

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**GALEN CARE, INC. D/B/A BRANDON
REGIONAL MEDICAL CENTER** ^{1/}

Employer

and

**Case No. 26-RC-8222
(formerly 12-RC-8557)**^{2/}

**UNITED FOOD & COMMERCIAL WORKERS
UNION, LOCAL 1625, AFL-CIO, CLC**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: ^{3/}

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. ^{4/}

3. The Petitioner involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: ^{5/}

Included: All full-time and regular part-time registered nurses (RNs) and pool/PRN nurses (who meet the requirements set forth in **Sisters of Mercy, 298 NLRB 483 (1990)**) employed by the Employer at its Brandon, Florida facility.

Excluded: The RNs who work in information services (Dept. 944), risk/quality management (Dept. 919), business office (Dept 904) and employee health (Dept 918), all business office clerical employees, other professional employees, physicians, technical employees, skilled maintenance employees, other nonprofessional employees, guards and supervisors (including charge nurses, clinical nurse managers, administrative supervisors, directors and nursing resource coordinator) as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the

eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 1625.^{6/}

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the **full** names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Tampa Regional Office (Region 12), South Trust Plaza, Suite 530, 210 East Kennedy Boulevard, Tampa, FL 33602-5824, on or before **November 16, 2000**.

REQUEST FOR REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **November 24, 2000**.

DATED at Memphis, Tennessee, this 9th day of November, 2000.

/s/

Ronald K. Hooks, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104

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- 1/ The Employer's name appears as amended at the hearing.
 - 2/ The General Counsel issued an Order Transferring Case from Region 12 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 12 and will continue as Case 12-RC-8557, except that Region 26 will retain jurisdiction only with respect to pre-election issues relating to the substance of this Decision.
 - 3/ The Employer and the Petitioner filed timely briefs which have been duly considered.
 - 4/ The parties stipulated that Galen Care, Inc. d/b/a Brandon Regional Medical Center, hereinafter referred to as the Employer, is a Florida corporation with an office and place of business located in Brandon, Florida, where it is engaged as a health care institution within the meaning of Section 2(14) of the Act and an acute care hospital within the

meaning of Section 103.30(f)(2) of the Board's Rules and Regulations. During the past 12 months, a representative period, the Employer received gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$50,000 directly from firms located outside the State of Florida.

5/ The Petitioner seeks to represent all full-time, regular part-time RNs and pool/PRNs, including charge nurses, employed at the Employer's facility. The parties stipulated to the inclusion of the following RNs: Mary Koram in Diagnostic Imaging and Kathy Swann and Brenda Bailey from MRI. The Petitioner seeks to exclude the RNs employed in information services, business office, risk/quality management and employee health, on the basis of supervisory or confidential authority or lack of a community of interest.

The Employer asserts the charge nurses are supervisors within the meaning of the Act and the RNs in the four above-specified departments must be included in an RN unit under the Board's Rules and Regulations.

The parties stipulated the following individuals are supervisors within the meaning of Section 2(11) of the Act:

Star Amick	Chief Nursing Officer
Judith Dunn	Assistant Chief Nursing Officer
Lori Russello	Director of Nursing Supervisor
Joseph Ashmore	Administrative Supervisor
Jason Gatlin	Administrative Supervisor
Angela Kirk	Administrative Supervisor
Evelyn Jahn	Administrative Supervisor
Susan Caldwell	Director, Surgical Services
Paula Heald	Director, Progressive Care Unit
Diana Yates	Director, Medical Surgical Services
Kathy Haddix-Hill	Director, Emergency Services

Sue Soule	Clinical Nursing Manager, PACU
Mary Lou Beatty	Clinical Nursing Manager, Operating Room
Peter Calcaterra	Clinical Nursing Manager, Medical/Surgical Services
Linda Woughter	Clinical Nursing Manager, Critical Care
Debra Hayes	Clinical Nursing Manager, Emergency Services
Yvette Herrington	Clinical Nursing Manager, Pediatrics/PICU
Jan Cole	Clinical Nursing Manager, Labor & Delivery/High Risk OB
Lynn Alexander	Clinical Nursing Manager, 3N/Neonatal ICU/Progressive Care Nursery

