

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

BLOOMFIELD HILLS NURSING CENTER, INC.¹

Employer

and

CASE 7-RC-22494

**LOCAL 79, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO**

Petitioner

APPEARANCES:

Allison Reuter, Attorney, of Detroit, Michigan, for the Employer.
Herbert A. Sanders, Attorney, of Detroit, Michigan, for the 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.

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

Upon the entire record² in this proceeding, the undersigned finds:

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.

¹ The name of the Employer appears as amended at the hearing.

² The Employer and Petitioner filed briefs, which were carefully considered.

3. The labor organization 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.

The Petitioner seeks to represent a unit of approximately 52 full-time and regular part-time licensed practical nurses (LPNs) and registered nurses (RNs) employed by the Employer at its nursing home facility located in Bloomfield Hills, Michigan. The Employer contends that the petitioned-for unit is inappropriate inasmuch as the nurses, who are designated by the Employer as charge nurses are supervisors within the meaning of Section 2(11) of the Act. The Employer additionally asserts that even if the charge nurses are found not to be supervisors, the nurses who serve as day shift team leaders and as afternoon and midnight shift supervisors, should be excluded from the unit as statutory supervisors. The Petitioner responds that none of the petitioned-for nurses are supervisors within the meaning of the Act.

I find that the Employer has not satisfied its burden of proof with respect to the charge nurses who are not team leaders and afternoon and midnight shift supervisors, and those charge nurses are not statutory supervisors and are eligible to vote. They do not exercise the independent judgment required for a finding of supervisory status and their role in the disciplinary and evaluation procedures does not, standing alone, affect the job status or tenure of other employees. However, I find that the team leaders and afternoon and midnight shift supervisors are statutory supervisors by virtue of their authority to evaluate employees, discipline them, and schedule and assign employees.

Overview

The Employer operates a nursing care facility which is licensed under Medicare and Medicaid and provides skilled and semiskilled nursing care to its residents. The three-story facility is divided into six units: One West and Terrace, for skilled care residents (those who require the highest level of care); Two West and Two East, for semi-skilled care residents; and Three West and Three East, for residents with dementia.

Administrator Jackie Zimmerman manages the facility. The assistant administrator is Michelle Nelson. The nursing department is headed by Director of Nursing (DON) Cindy Hochstetler. The assistant director of nursing (ADON)

Is Denise Luttermoser.³ Nursing management also includes In-Service Director Yahel Dawson, two minimum data set (MDS) coordinators and one restorative coordinator.⁴ The nursing department staff consists of 34 LPN s, including two team leaders and the afternoon and midnight shift supervisors; 18 RNs, including one team leader; and certified nurse assistants (CENAs). The CENAs are represented by the Petitioner in a unit with food service, dietary, housekeeping and laundry employees, ward clerks, cooks, and janitors, and are covered by a collective bargaining agreement.

Assignments and Scheduling

Staffing levels are dictated by State and Federal regulations and budgetary constraints. There are generally two charge nurses per unit on both the day and one charge nurse per unit on the midnight shift. The charge nurses on the first shift report to the team leader on their floor.⁵ The charge nurses on the afternoon and midnight shifts report to shift supervisors on the afternoon and midnight shifts, respectively. There are generally five to six CENAs assigned to each unit on each shift. Thus, there are approximately 100 to 125 CENAs.

The schedules for nurses is prepared by DON Luttermoser. The CENA schedules are prepared by Staffing and Scheduling Clerk Betty Suttles.⁶ These CENA schedules include unit assignments. CENAs often remain assigned to the same unit. Within the units, the resident rooms are divided into sections for the purpose of CENA responsibilities. The number of rooms and CENA job assignments in each section is prescribed by the Employer based on the number of CENAs on the unit. The charge nurse writes in the name of the CENA who is to perform the pre-assigned duties on the pre-printed assignment form. The charge nurse may also add routine assignments based on resident needs, such as which CENA will be working in the feeder room, for residents who cannot feed themselves, and dining room.

The CENAs perform their assigned tasks for one week and then rotate to the next week-long assignment. When transfers to another unit based on staffing needs are required, the charge nurse utilizes a pre-printed "pull list" which is kept on each unit. The pull list shows which CENA is to be pulled, or transferred, to

³ The parties stipulated that Zimmerman, Nelson, Hochstetler, and Luttermoser are supervisors within the meaning of the Act because they have the authority to hire, fire, and discipline employees, and I so find.

