974, the Commission excluded LPNs from the professional bargaining unit currently represented by the AMHS, and thereby implicitly concluded that the LPN classification was non-professional. The LPNs and other County para-professionals then remained in the bargaining unit represented by Local 1258 pursuant to that Commission decision. Rock County (Health Care Center) Inpatient and Outpatient Services, Dec. No. 13131 (WERC, 11/74).

The County argued that LPNs are clearly not professional employes within the meaning of MERA. In this regard, the County noted that LPNs need only complete one year of schooling after high school and pass a licensure exam to become and remain LPNs; that LPNs, under Sec. 441.11(3), Stats., as well as under County policy, may provide only "basic care" when not directly supervised by an RN; that LPNs, therefore, generally perform only simple acts of care for patients who are not acutely ill; that, as a result, LPNs duties do not require the consistent exercise of discretion and independent judgment; that even when an LPN performs more complex care, it is only rendered under the direct supervision of an RN; that LPN duties are of a routine, manual, mechanical and physical nature, not constituting predominantly intellectual and varied work. Thus, LPNs, the County contended, are not professional employes and should not be allowed the petitioned-for election on that basis.

Finally, the County urged that were the Commission to direct an election herein, this could lead to undue fragmentation of the County's work force. The County asserted that the LPNs are not a unique group with unique interests. In this regard, the County pointed out that the LPNs share common workplaces, comparable duties and skills, similarities in wages, hours and working conditions with other Local 1258 members and that Local 1258 has protected LPN interests regarding pay and job security in the most recent negotiations between the parties. The County asserted that it already bargains with 10 bargaining units and if the Commission directed the petitioned-for election, LPNs would likely vote to separate from the unit currently represented by Local 1258, creating a eleventh unit with which the County would be obliged to deal.

Lastly, the County asserted that Petitioner's complaints that the LPNs constitute a minority in the 300-member bargaining unit and that LPNs are discouraged from "disciplining" NAs, were insufficient basis upon which to grant the election Petitioner seeks. The County noted that LPNs are not authorized to administer discipline. Rather, their role in the "disciplinary" process is the same as that of RNs, NAs and other employes below the Associate Administrator level -- to report any irregularities observed in patient care.

Based upon all of these arguments, the County sought dismissal of the petition.

#### DISCUSSION

Through this election petition, Petitioner seeks to end AFSCME's representation of LPNs employed by the County. Petitioner asserts that LPNs as para-professionals are so different from the employes in the existing non-professional AFSCME unit that it is no longer appropriate for LPNs to be included therein. 2/ AFSCME properly notes that if Petitioner, a County LPN,

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2/ We do not understand the Petitioner to be asking us to reconsider our consistent holding that LPNs are not professionals within the meaning of Sec. 111.70(1)(L), Stats. Tr. 8. See, Shawano County, Dec. No. 20996-A (WERC, 1/84); Douglas County, Dec. No. 13389 (WERC, 2/75); La Crosse

had filed a unit clarification petition seeking exclusion of LPNs without a vote, existing Commission precedent would lead to dismissal of the petition. 3/ However, by this election petition we understand Petitioner to seek a Commission determination that the existing AFSCME unit is inappropriate because of the inclusion of LPNs, and a resultant Commission direction of an election in which LPNs could decide whether they wished to be represented by AFSCME in an LPN unit. 4/ Under these circumstances, we find the instant petition to be a bona fide election petition and not a unit clarification petition in disguise which we would be obligated to dismiss. Therefore, we will proceed to examine the merits of the Petitioner's contention that LPN's as "para-professionals" can not appropriately continue to be included in the existing unit.

We initially note that the status of the existing broad non-professional unit as an "appropriate" one for the purposes of collective bargaining was implicitly established when we directed an election in the existing unit in October 1967 (Dec. No. 8243). The appropriateness of the existing unit was further affirmed in November 1967 when the Commission rejected a request by employees at the then Pinehurst Sanatorium for a separate Pinehurst employees bargaining unit (Dec. No. 8243-C). Lastly, in 1974 (Dec. No. 8243-H), we included in the existing AFSCME unit positions such as Alcoholism and Drug Abuse Counselors which were labelled as "para-professional" positions by the County, AMHS and AFSCME in a related election proceeding (Dec. No. 13131).