The Employer employs approximately 50 charge nurses within its six departments, of which two have sub-units. The charge nurses are RNs, who are paid an additional \$1.00 an hour. This is the only difference between the wages and benefits of charge nurses and RNs. The charge nurses are promoted from their prior position as RNs. The charge nurses report to their respective clinical nursing managers, who in turn report to their respective directors. Clinical nursing managers are salaried. When a charge nurse is unavailable, a relief charge nurse is utilized and they receive an additional 75 cents an hour. The parties stipulated relief charge nurses were in the unit.

The Employer presented a director or clinical nursing manager from each of the departments (or made a proffer wherein the testimony was found to be cumulative). The Employer presented evidence that the charge nurses assigned and directed work, such as who was assigned to particular patients, and were involved in the scheduling of employees. The evidence, however, did not establish that any of this work involved the use of independent judgment, which would render it to be of a supervisory nature. Rather, it involved common sense decisions based upon the skills of the staff and the needs of the patient. Similarly, the charge nurses make recommendations on staffing

during a shift, either to increase or decrease, but this is based upon the patient census. Determinations, of who should be sent home or contacted to come in to work, are based upon the solicitation of volunteers or such common sense considerations as who has worked the most overtime, or who is on call and who is available, rather than the use of any independent judgment. The charge nurses also provide “input” into the transfer of employees but the record evidence reflects that the input is not an effective recommendation within the meaning of Section 2(11) of the Act and, thus, does not establish supervisory status. See **Providence Hospital**, 320 NLRB 717, 730-33 (1996); **Youville Health Care Center**, 326 NLRB 495 (1998).

Concerning the charge nurses’ authority to issue discipline, the record evidence reflected that the charge nurses issue oral counselings, which are not documented. Additionally, the Employer introduced testimony and documentation, which established that charge nurses in certain departments had issued written counselings to employees. Specifically, the record evidence reflected that charge nurses have counseled employees concerning their attitude, failure to follow procedure and attendance and clinical nursing managers did not independently investigate the matters. Instead, the charge nurse met with the applicable employee and issued the counseling. The Petitioner asserts that the charge nurses’ authority in the issuance of this discipline does not constitute evidence of supervisory status under Section 2(11) of the Act and cites **Ohio Masonic Home, Inc.**, 295 NLRB 390, 393-94 (1989), and **Passavant Health Center**, 284 NLRB 887, 889 (1987), wherein the Board held the “mere authority to issue verbal reprimands” and “written warnings (which) simply bring to an employee’s attention substandard performance by employees without recommendation for future

discipline” is too minor a disciplinary function to constitute statutory authority. These oral and written counselings are of the same nature as those in **Ohio Masonic Home, Inc.** and **Passavant Health Center**; thus, they are insufficient to establish statutory authority.

The record evidence reflects that the charge nurses are involved in hiring new employees. Specifically, charge nurses have interviewed applicants and made recommendations in the following departments: emergency, critical care services, pediatrics and coronary care. These recommendations were followed; thus, they were effective. The record did not reflect whether the charge nurses in all of the departments have this same authority. Such authority to effectively recommend the hiring of employees is clear evidence of Section 2(11) status.

The final area of authority to review concerns evaluations. The record evidence from all of the Employer’s witnesses as well as the only charge nurse who testified for the Petitioner, reflects that the charge nurses evaluated all of the employees subordinate to them in their departments, including RNs, LPNs, CNAs and other personnel. In conducting the evaluations, the charge nurses grade the employees on a scale of 1 to 3 and fill out all the written information on the multi-page evaluation. The charge nurses then discuss the evaluation with the applicable employee. After that, the evaluation is given to the clinical nursing manager. The clinical nursing manager then determines the amount of the merit wage increase, which is in direct relationship with the score assigned by the charge nurse. Thus, the higher the score, the higher the merit wage increase. On a rare occasion, a clinical nursing manager has increased the score given by the charge nurse, but there is no evidence that the score has ever been

lowered. The Employer has utilized this evaluation method for all recent years, including 2000, except 1999 when self-evaluations were conducted and an across the board increase was given.