⁴ The parties are in agreement that the positions of in-service director, MDS coordinator and restorative coordinator are managerial positions and are thus excluded from the petitioned-for unit.

⁵ There is only one charge nurse assigned to the first floor terrace unit at all times.

⁶ It appears that neither party is contending that Suttles should be included in any appropriate unit. However, as the record is not dispositive as to her eligibility, she may vote subject to challenge by either party.

another unit to meet staffing needs. The charge nurse then notifies the scheduling clerk which CENA is to be pulled off the unit.

Based on staffing needs, charge nurses may request CENAs to work overtime. However, the CENAs cannot be mandated to work overtime by the charge nurses. Rather, these overtime issues are handled by either the scheduling clerk on the day shift, or the shift supervisors on the afternoon and midnight shifts. The CENAs go directly to the ADON or DON for approval for schedule changes, time off, and vacations. While charge nurses are authorized to designate break and lunch times for the CENAs, which are required by the CENAs' union contract, the CENAs can also decide the timing among themselves.

Patient Care

At the start of each shift, the charge nurse gives report to the CENAs. The discussion with the CENAs includes updates on the conditions of residents, any special orders by physicians, and other issues relevant to resident care. The charge nurses then pass medications, perform treatments, complete charting, and follow up on any change in the condition of residents. When required, charge nurses accompany physicians on rounds and respond to any resident emergencies. The duties of the CENAs include basic care of residents and assistance with daily living functions, such as walking, bathing, dressing, feeding, and hygiene. There is no record evidence that the charge nurses are involved in the training of the CENAs.

Charge nurses and CENAs on a regular basis are required to attend relevant in-service training provided by either the in-service director, or a team leader or shift supervisor. Charge nurses may complete an "In-service Referral" document to refer a CENA for in-service training regarding a particular issue which the charge nurse determines is needed based on monitoring the CENA's job performance. These individual in-service training sessions are provided by either the in-service director, team leader, or shift supervisor. The in-service referral write-ups, are not considered by the Employer to constitute disciplinary write-ups, although they may be used by the Employer to determine whether a disciplinary write-up is appropriate. In this regard, when a charge nurse submits an in-service referral to a team leader or shift supervisor, it instead may be returned with the instruction to complete a corrective action form.

Discipline

All employees are expected to report infractions by other employees of Employer policies and procedures as to mistreatment of residents. Charge nurses

can write a description of the infraction by a CENA on a corrective action form. The top of the corrective action form contains four separate boxes, for written warning, written reprimand, suspension, and discharge. As the charge nurses do not have access to employee disciplinary records and are not aware of any employee's disciplinary history, the charge nurse does not determine or check off any box noting the level of discipline that will issue. The corrective action forms describing the incident are signed by the charge nurse on the line provided for writer signature and are submitted to the team leader or shift supervisor. At this point, an independent investigation is conducted regarding the incident surrounding the disciplinary write-up, including interviewing the CENA, the charge nurse, and any relevant witnesses. However, it is unclear from the record as to whether the team leader and shift supervisor or a higher management official, such as the ADON or DON, conducts this investigation. It is clear that after the investigation, a final decision on whether to issue discipline and the level of any discipline is made by the DON or ADON in conjunction with the administrator. It appears that the team leader or shift supervisor is responsible for discussing the disciplinary write-up with the employee.

In the case of suspected resident abuse, a charge nurse can send a CENA home pending an investigation, but the ultimate determination as to discipline or termination is made by the DON or ADON in conjunction with the administrator. The charge nurses have not been informed by the Employer that they have the authority to send CENAs home for poor work performance. The charge nurses do not participate in the CENA grievance procedure.

Evaluations

CENAs are evaluated annually. The eight-page evaluation form contains sections for ranking and commenting on work performance, and a corrective action plan to develop improvement. The charge nurse completes the evaluation form and signs on the line for evaluator.⁷ The evaluation is then submitted to the team leader or shift supervisor, who meets with the CENA to review the evaluation. The charge nurse occasionally sits in on these evaluation meetings. If a CENA is rated poorly, the in-service director provides in-service teaching to the CENA and re-evaluates the CENA. A decision not to retain an employee based on job performance is made by the DON and administrator, after their independent investigation. The CENA evaluations have no effect on their wages, which are contractually determined. Once a CENA evaluation is completed by the team

⁷ Generally, the charge nurse that is most familiar with the job performance of a particular CENA will complete that CENA's evaluation. In the case where there are two charge nurses on the same unit for the same shift, both of whom are familiar with the same CENA, either one or both charge nurses might complete the CENA evaluation.

leader or shift supervisor, it goes to the DON for approval and then to the employee file.

