

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO, CLC, LOCAL 150**

Involving Certain Employes of
NORTH CENTRAL HEALTH CARE FACILITIES, INC.

Case 14
No. 57568
ME-3724

Decision No. 29770

Appearances:

Ruder, Ware & Michler, S.C., by **Attorney Ronald J. Rutlin**, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of North Central Health Care Facilities, Inc.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea F. Hoeschen**, 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Service Employees International Union, AFL-CIO, CLC, Local 150

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION**

On May 24, 1999, Service Employees International Union, AFL-CIO, CLC, Local 150 filed a petition with the Wisconsin Employment Relations Commission seeking an election among certain employes of North Central Health Care Facilities, Inc. to determine whether "ALL REGISTERED NURSES AND LICENSED PRACTICAL NURSES EXCLUDING SALARIED EMPLOYEES, SUPERVISORY EMPLOYEES AND EMPLOYEES WHO WORK IN DEPARTMENT LOWER D" wish to be represented for the purposes of collective bargaining by Local 150.

No. 29770

The parties agreed that a bargaining unit of licensed practical nurses (LPN's) and registered nurses (RN's) was appropriate but disagreed as to whether certain LPN's and RN's should be excluded from the proposed unit as supervisors.

Hearing was held in Wausau, Wisconsin on July 15 and August 26, 1999 by Commission Examiner Peter G. Davis. The parties filed post-hearing briefs, the last of which was received October 11, 1999.

Post hearing exhibits were submitted and received into the record without objection on November 3, 1999.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. North Central Health Care Facilities, Inc., herein the Employer, is a municipal employer having its principal offices at 1100 Lake View Drive, Wausau, Wisconsin.

2. Service Employees International Union, AFL-CIO, CLC, Local 150, herein Local 150, is a labor organization which represents certain non-professional employees of the Employer for the purposes of collective bargaining.

3. The Employer operates the Mount View Care Center that provides health care and nursing home services on a seven days a week -- 24 hours a day basis to residents of Marathon, Lincoln, and Langlade Counties.

The Center is organized into seven units -- each of which is headed by a Team Manager. The Team Managers (registered nurses) work Monday through Friday with hours of work generally corresponding to those of day shift employees. At the time the instant election petition was filed, a "P.M. shift supervisor" and a "night shift supervisor" (both registered nurses) provided support for the afternoon and evening shifts.

At the time the instant election petition was filed, one or two nurses (who were either registered nurses or licensed practical nurses) were assigned to each unit on each shift and directed the work of Certified Nursing Assistants, Psychological Technicians, Unit Clerks and Patient Environmental Assistants.

For several years, Mount View Care Center has been experiencing a decline in demand for services and operating at a deficit that required tax subsidies. As part of an effort to address these issues, the Employer contracted for an independent review of its operations. In

December, 1998, the Employer received a written Operations Review which made recommendations for change in many Center operations -- including a redesign of the existing supervisory structure to, among other matters,

Redesign role of nurse managers to direct units and hold charge nurses accountable for managing patient care.

4. Pursuant to the recommendations contained in the Operations Review, the Employer evaluated the role of the nurses who function as Team Managers and of the RN's and LPN's who provide patient care. Pursuant to that evaluation, the Employer eliminated the positions of P.M Shift Supervisor and Night Shift Supervisor, revised the responsibilities of the Team Manager position and created what it believed would be the supervisory position of Charge Nurse.

As of July, 1999, it was the Employer's intention that effective in October, 1999, all RN's and LPN's in the proposed Local 150 bargaining unit would serve as Charge Nurses so that twelve of the twenty-one "unit shifts" in the facility (the day and afternoon shifts in six of the seven units) could have two supervisors/Charge Nurses present.

Between the first and second days of hearing, the Employer reassessed its supervisory needs and concluded that effective in October, 1999, the Charge Nurse would be given additional supervisory responsibility beyond that originally contemplated but that there would only be one Charge Nurse on each shift in each unit. Those shifts/units that were to have had two Charge Nurses would retain the second nursing position but in a non-supervisory capacity.

