

R.D. # 0011-99
Matawan, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**MADISON CENTER
GENESIS ELDERCARE, INC.**

Employer

And

CASE 22-RC-11729

**COMMUNICATIONS WORKERS
OF AMERICA, LOCAL 1040, AFL-CIO**

Petitioner

SUPPLEMENTAL DECISION

On May 20, 1999, former Regional Director William A. Pascarell of the National Labor Relations Board (the Board) issued a Decision and Direction of Election (DD&E) in the above-captioned case. After a representation election conducted on June 18, 1999, the Board, on August 24, 1999, certified Communications Workers of America, Local 1040, AFL-CIO (the Petitioner,) as the exclusive collective bargaining agent of a bargaining unit consisting of:

All full time and regular part time registered nurses employed by the Employer at its Matawan, New Jersey facility, excluding director of nursing, assistant director of nursing, clinical coordinators, MDS coordinators, clinical reimbursement coordinators, nurse supervisors,

managers, administrators, confidential employees office clerical employees, guards and supervisors as defined in the Act.¹

On January 13, 2000, the Board issued a Decision and Order in Case 22-CA-23580,² finding that the Employer violated Sections 8(a)(1) and (5) of the National Labor Relations Act, as amended (the Act) by refusing the Petitioner's request to bargain and furnish information following its certification. On May 29, 2001, the United States Supreme Court issued *National Labor Relations Board v. Kentucky River Community Care*, 121 S. Ct. 1861 (*Kentucky River*), addressing the test for determining whether a professional employee is a supervisor within the meaning of the Act. On October 24, 2001, the Board issued an Order remanding this proceeding to the undersigned to reopen the record in Case 22-RC-11729, in light of *Kentucky River*, for further consideration and to take additional evidence on the issue of whether the Employer's registered nurses "assign" and "responsibly direct" other employees, and the scope and degree of "independent judgment" used in the exercise of such authority.³ The Board did not revoke the Petitioner's certification. Pursuant

¹ The parties earlier stipulated that the Employer's Administrator, Director of Nursing, Assistant Directors of Nursing, clinical coordinators, clinical reimbursement coordinators, MDS coordinators and nurse supervisors are supervisors within the meaning of the Act. The Petitioner stipulated in the instant hearing that Unit Directors and Assistant Unit Directors are also supervisors as defined in the Act, and are therefore, appropriately excluded from the bargaining unit.

² 330 NLRB No. 72 (not published in Board volumes).

³ The Board's remand was clear and narrowly tailored. As stated *supra*, the Board remanded the instant matter to the Region for reconsideration in light of the Supreme Court's *Kentucky River* decision and "to take additional evidence on the issue of whether the Employer's registered nurses 'assign' and 'responsibly direct' other employees and on the scope or degree of 'independent judgment' used in the exercise of such authority." To that end, all other evidence adduced at hearing, including evidence concerning other indicia of supervisory authority, such as the ability to discipline or evaluate employees, are clearly beyond the scope of the Board's remand. Nevertheless, I find that no evidence adduced at the hearing regarding other indicia of supervisory

to the remand order, on January 10, 2002, a hearing was held before a hearing officer of the Board.⁴

On remand, the Employer contends that all of its registered nurses (RNs) “assign” and “responsibly direct” licensed practical nurses (LPNs) and certified nursing assistants (CNAs) employed at its facility. The Petitioner, while stipulating that RNs who are Unit Directors and Assistant Unit Directors are supervisors within the meaning of Section 2(11) of the Act, disputes the Employer's contention that the other RNs assign and responsibly direct the LPNs and CNAs.⁵

Administrator Linda Stevens and Unit Director Kevin Fisher testified for the Employer at the instant hearing. The Petitioner presented no witnesses.

Stevens testified that the Employer operates a 200-bed nursing home in Matawan, New Jersey (the facility). The facility is divided into four wings: A and B wings, each consisting of 60 long-term care patients with chronic care conditions, and C and D wings consisting of, respectively, 64 and 16 sub-acute care patients who are more acutely ill. Relevant to the instant matter, the Employer employs 25 RNs, 85 CNAs and 16 LPNs.⁶

status causes me to alter the initial determination reached in the DD&E regarding the supervisory status of the individuals in dispute.

⁴ The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

⁵ Briefs filed by the parties have been duly considered.