Team Leaders and Shift Supervisor

Team leaders Tonya Jones, RN, Gloria Carroll, LPN, and Debra McGhee, LPN, work on the first, second, and third floor, respectively, during the day shift, 7:00 a.m. to 3:00 p.m. The team leaders are responsible for their respective floors. The day shift charge nurses report directly to the team leader on their floor or, if the team leader is not available, to the DON.

RN team leader Jones fills in as ADON or DON on average about one full day per month, when the ADON and/or DON are away from the facility.⁸ As acting ADON or DON, the RN team leader has the authority to take calls from the pharmacy; make financial decisions; discipline employees; investigate abuse issues; handle case management issues regarding resident admissions; handle state survey issues; sign off on incident and accident reports; and interview job applicants. Additionally, when the ADON and DON are both away from the facility and out of call range, the RN team leader can take their on-call duties during the afternoon and midnight shifts.

LPN Dan Hanson serves as the afternoon shift supervisor from 3 :00 p.m. to 11:00 p.m. and LPN Una Thompson-Smith serves as the midnight shift supervisor from 11 :00 p.m. to 7:00 a.m. During most of the afternoon shift and the midnight shift, there is no management official on the premises and the shift supervisors are responsible for the entire facility. However, a member of management is always on call. The afternoon and midnight shift charge nurses report directly to their shift supervisor.

The team leaders and shift supervisors engage in some direct patient care. The team leaders prepare paperwork relating to quality assurance policies of the Employer. The team leaders and shift supervisors are authorized to adjust employee time cards. They are involved with CENA evaluations as described above and evaluate the charge nurses on their floor or shift. They also participate in the first step, oral discussion, of the CENA grievance procedure when a dispute arises between a CENA and charge nurse.

The shift supervisors are authorized to call employees in if their shift is understaffed or send employees home if overstaffed. However, they are not authorized to mandate overtime work for nursing personnel. The team leaders and shift supervisors are also authorized to send employees home for misconduct.

⁸ The LPN team leaders do not ever assume the role of ADON or DON because under state regulations, the facility must have an RN in charge as director.

They also complete corrective action forms for discipline, including the level of discipline to be issued. Although it appears that any decision to discipline is made by the ADON and DON in conjunction with the administrator, the team leaders and shift supervisors meet with employees to issue discipline.

The DON holds monthly nursing administration meetings which are attended by the team leaders and shift supervisors, in addition to the ADON, MDS coordinator and restorative nurse. The RN charge nurses earn approximately \$25.00 per hour and the LPN charge nurses earn approximately \$20.00 per hour. The team leaders and shift supervisors earn a premium of about \$1.50 to \$2.00 per hour. All nursing personnel receive the same insurance benefits, wear the same scrub uniforms, share the same employee break rooms, and punch the same time clock. The team leaders and shift supervisors wear name tags designating their positions; the charge nurses and CENAs wear name tags stating only their names.

Analysis

Section 2(3) of the Act excludes from the definition of the term "employee" "any individual employed as a supervisor." Section 2(11) of the Act defines a "supervisor" as:

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

Section 2(11) is to be interpreted in the disjunctive and the possession of anyone of the authorities listed in that section places the employee invested with this authority in the supervisory class. *Ohio Power Co. ~ NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949); *Allen Services Co.*, 314 NLRB 1060, 1061 (1994). However, the Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Azusa Ranch Market*, 321 NLRB 811,812 (1996).

In *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001), the Supreme Court upheld the Board's longstanding rule that the burden of proving Section 2(11) supervisory status rests with the party asserting it. See *Ohio Masonic Home*, 295 NLRB 390,393 fn. 7 (1989); *Bowen of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). However, the Court rejected the Board's interpretation of "independent judgment" in Section 2(11)'s test for supervisory status, i.e., that nurses will not be deemed to have used "independent judgment" when they

exercise "ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specific standards." 532 U.S. at 707. Although the Court found the Board's interpretation of "independent judgment" in this respect to be inconsistent with the Act, it recognized that it is within the Board's discretion to determine, within reason, what scope or degree of "independent judgment" meets the statutory threshold. See *Beverly Health & Rehabilitation Services*, 335 NLRB 54 fn. 3 (Aug. 27, 2001). Further, the Court acknowledged that the term "independent judgment" is ambiguous as to the degree of discretion required to establish supervisory status and that such degree of judgment "that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations issued by the employer." 532 U.S. at 713-714.