On the basis of the record evidence as described above, I find the charge nurses exercise statutory supervisory authority by their preparation of performance evaluations for the employees subordinate to them in their departments, which determines the size of the merit wage increase awarded. See **Bayou Manor Health Center**, 311 NLRB 955 (1993), and **Beverly Enterprises-Massachusetts, Inc.**, 329 NLRB No. 28 (1999), where the Board found the authority to conduct employees' evaluations, which were thereafter used as the bases for wage increases, established statutory supervisory authority. The cases cited by the Petitioner, **Elmhurst Extended Care Facilities, Inc.**, 329 NLRB No. 55 (1999), **Harborside Healthcare, Inc.**, 330 NLRB No. 191 (2000), and **Coventry Health Center**, 332 NLRB No. 13 (2000), are distinguishable. In **Elmhurst**, the employer did not have the same method for their evaluations on a year to year basis so that the record was unclear as to the charge nurses' role in evaluations and the last year that evaluations had been completed they did not impact the wage increase because it was an across-the-board raise. In **Harborside** and **Coventry**, the Board found the unit managers or RN supervisors evaluated employees as well as the charge nurses and the evidence failed to establish that the charge nurses' evaluations had any impact on employees' wage increases. As I have found that the charge nurses exercise statutory supervisory authority, they are excluded from the Unit.

The Union seeks to exclude RN Renee Woodruff from information services, RNs Randy Perrin, Agnes Bolgren and Bobbi Huerta from risk/quality management, RN

Nancy Saltzgaver from employee health and RN Barbara Douthit from the business office on the basis of supervisory status, confidential status or lack of community of interest. The Petitioner did not provide any evidence to support their supervisory and/or confidential status claim. Rather, the Petitioner focused on the lack of community of interest. The case at bar involves an acute care hospital, which is governed by Section 103.30 of the Board's Rules and Regulations. Under Section 103.30, there are eight appropriate units, including "all RNs", unless there are "extraordinary circumstances", at which point, the Board will determine by adjudication. Thus, the above six RNs are in the unit unless "extraordinary circumstances" are found.

The six RNs in dispute are assigned to non-nursing care departments – information services, risk/quality management, business office and employee health. None of the six are involved in direct patient care while all of the petitioned-for RNs are involved in direct patient care. Saltzgaver acts as a nurse for employees employed by the Employer, works with workers compensation and clears employees for hire and to return to work following injuries. The three RNs in quality management, Perrin, Bolgren and Huerta, review medical records, occurrence reports and medical claims for the hospital; consult with doctors and others concerning infection control and coordinate hospital research, respectively. Woodruff is a meditech analyst, who teaches meditech to RNs and others and works with computer information services regarding medical charts and order entries, while Douthit reviews insurance and billing questions in the business office.

Their offices are not located in the same areas as the petitioned-for RNs and in the case of Saltzgaver, her office is located in human resources in another building.

Five of the six disputed RNs, the exception being Huerta, are on salary while the petitioned-for RNs are hourly paid. Unlike the petitioned-for RNs, they work regularly scheduled hours, which rarely include weekends. None of the six wear uniforms while the petitioned-for RNs wear uniforms.

On the basis of the record evidence, I find that extraordinary circumstances exist, which justify the exclusion of these six RNs from the unit. The differences between them and the petitioned-for RNs have been noted above and include the lack of direct patient care, they work in non-nursing departments, they are salaried, they work in separate areas of the hospital and their duties have an entirely different focus. Thus, I shall exclude from the appropriate unit RNs working in the following departments: information services, risk/quality management, employee health and business office.

Overall, there are approximately 400 employees in the unit.

6/ In accordance with Section 102.97 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a Request for Review is filed, unless the Board expressly directs otherwise.

CLASSIFICATION INDEX

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