⁶ Since the initial decision in this matter, the Employer has made changes to the organizational structure and staffing at the facility. It is undisputed that the nursing staff is now supervised by the Administrator, Director of Nursing, Assistant Director of Nursing, RN Supervisors, Staff Development Coordinators, three Unit Directors of Nursing, an Assistant Unit Director of Nursing and a Case Manager. Thus even without the disputed individuals, there are 16 statutory supervisors to supervise the nursing staff. The RNs, the disputed classification, are analyzed herein as presently constituted.

RNs, under the New Jersey statute providing for their licensure, prepare assessments of patients, devise care plans for their patients and ensure follow-through on patients' care plans. RNs change the patient care plans, depending on the changing conditions of their patients. The Employer's witnesses testified that RNs also instruct LPNs and CNAs in the care of patients. Under the New Jersey licensing statute, the LPNs' function is to observe and report back to the RN. The record is clear that LPNs, along with RNs, also engage in hands-on patient care: tube feeding, oxygen therapy and some types of intravenous therapy. CNAs provide the care for the patients' daily needs: feeding, bathing, dressing and ambulating the patients.

According to Stevens, A wing is staffed by a Unit Director of Nursing to whom two LPNs and six CNAs report. B wing, the other 60-bed long-term care wing, has its own Unit Director to whom the CNAs and LPNs report. The C and D wings have a common Unit Director and an Assistant Unit Director of Nursing. C wing also has two Charge Nurses; both are RNs. C Wing is sub-divided into districts; for the 7:00 a.m. through 3:30 p.m. and 3:00 p.m. to 11:30 p.m. shifts, the districts are numbered 1 through 4 and are grouped geographically, each with 16 patients. Districts 1 through 3 are each staffed with an RN and two CNAs; the RN on District 3 also acts as a relief charge nurse. An LPN and two CNAs staff District 4. The District 4 LPN reports to the RN from District 3. The 11:00 p.m. to 7:30 a.m. shift has only three districts, each staffed by an RN and a CNA.

According to Stevens, the RN's responsibility is to "direct and supervise." C wing's Unit Director assigns staff to each district. Staffing remains constant unless

there is a staff shortage. Depending on the severity of patient needs of particular districts, district RNs can move staff from one district to another.

Patients on C and D wings have been discharged from a hospital and need continued care. They have had, for example, joint replacements, chemotherapy, myocardial infarctions or strokes. The more acute health care needs of these patients necessitate the higher number of RNs on the C and D wings. The RNs in the C and D wing districts assess the patients, complete the care planning process and ensure that the treatment plans for patients in their districts are carried out.

Stevens testified that the district RNs on C and D wings are responsible for the assignments of the CNAs or the LPNs who report to them. In describing this responsibility, both Stevens and Fisher indicated that the RNs assess their patients, complete the care planning process and make sure that the treatment plan is carried out. They testified that the kinds of directives RNs give to CNAs in these districts include when a patient should get out of or back into bed, based on the RN's assessment of the patient's strength or respiratory status; the method of feeding to use with a particular patient; how far to ambulate a patient; a particular manner to dress a patient if, for example, he or she has had a stroke; or instructions to take a patient to the rehabilitation department.⁷ RNs give instructions to LPNs, such as to change a patient's dressing or whether to use a straw in feeding a patient. All these decisions are based on the care plan and assessment for the particular patient. RNs also tell the CNAs to get particular items during an emergency. As the patients on the C & D

⁷ While RNs might tell a CNA to dress a patient in a particular way, because the patient's one side or the other has been compromised due to a stroke, CNAs learn to dress patients as part of their training.

wings can be acutely ill, the assessments of those patients may change frequently. The record revealed that while it is the professional responsibility of the RN to care for their patients and that CNAs help deliver that care, no evidence was presented as to the RNs' accountability for the CNAs' performance.

D wing personnel report to the Unit Director and Assistant Unit Director of C wing. On this 16 patient wing, emphasis is placed on rehabilitation. A Charge Nurse and two CNAs staff D wing during the day. During the evening, the wing is staffed by an LPN and two CNAs. The third shift has an LPN and a CNA.

Stevens testified that Charge Nurses are the people that “pull all the districts together and get them working in sync.” Her generalized testimony regarding the duties of Charge Nurses was that they coordinate communications between the physicians and District Nurses and that they “direct and coordinate the districts.” Stevens also indicated that Charge Nurses and District Nurses have the same function, except that on the smaller unit the District Nurse is “the person in charge.”