5. In September, 1999, the Employer posted notices for 42 Charge Nurse positions and advised all LPN's and RN's as follows:

To All Nursing Home Licensed Nursing Staff:

It has become necessary to restructure nursing services beyond that originally planned for the new MVCC. In October 1999, the new structure will now include one supervisory nurse or "Charge Nurse" per unit per shift. The Charge Nurse will have full supervisory authority to direct all activities of licensed nurses, CAN's and other direct care workers on that unit and shift. The Charge Nurse will report to the Team Manager of the unit. A complete job description is available from Team Managers and the Personnel Department. Salary range is \$16.09 per hour to \$21.23 per hour for RN's and \$12.31 per hour to \$16.11 per hour for LPN's, plus applicable shift/weekend differential. Positions available will be .8, .7 or .6 FTE. However, to make positions available at that level, Charge Nurses will need to work at least two units. For scheduling purposes, we have combined 1S/1N and 2S/2N and C/E/Upper D units.

There will be 29.4 full-time equivalent positions created through reclassification of positions currently budgeted as staff licensed nurse positions. Positions will be posted shortly and will be made available first to current licensed nursing staff who have an interest in and have demonstrated ability for supervisory responsibilities. You are encouraged to apply for these positions. Training and support will be provided in balancing daily work processes and supervisory responsibilities.

There will be 16.8 FTE staff licensed nurse positions remaining for those nurses whose abilities and interests are not in the area of supervision. There is the possibility we will not identify the equivalent of 29.4 FTE licensed nurses within our current staff with an interest or the ability to perform a supervisory role. If that occurs, the Facility would need to recruit and hire from outside. The end result may be more licensed nursing staff remaining than needed to fill 16.8 FTE staff positions and more potential layoffs would then be likely.

6. In October, 1999, the Employer implemented the new Charge Nurse supervisory structure having filled 40 of the 42 Charge Nurse positions. Staff Nurses filling the Charge Nurse position received letters from the Employer confirming their selection and pay rate and further stating in pertinent part:

The Charge Nurse position requires you to exercise first line supervisory authority over unit nursing staff on your assigned shift. Therefore, mandatory supervisory training will be required prior to 10/18/99. Class times have been scheduled for October 12, 13, 14 and 15, 1999. If you have not already done so, please contact Joanne or Luann at Ext. 300 to select a convenient date and time.

7. The current job description for the Charge Nurse position is as follows:

CHARGE NURSE

STATEMENT OF PURPOSE

This is professional nursing work involving the delivery and supervision of patient care on an assigned nursing unit in a skilled nursing home facility. The employee performs the full scope of professional nursing functions within the parameters of professional licensure and standards of practice. Emphasis is on daily supervision and leadership provided to subordinate nursing service and ancillary personnel to assure an optimal quality within the framework of available nursing resources. Work is reviewed by the unit Team Manager on

the basis of quality of patient care, absence or presence of complaints, interaction between the Charge Nurse and persons supervised, residents, families and on the basis of patient care plans, patient records, and relative absence of medication errors.

Tasks, Duties and Responsibilities

1. Observes patients and plans appropriate nursing care. Implements care utilizing the team resources available including other nurses, resident, guardian/family, and other team members.
2. Delegates to ancillary nursing personnel within the scope of his/her skills and training. Conducts report, assigns/reassigns work to team members during the course of a shift according to resident needs. Schedules break and meal times. Authorizes overtime, makes requests for additional staff from central scheduling, from other units when needed, or may approve a unit staff to go to another unit. Approves/disapproves employee requests to leave early or to exchange shifts.
3. Assists ancillary personnel with direct patient care, provides direct patient care including but not limited to: passing medications, treatments, assessments, documentation and physician orders in accordance with resident's care plan to assure residents' needs are met.
4. Supervises and directs employees in the nursing department during the course of assigned shift. Provides feedback to those individuals supervised. Recommends retention or discharge of probationary employees. Monitors and directs or redirects daily performance of employees. Participates in annual evaluation of personnel supervised. Recommends pay increases or denials. Identifies training needs of employees.
5. Ensures adherence to facility policies/procedures, including but not limited to safety, fire and disaster, infection control, and hazard communication. Is authorized to implement disciplinary action up to and including suspension for failure to follow established department or facility policies or procedures or for any work-related performance issue. Recommends retention or discharge of employee.
6. Promotes positive customer and team relations through effective communication, maintenance of confidentiality, and prompt response to patient, family, and staff concerns.