Given the foregoing, it is evident that, to at least some extent, we have already considered the appropriateness of the existing unit and the propriety of including "para-professionals" within same. However, as we have not previously specifically considered whether it would be appropriate to sever the LPNs from the existing unit, we proceed to consider that question.

When evaluating the appropriateness of bargaining units, the Commission considers:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.

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County, Dec. No. 12931 (WERC, 8/74); Monroe County, Dec. No. 11913 (WERC, 6/73); Kenosha County, Dec. No. 8637 (WERC, 7/68). If we are misinterpreting Petitioner's position, we find nothing in this record which would persuade us to alter our earlier holdings.

- 3/ We have long held that individual employees are not proper parties to file unit clarification petitions. See, City of Green Bay, Dec. No. 12682 (WERC, 5/74).
- 4/ While the LPNs assert their ultimate goal is inclusion in an existing professional unit represented by AMHS, the immediate purpose which can be accomplished through the existing petition is limited to an end of AFSCME representation of LPNs in the existing unit and creation of a separate LPN unit. This is so because AMHS has not expressed any interest throughout this proceeding in representing the LPNs through expansion of an existing AMHS unit and because Sec. 111.70(4)(d)2.a. Stats., would require that a majority of the employees in the AMHS professional unit vote in favor of inclusion of the LPNs before same could occur.

2. The duties and skills of employes in the unit sought as compared with the duties and skills of other employes.
3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought have separate or common supervision with all other employes.
5. Whether the employes in the unit sought have a common workplace with the employes in said desired unit or whether they share a workplace with other employes.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 5/

Applying these considerations the existing AFSCME unit, the record indicates that there are other employes in the AFSCME unit with whom the LPNs share common work sites, hours and fringe benefits, as well as similar supervision, wages, skills, duties and backgrounds.

However, we acknowledge that LPNs, like any other group of employes in a single occupation, clearly possess a substantial community of interest among themselves and have essentially the same duties, skills, wages, hours, working conditions, workplace and supervision. Thus, if we were to evaluate the LPNs' request for a separate unit solely on the basis of criteria 1-5, above, a persuasive case could be made for that result. However, application of factors 6 and 7 above persuade us that it is not appropriate to grant the LPNs' request.

Factor 6 is generated by Sec. 111.70(4)(d)2.a. Stats., which states:

The Commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force.

If we were to establish an LPN unit, 6/ we would be creating yet another unit in a County already confronted with ten existing units. In our view, such action would result in undue fragmentation contrary to the legislative command noted above. As the LPNs have long been included in the existing unit, bargaining history (factor 7) also strongly favors maintenance of the AFSCME unit as presently constituted. Given the foregoing, we conclude that under the circumstances presented in this case, a separate LPN unit is not appropriate.

Lastly, we acknowledge that from time to time tensions arise within a bargaining unit as the bargaining representative seeks to represent the interests of employes in different positions. We further acknowledge that inclusion of many different positions in a single unit can present an employer with additional challenges as it seeks to manage its operations. However, these factors simply do not form a valid basis for finding the existing unit to be "inappropriate" or a separate unit to be appropriate. 7/

Thus, we have dismissed the instant petition.

Dated at Madison, Wisconsin this 26th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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5/ Milwaukee County, Dec. No. 19753-A (WERC, 2/83).

6/ As noted in Footnote 4, inclusion of the LPNs in the AMHS unit (which the LPNs correctly argue would not involve additional fragmentation of the County workforce) cannot be accomplished through this proceeding.

7/ See, Milwaukee County, supra.

By Herman Torosian, Commissioner

William K. Strycker, Commissioner

Chairman A. Henry Hempe did not participate in this case.