Analysis

Section 2(11) of the Act defines the term “supervisor” as:

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

It is well established that an individual need possess only one of the enumerated indicia of authority in order to be encompassed by the definition, as long as the exercise of such authority is carried out in the interest of the employer, and requires the exercise of independent judgment. *Big Rivers Electric Corp.*, 266 NLRB

380, 382 (1993). The legislative history of Section 2(11) indicates that Congress intended to distinguish between employees who may give minor orders and oversee the work of others, but who are not necessarily perceived as part of management, from those supervisors truly vested with genuine management prerogatives. *George C. Foss Co.*, 270 NLRB 232, 234 (1984). The Board takes care not to construe supervisory status too broadly because the employee who is deemed a supervisor loses the protection of the Act. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997).

The exercise of some supervisory authority in a merely routine, clerical, perfunctory or sporadic manner does not require a finding that an employee is a supervisor within the meaning of the Act. *Somerset Welding & Steel*, 291 NLRB 913 (1988). Designation of an individual as a supervisor by title in a job description or other documents is insufficient to confer supervisory status. *Western Union Telegraph Company*, 242 NLRB 825, 826 (1979). The mere issuance of a directive or a job description setting forth supervisory authority is also not determinative of supervisory status. *Bakersfield Californian*, 316 NLRB 1211 (1995); *Connecticut Light & Power Co.*, 121 NLRB 768, 770 (1958). State legislation requiring a healthcare employee to supervise another is not the equivalent of the Act's requirements for supervisory status. *Third Coast Emergency Physicians*, 330 NLRB 756 at n.1 (2000); *Crittenton Hospital*, 328 NLRB 879 (1999). Rather, the question is whether there is evidence that the individual actually possesses any of the powers enumerated in Section 2(11). *Western Union Telegraph Co.*, above at 826; *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976).

In *Kentucky River*, 121 S. Ct. at 1866, the Supreme Court agreed with the Board that the burden of proving supervisory status rests on the party asserting that status. Absent detailed, specific evidence of independent judgment, mere inferences or conclusionary statements without supporting evidence are insufficient to establish supervisory status. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Sears Roebuck & Co.*, 304 NLRB 193 (1991). Whenever evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established. *Phelps Medical Center*, 295 NLRB 486, 490-91 (1989).

The Board has recognized the tension between the "professional judgment" that is required of a professional employee covered by the Act pursuant to Section 2(12) and the "independent judgment" that excludes an employee from coverage by virtue of Section 2(11). Prior to *Kentucky River*, the Board endeavored to resolve this tension in cases involving the supervisory status of professional employees by ruling that the use of professional judgment to direct employees was not "independent judgment." However, in *Kentucky River*, the Supreme Court ruled that the Board may not exclude from the "independent judgment" required in Section 2(11) professional or technical judgment when used in directing less-skilled employees to deliver services. The Court reasoned that such a per se approach was inconsistent with the language of Section 2(11) and its previous decision in *NLRB v. Health Care and Retirement Corp.*, 511 U.S. 571 (1994), in which it had ruled that the statute applies no differently to professionals than to other employees.

Although the *Kentucky River* Court found the Board's interpretation of "independent judgment" to be inconsistent with the Act, the Court recognized that it is within the Board's discretion to determine what scope or degree of discretion meets the statutory requirement that a supervisor use independent judgment. *Id.* at 1867. The Court stated: "Many nominally supervisory functions may be performed without the 'exercis[e of] such a degree of ... judgment or discretion ... as would warrant a finding' of supervisory status under the Act." *Id.* (citing *Weyerhaeuser Timber Co.*, 85 NLRB 1170, 1173 (1949)). The Court also agreed with the Board that if the Employer limits the degree of independent judgment by, for example, detailed orders, the individual may not be appropriately held a supervisor. *Kentucky River*, above at 1867 (citing *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995)). Additionally, while the Court explicitly refrained from interpreting the phrase "responsibly to direct," the Court suggested that the Board could interpret this phrase by "distinguishing between employees who direct the manner of others' performance of discrete tasks from employees who direct other employees as [Section] 2(11) requires." *Kentucky River*, above at 1871 (citing *Providence Hospital*, 320 NLRB 717, 729 (1996)).