7. Demonstrates effective management skills as a team member within the collaborative Mount View Care Center. Demonstrates competence in meeting established unit and state standards of nursing practice. Engages in professional self-improvement opportunities within and outside the facility.

Knowledge, Skills, and Abilities

1. Competent performance of skills, per performance evaluation.
2. Effective oral and written communication skills. Able to use or learn a computer-based system for data entry, planning and documenting care.
3. Demonstrate effective leadership skills in supervising ancillary nursing personnel and delegating appropriately.
4. Positive team attitude and composed demeanor when dealing with team problems and medical emergencies.
5. Ability to demonstrate and delegate select nursing tasks and procedures to lesser trained staff members.

Minimum Requirements of Training and Experience

1. Graduation from an accredited school of nursing and registration as an RN as required by the Wisconsin State Board of Nursing.

OR

Graduation from an accredited school of nursing and registration as an LPN as required by the Wisconsin State Board of Nursing and functioning within the following parameters:

- Following written protocols and procedures developed and approved by an RN (Attachment A).
- Manages and directs nursing care and other activities of nursing support personnel under the general supervision of an RN.
- Accepts this position only if prepared to competently perform the assignment based on his/her nursing education, including education, training, or experience, or active involvement in education or training for responsibilities not included in the basic LPN curriculum.

2. Specialized training or acquiring specialized training, or have had experience in areas such as nursing service administration, restorative nursing, psychiatric nursing, or geriatric nursing.

3. Certified in CPR.

4. No prior record of felony conviction for crimes relating to harm/abuse to another person, theft, or issue or misappropriation of a legal or illegal drug.

8. Charge Nurses have the independent authority to issue verbal warnings, written warnings and suspensions. Charge Nurses play a substantial role in evaluating employees and determining whether probationary employees will become permanent employees.

Charge Nurses have substantial authority to direct the work of the employees in their unit on their shift and exercise independent judgment in doing so. They can change work assignments within a unit or between units, grant or deny leave requests, and determine whether shift vacancies need to be filled.

Charge Nurses direct the work of between two and eleven employees -- depending on the unit and shift in question. On weekends and during the approximately sixteen hours each day when the Team Manager is not present in the Center, the Charge Nurses are the only on-site supervisors.

As measured by the existing maximum pay rates, RN's and LPN's filling Charge Nurse positions earn \$1.89 per hour (RN's) or \$1.62 per hour (LPN's) more than the Staff Nurse RN's and LPN's whose work they direct. The wage differential reflects the Charge Nurses' supervisory responsibilities.

Charge Nurses are the management representatives at the first step in the contractual grievance procedure contained in the existing non-professional employee agreement between Local 150 and the Employer. When serving as the management representative, Charge Nurses have the authority to adjust employee grievances.

9. Charge Nurses possess supervisory responsibilities in sufficient combination and degree to be supervisors.

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

CONCLUSIONS OF LAW

1. Charge Nurses are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats.
2. A question concerning representation within the meaning of Sec. 111.70(4)(d)3, Stats., exists within the following collective bargaining units deemed appropriate within the meaning of Sec. 111.70(4)d)2.a., Stats.
 - A. All regular full-time and regular part-time registered nurses employed by North Central Health Care Facilities, Inc. at the Mount View Care Center excluding supervisory, confidential, managerial and executive employees.
 - B. All regular full-time and regular part-time licensed practical nurses employed by North Central Health Care Facilities, Inc. at the Mount View Care Center excluding supervisory, confidential, managerial and executive employees.
 - C. All regular full-time and regular part-time registered nurses and licensed practical nurses employed by North Central Health Care Facilities, Inc. at the Mount View Care Center excluding supervisory, confidential, managerial and executive employees.