In the instant case, the Employer's argument that the RNs use independent judgment to responsibly direct the LPNs and CNAs focuses mainly on directions given by RNs to LPNs and CNAs. The record evidence, aside from the conclusionary testimony of the witnesses regarding 'reporting to' or 'supervising,' indicates that the RNs direct the manner of LPNs' and CNAs' performance of discrete tasks rather than directing the LPNs and CNAs. To this end, RNs direct CNAs as to whether to feed a

patient with a straw and how long or far to ambulate a patient. In emergencies, an RN may instruct a LPN or CNA to get a bandage or call 911.

The Board has recognized the type of instruction generally at issue in this case is both an assignment and a direction:

The term "assignment" ... clearly differs from responsible direction in that it refers to the assignment of an employee's hours or shift, the assignment of an employee to a department or other division, or other overall job responsibilities. It would also include calling in an employee or reassigning the employee to a different unit. Whether assignment also includes ordering an employee to perform a specific task is, however, less clear. ... Certainly there are times when the assignment of tasks overlaps with direction. For example, ordering a nurse to take a patient's blood pressure could be viewed as either assigning the nurse to that procedure or directing the nurse in the performance of patient care. Because the distinction between assignment and direction in these circumstances is unclear, the Board has often analyzed the two statutory indicia together.

Providence Hospital, above at 727. Regardless of whether the instruction is an assignment or a direction, the Board decides if the instruction is given with supervisory authority by determining if the instruction requires independent judgment. *Id.* at 729; *Ten Broeck Commons*, 320 NLRB 806, 810 (1996).

The Employer argues that because RNs issue instructions to LPNs and CNAs and because RNs are responsible for patients' medical care, the RNs responsibly direct the LPNs and CNAs. However, not all assignments and directions given by an employee involve the exercise of supervisory authority. In *Providence Hospital*, above at 733, 734 and 736, the Board found that charge nurses and other health care employees with the responsibility to direct employees were not statutory supervisors because their assignments and directions were not made with Section 2(11) authority. There, the Board quoted the court in *NLRB v. Security Guard Service*, 384 F.2d 143, 151 (5th Cir. 1967):

If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.

Providence Hospital, above at 725. The Board has instructed that each case involving the indicia of assignment and responsibility to direct turns on its own particular facts and that there are no hard and fast rules. *Id.* Since Section 2(11) explicitly requires a statutory supervisor to use independent judgment in assigning and responsibly directing employees, determining whether an employee's directions render the employee a statutory supervisor requires deciding whether the directions given require independent judgment or whether such directions are merely routine. *Id.* at 729.

There can be no doubt that the tasks to which LPNs and CNAs are assigned are of critical importance to the health of the Employer's patients and residents. This does not mean that the directing of such tasks cannot be routine. As the Board observed concerning a treatment plan devised by a charge nurse for a patient in *Ten Broeck Commons*, above at 811:

There is an important distinction between designing complex work tasks and directing employees in carrying out those tasks. If this distinction is blurred, it becomes easy to be misled into concluding that an individual exercises independent judgment based simply on the fact that the work tasks being designed by that individual are relatively 'complex' or 'important.' ...

[T]he fact that severe adverse consequences might flow from an employee's routine direction or monitoring of the work of others does not, without more, make the employee a supervisor.

Thus, contrary to the Employer's argument, the mere fact that patients on the C and D wings can be seriously ill, requiring a higher level of medical judgment, medical assessment and "moment-to-moment" nursing judgment does not indicate

that RNs exercise more than routine direction. *Id.* In *Loyalhanna Health Care Associates*, 332 NLRB No. 86, slip op. at p. 3 (2000), the Board found that nurses did not use supervisory authority to give directions to aides in the absence of evidence that such direction involved other than routine aspects of patient care, such as taking patients' vital signs and ensuring that care plans are followed. See also *Northern Montana Health Care Center*, 324 NLRB 752, 753 (1997); *Ten Broeck Commons*, above at 810-812. In the instant matter the record indicates that, with regard to the duties performed by LPNs and CNAs, directions given to them by the RNs are routine instructions given on a frequent and daily basis which focus on ensuring that the patients' care plans are followed. Routine directions do not require the use of Section 2(11) independent judgment. *Kentucky River*, above at 1867; *Loyalhanna Health Care Associates*, above, slip op. at p. 3; *Ten Broeck Commons*, above at 810-812; *Northern Montana Health Care Center*, above at 753; *Weyerhaeuser Timber Co.*, above at 1173. Thus, I find that the directions given by the RNs to the LPNs and CNAs do not require the degree of judgment or discretion as would warrant a finding of supervisory status under the Act. *Kentucky River*, above at 1867.

Moreover, proof of independent judgment in the assignment or direction of employees entails the submission of concrete evidence showing how such decisions are made. *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000); *Crittenton Hospital*, 328 NLRB 879; *Quadrex Environmental Co.*, 308 NLRB 101; *Sears Roebuck & Co.*, 304 NLRB 193. In *Crittenton Hospital*, above, the employer argued that charge nurses were supervisors because they had the power to make mandatory

overtime assignments or call in substitutes based on their assessments of whether staffing was adequate. However, there was

no evidence showing how mandatory overtime or additional staffing needs are determined, or the process by which employees are selected for overtime or call-in. Thus, the employer ... failed to demonstrate that RNs utilize independent judgment.

Id. at 879. See also *Harborside Healthcare, Inc.*, above at 1336 (charge nurses' call-in authority was not supervisory in the absence of evidence disclosing how they decided which employees to call). Likewise, here, although the record leaves no doubt that RNs may authorize LPNs and CNAs to stay past the end of their shifts and sign for overtime once it has been worked, there was insufficient testimony describing the basis for an RN's decision to ask an LPN or CNA to stay or that signing for overtime was not mere record keeping. In the absence of such evidence, I cannot conclude that the RNs use independent judgment to responsibly direct the LPNs and CNAs. *Harborside Healthcare, Inc.*, above; *Crittenton Hospital*, above.

The assignment of tasks in accordance with an Employer's set practice, pattern, parameters or protocol does not require the exercise of independent judgment to satisfy the statutory definition. *Kentucky River*, 121 S. Ct. at 1867; *Chevron Shipping Co.*, 317 NLRB at 381; *Express Messenger Systems*, 301 NLRB 651, 654 (1991); *Bay Area-Los Angeles Express*, 275 NLRB 1063, 1075 (1985). Where an employee has been pre-assigned a set of tasks, it is not supervisory authority for an employee to ask another employee to do those tasks that were already assigned to him or her. *Western Union Telegraph Company*, above. The record shows that the Employer, relying on statute and the training of its employees, has decided that LPNs and CNAs can perform certain tasks and has made certain that the LPNs and CNAs

are trained to do such tasks. Nor does the RNs' role in educating LPNs and CNAs in areas in which they need training or referring them to management for additional training confer supervisory status. In these circumstances, I conclude that the RNs are merely functioning within the parameters established by the Employer. *Kentucky River*, above at 1867; *Chevron Shipping Co.*, above at 381; *Express Messenger Systems*, above at 654; *Bay Area-Los Angeles Express*, above at 1075. Accordingly, I find that they do not use independent judgment to responsibly direct LPNs and CNAs.

An assignment based on an assessment of employees' skills, where the matching of skills to requirements is a routine function, does not reflect supervisory authority under the Act. *Ten Broeck Commons*, above at 810 (charge nurses' assignment of work to certified nursing assistants did not require the use of independent judgment because the assistants had the same skills and were routinely rotated). There was no record evidence that the RNs take into account any factor, such as the LPNs and CNAs skill or experience, in determining the tasks to be performed by any particular LPN or CNA. The absence of consideration by the RN of any such factors further indicates that an RN's decision to assign particular tasks to a LPN or CNA is made without independent judgment. *Kentucky River*, above at 1867; *Ten Broeck Commons*, above at 810; *Weyerhaeuser Timber Co.*, above at 1173.

I find that there is no other evidence that the RNs use independent judgment to responsibly direct LPNs and CNAs. The directions by RNs to LPNs and CNAs to stay after their respective shifts have ended are routine and merely consistent with the Employer's policy of ensuring full staffing for patient care. *Kentucky River*, above at 1867; *Chevron Shipping Co.*, above at 381; *Express Messenger Systems*, above at

654; *Bay Area-Los Angeles Express*, above at 1075. An RN instructing an LPN or CNA to assist during an emergency is based on no more judgment than observing the plain fact that the LPN or CNA was, prior to reassignment, working on a non-emergency task. *Kentucky River*, above; *Weyerhaeuser Timber Co.*, above.