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

DIRECTION OF ELECTION

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days of the date of this Direction in the following voting groups for the following stated purposes:

Voting Group 1

All regular full-time and regular part-time licensed practical nurses employed by North Central Health Care Facilities, Inc. at Mount View Care Center, excluding supervisory, managerial, confidential and executive employees and conditionally excluding registered nurses, who were employed on November 15, 1999, except such employees as may prior to the election quit their employment

or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Service Employees International Union, AFL-CIO, CLC, Local 150 for the purposes of collective bargaining with North Central Health Care Facilities, Inc., or desire not to be so represented.

Voting Group 2

All regular full-time and regular part-time registered nurses employed by North Central Health Care Facilities, Inc. at Mount View Care Center, excluding supervisory, managerial, confidential and executive employees who were employed on November 15, 1999, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining: (1) whether a majority of the employees in said voting group desire to be included in a single collective bargaining unit with the licensed practical nurses; and (2) whether a majority of such employees voting desire to be represented by Service Employees International Union, AFL-CIO, CLC, Local 150 for the purposes of collective bargaining with North Central Health Care Facilities, Inc., or desire not to be so represented.

Given under our hands and seal at the City of Madison, Wisconsin this 15th day of November, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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

POSITIONS OF THE PARTIES

Local 150

Local 150 argues that all of the registered nurses or licensed practical nurses it seeks to represent are presently municipal employees. Local 150 further contends that the creation of the Charge Nurse position does not provide a persuasive basis for concluding that any of the nurses will be supervisors at the time an election is conducted. Therefore, Local 150 asks that all of the disputed employees be found to be eligible to vote and eligible for union representation.

As to the supervisory status of the nurses prior to the creation of the Charge Nurse position, Local 150 asserts that none of the nurses is a supervisor. Local 150 argues that the Team Managers are the actual supervisors of the various units at the Mount View Care Center.

The nurses exercise professional judgment supervising the activity of patient care but do not supervise employees. They have little authority to discipline employees or to direct or assign work. Their higher pay level reflects their education and professional expertise -- not supervisory responsibility. Finding the nurses to be supervisors would create an unrealistically low supervisor-to-employee ratio of 1:3.

As to the Employer's contention that employees filling the newly created position of Charge Nurses are supervisors, Local 150 asserts that there is too much uncertainty to warrant exclusion of Charge Nurses at this point in time. Even if the Employer is able to fill the Charge Nurse positions prior to the election, Local 150 argues that at the time of the election, Charge Nurses may not possess the supervisory authority the Employer asserts it has given the position. Local 150 notes that Team Leaders may be slow to relinquish their existing supervisory authority or logistical problems may arise because so many more employees suddenly have responsibility for hiring and discipline. Citing Commission decisions in MANITOWOC COUNTY, DEC. NO. 8152-C, (WERC, 6/79); WAUKESHA JOINT SCHOOL DISTRICT NO. 1, DEC. NO. 10823-A (WERC, 3/81); NORTHLAND PINES SCHOOL DISTRICT, DEC. NO. 27154 (WERC, 2/92); and TOWN OF MADISON, DEC. NO. 24186-B (WERC, 3/94), Local 150 argues that uncertainty as to the future warrants finding the nurses to be municipal employees.

Local 150 also argues that the Employer is in effect asking the Commission to hold the rights of municipal employees in abeyance while the Employer works through operational changes. Citing MUSCODA SOLID WASTE COMMISSION, DEC. NO. 26664 (WERC, 10/90) and

OUTAGAMIE COUNTY, DEC. NO. 22269 (WERC, 1/85), Local 150 contends that until the extent of their supervisory responsibilities becomes “solidified,” exclusion of Charge Nurses as supervisors improperly deprives these nurses of their right to vote on union representation.