Additionally, I find that the distinction approved by Justice Scalia in *Kentucky River*, above, between directing discrete tasks and directing employees applies to the facts here. In giving the instructions discussed above to the LPN or CNA, the RN is directing the LPN or CNA to perform discrete tasks, such as to ambulate a patient for 20 feet.

In *NLRB v. Quinnipiac College*, 256 F.3d 68 (2d Cir. 2001), a finding of responsible direction resulted from the fact that supervisors were accountable for the performance of other employees. Significantly, while the RNs may be accountable for the care they provide, the record reflects no evidence that the RN is responsible for the performance of the LPNs and CNAs. This fact distinguishes the instant case from others where individuals were found to possess supervisory status. *Custom Bronze & Aluminum Corp.*, 197 NLRB 397 (1972) and *Schnurmacher Nursing Home v. NLRB*, 214 F. 3d 260 (2nd Cir. 2000). In *Custom Bronze & Aluminum*, above at 398, the Board relied “in particular” on the fact that the alleged supervisor alone was responsible for the work of other employees. In *Schnurmacher*, above at 266-67, the court relied heavily on the fact that a putative supervisor was held accountable for the employees she supervised to the extent that the supervisor was disciplined for the shortcomings of the supervisees.

In the instant matter, there was no evidence that RNs are held responsible for the performance of LPNs and CNAs. The absence of this accountability is consistent with my finding that the RNs do not responsibly direct the LPNs and CNAs. *NLRB v. Quinnipiac College*, above; *Schnurmacher Nursing Home*, above; *Custom Bronze & Aluminum Corp*, above. Moreover, the fact that one employee may point out deficiencies in the performance of another employee does not necessarily make that employee a statutory supervisor. *Crittenton Hospital*, above.

The Employer argues that it has substantially changed the organizational structure of the facility since this matter first came before the Board. In this regard, the Employer no longer organizes the nursing staff into “teams” of LPNs and CNAs who report to a RN or directly to a shift nursing supervisor, also an RN. Additionally, C and D wings, during the day shift, no longer are overseen by a senior RN, called a clinical coordinator. Further, each wing no longer has an RN charge nurse with two teams reporting directly to her. The current Administrator instituted the current changes, described above on pages 3-5, in which Unit Directors and Assistant Unit Directors administer nursing districts, run by RNs, LPNs and CNAs. The Employer asserts that these changes have altered the RN function and “enhanced the supervisory role of the RNs that have remained.”

I find that there is no evidence in the record to indicate that the changes upon which the Employer relies have bestowed supervisory status on the RNs. In this connection, there is insufficient evidence that RNs exercise independent judgment to assign and responsibly direct less skilled employees as a result of the Employer’s organizational changes.

Additionally, as the records reveal that the Charge Nurses function in much the same manner as District Nurses, who I have found lack supervisory status, and the record is devoid of specific testimony indicating the Charge Nurses assign or responsibly direct other employees, I find that Charge Nurses are not supervisors.

In sum, I find that RNs' instructions to LPNs and CNAs involve routine tasks. Furthermore, while the RNs undoubtedly use independent judgment to determine a course of patient care, the Employer has not provided concrete evidence of how the RNs use independent judgment to assign tasks to the LPNs and CNAs. I find that RNs are constrained to assign to LPNs and CNAs the discrete tasks in which they have been trained and that the RNs do not generally differentiate between the skills and experience of the LPNs and CNAs when they assign a task. I further find that the record is devoid of evidence that RNs are accountable for the performance of LPNs and CNAs. For all these reasons, I find that the Employer has not sustained its burden of proving that the RNs use independent judgment to assign and responsibly direct the LPNs and CNAs. Therefore, I find that the RNs are not statutory supervisors of the LPNs and CNAs as a result of the exercise of these functions.

Based on all of the above, I find that the Employer has failed to sustain its burden of showing that its RNs are statutory supervisors and that there is no reason to set aside the DD&E of May 20, 1999 or to revoke the Petitioner's certification which issued on August 24, 1999.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental 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 February 14, 2002.

Signed at Newark, New Jersey this 31st day of January 2002.

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