Given all of the foregoing, Local 150 asks that all registered nurses and licensed practical nurses be found to be municipal employees eligible to vote in the upcoming election.

The Employer

The Employer asserts that under the organizational structure in place when the election petition was filed, all of the registered nurses and licensed practical nurses were supervisors. The Employer contends that under the organizational structure now in place, those registered nurses and licensed practical nurses employed as “Charge Nurses” are supervisors.

As to the organizational structure that existed when the petition was filed, the Employer argues that the Staff Nurses were supervisors based on their responsibility to direct work and to discipline and evaluate employees.

As to the organizational structure now in place, the Employer alleges that the Charge Nurses are supervisors due to their substantial and increased independent authority to direct and assign the work of between two and twelve employees, to evaluate and discipline those employees, and to resolve their grievances. The Employer notes the increase in pay received by Charge Nurses over and above the Staff Nurse wage rates and argues the higher level of compensation reflects supervisory responsibilities.

The Employer disputes Local 150’s contention that there is too much uncertainty to warrant a Commission decision on the status of Charge Nurses. The Employer asserts that it has created the new position, established a job description, filled the positions, and begun training the Charge Nurses in their supervisory responsibilities. Given these facts, the Employer contends that the cases cited by Local 150 are distinguishable.

The Employer also disputes Local 150’s contention that the Employer is asking that the rights of employees be held in abeyance pending the Employer’s operational changes. The Employer argues that the election should be held but that the Charge Nurses should be excluded from voter eligibility due to supervisory status. Staff Nurses will be eligible to vote. If Local 150 wins the election and subsequently believes that the Charge Nurses are not functioning as supervisors, Local 150 can file a unit clarification petition to resolve that issue.

DISCUSSION

Well prior to the filing of this election petition, the Employer had begun an extensive review of its operation at Mount View Care Center. As part of that review, the Employer had concluded that some restructuring of the existing supervisory structure was appropriate.

As of the first day of hearing on the election petition, the Employer was in the process of establishing a supervisory structure under which all of the registered nurses and licensed practical nurses Local 150 seeks to represent would serve as supervisors in a newly created Charge Nurse position. In six of the seven units, two Charge Nurses would be present on the day and the afternoon shifts. The seventh unit would have one Charge Nurse supervisor on the day and afternoon shifts. Each of the seven units would have one Charge Nurse supervisor on the night shift.

Between the first and second days of hearing, the Employer reassessed its supervisory needs and concluded that only one Charge Nurse would be present in any unit on any shift and that the Charge Nurse position would have greater supervisory authority than had previously been contemplated. The additional nursing position which was to have been held by a second Charge Nurse supervisor (in six of the seven units on the day and afternoon shifts) would be a Staff Nurse who would be supervised by the Charge Nurse.

As evidenced by their respective positions in this litigation, the parties disagree over the impact of this evolution on the question of supervisory status.

The Employer argues that the organizational changes are sufficiently defined to allow us to determine whether Charge Nurses are supervisors. Local 150 contends there is still too much uncertainty as to Charge Nurses and thus argues that we should look at the organizational structure which was in place when the election petition was filed.

We conclude that the new organizational structure has been established with sufficient specificity for us to determine whether Charge Nurses are supervisors.

Local 150 correctly argues that where an employer asserts that it may make unknown operational changes at some point in the future (OUTAGAMIE COUNTY and MUSCODA SOLID WASTE COMMISSION) or that it intends to make some specific change in the future (TOWN OF MADISON, NORTHLAND PINES SCHOOL DISTRICT, WAUKESHA JOINT SCHOOL DISTRICT NO. 1, MANITOWOC COUNTY), we have concluded that such assertions are too speculative for us to accept as the basis for a decision.

However, the record before us contains an updated Charge Nurse job description, testimony as to the updated responsibilities of the Charge Nurse, and evidence that the Charge Nurse positions have been posted and filled and that training in supervisory duties is

underway. Thus, unlike the cases cited by Local 150, the changes are not unknown and/or to be made at some future point in time. The changes in supervisory structure and responsibility are known and have been made. Therefore, it is appropriate for us to proceed to a consideration of whether the Charge Nurses are supervisors.

The statutory definition of a supervisor in Sec. 111.70(1)(o)1, Stats., is the following:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The factors that we focus on in evaluating claims of supervisory status under Sec. 111.70(1)(o)1, Stats., are the following:

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 persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

See, for example, CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97).

We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. Our task therefore is to determine whether the factors are present in sufficient combination and degree to warrant finding an employee to be a supervisor. See, for example, ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

When we consider the responsibilities of the Charge Nurses, we think it clear that they are supervisors.

Charge Nurses have the independent authority to issue verbal warnings, written warnings and suspensions. Charge Nurses play a substantial role in evaluating employees and determining whether probationary employees will become permanent employees.

Charge Nurses have substantial authority to direct the work of the employees in their unit on their shift and exercise independent judgment in doing so. They can change work assignments within a unit or between units, grant or deny leave requests, and determine whether shift vacancies need to be filled.

Charge Nurses direct the work of between two and eleven employees – depending on the unit and shift in question. On weekends and during the approximately 16 hours each day when the Team Manager is not present in the Center, the Charge Nurses are the only on-site supervisors.

As measured by the existing maximum pay rates, RN's and LPN's filling Charge Nurse positions earn \$1.89 per hour (RN's) or \$1.62 per hour (LPN's) more than the Staff Nurse RN's and LPN's whose work they direct. The wage differential reflects the Charge Nurses' supervisory responsibilities.

Charge Nurses are the management representatives at the first step in the contractual grievance procedure contained in the existing non-professional employee agreement between Local 150 and the Employer. When serving as the management representative, Charge Nurses have the authority to adjust employee grievances.

Given all of the foregoing, we conclude the Charge Nurses are supervisors. Thus, they are not eligible to vote in the election we have directed and are excluded from the bargaining unit(s) created if Local 150 is selected by the eligible employees as their bargaining representative.

Should experience establish that the Charge Nurse's supervisory responsibilities are exercised or implemented in a manner inconsistent with our Findings of Fact, Local 150 is free to ask us to revisit this issue through a unit clarification petition (if Local 150 wins the election) or through a subsequent election petition (if Local 150 loses the election).

ELECTION PROCEDURE

When in an election proceeding a request is made to include professional employees in a single unit with non-professional employees, Sec. 111.70(4)(d), Stats., requires that the professional employees be given an opportunity to vote to determine whether they desire to be

so included. In order to be so included, a majority of the eligible professional employees must vote in favor of such inclusion. Therefore, in this proceeding, the professional employees (Voting Group No. 2) will be given two ballots, (1) to determine whether they desire to be included in a single unit with non-professional employees (Voting Group No. 1) and, (2) whether they desire to be represented by Service Employees International Union, AFL-CIO, CLC, Local 150. The unit determination ballot will be a separate colored ballot, and the professional employees will be instructed to deposit their unit determination ballots in the ballot box. The professional employees who appear to vote will be instructed to place their representation ballots in a furnished blank envelope and to seal said envelope and deposit same in the ballot box.

The unit determination ballots cast by the professional employees will be initially counted, and should a majority of the eligible professional employees vote in favor of being included in the unit of non-professional employees, then the sealed envelopes, containing the ballots of the professionals with respect to representation, will be opened and their ballots will be co-mingled with the representation ballots cast by the non-professional employees, and thereafter the tally will include the representation ballots cast by all employees.

Should a majority of the professional employees eligible not vote in favor of being combined in a unit with non-professional employees, then the professional employees shall constitute a separate unit, and their representation ballots will not be co-mingled with the representation ballots cast by the non-professional employees, and, therefore, the representation ballots cast by the non-professional and professional employees will be tallied separately to determine separately their choice as to bargaining representative.

Dated at Madison, Wisconsin this 15th day of November, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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