In discussing the tension in the Act between the Section 2(11) definition of supervisors and the Section 2(12) definition of professionals, the Court also left open the question of the interpretation of the Section 2(11) supervisory function of "responsible direction," noting the possibility of "distinguishing employees who direct the manner of others' performance of discrete tasks from employees who direct other employees." 532 U.S. at 720. See *Majestic Star Casino*, 335 NLRB 36 slip op. at 2 (Aug. 27, 2001). For instance, direction as to a specific and discrete task falls below the supervisory threshold if the use of independent judgment and discretion is circumscribed by the superior's standing orders and the employer's operating regulations, which require the individuals to contact a superior when problems or anything unusual occur. *Dynamic Science, Inc.*, 334 NLRB 391(2001); *Chevron Shipping Co.*, 317 NLRB 379,381 (1995).

In the instant case, resident care plans devised by Employer protocols and physician orders determine the degree and nature of resident care required of the CENAs. The limited authority of nurses to assign discrete tasks to less skilled employees based on standing orders or what is dictated by the profession does not require the use of independent judgment in the direction of other employees. See *Ferguson Electric Co.*, 335 NLRB 15, JD slip op. at 6-7 (Aug. 24, 2001).

The charge nurses do not generally follow up on the work of the CENAs to ensure that a task has been done correctly. However, if they notice an error or omission, they will point it out. The charge nurses are responsible for making sure the residents are divided among the CENAs assigned to a unit, but these assignments are routine in nature, and are based mainly on principles of fairness and the even distribution of work. *Byers Engineering Corp.*, 324 NLRB 740 (1997); *Ohio Masonic Home*, supra at 394-395. Additionally, even if the charge nurses can schedule and adjust CENA break and lunch times, such scheduling is a routine act and such breaks are required by the CENA contract. Thus, I find that

the charge nurses' involvement in assigning and directing CENAs does not entail the use of independent judgment required to confer supervisory status.

The charge nurses' responsibility in the area of discipline is to serve as a conduit, by reporting misbehavior and preparing anecdotal notes on corrective action forms. Higher management independently investigates and determines penalties for misconduct. The Board does not find anecdotal reports or written warnings to be proof of supervisory authority unless they result in personnel action, 'without independent investigation or review by others. *Hillhaven Rehabilitation Center*, 325 NLRB 202, 203 (1997); *Northcrest Nursing Home*, 313 NLRB 491, 497-498 (1993). The Board has repeatedly held, with court approval, that a reportorial function is not sufficient to support a supervisory finding. *Ohio Masonic Home*, supra at 393-394; *NLRB v. Grancare, Inc.*, 170 F.3d 662,668 (7th Cir. 1999); *NLRB v. City Yellow Cab Co.*, 344 F.2d 575,580-581 (6th Cir.1965).

Although charge nurses may send a CENA home in certain circumstances, the record evidence demonstrates that an independent investigation is thereafter conducted by the DON, who determines whether to issue discipline. In the case of resident abuse, which is strictly regulated by the State, the charge nurse is expected to remove a CENA from the situation pending investigation by the DON. Possessing authority to take limited action in response to flagrant violations is insufficient by itself to establish supervisory status. *Phelps Community Medical Center*, 295 NLRB 486,491-492 (1989); *Loffland Bros. Co.*, 243 NLRB 74,75 fn. 4 (1979).

The charge nurses give significant input regarding the annual evaluations of the CENAs. However, the team leader or shift supervisor reviews the evaluation with the CENA before it is forwarded to the DON for final approval. Additionally, the in-service director provides teaching and in-service assistance in response to a poor rating, and re-evaluates the CENA. Discipline may result if the CENA fails to improve. These evaluations do not affect CENA wage rates, which are contractually determined. The evaluations do not call for recommendations from the charge nurses regarding job tenure or status. The DON and administrator retain the authority to determine and effectuate any personnel actions flowing from the evaluations. The Board has consistently declined to find supervisory status when nurses perform evaluations that do not, by themselves, affect other employees' job status. *Hillhaven Rehabilitation Center*, 325 NLRB 202,203 (1997), citing *Ten Broeck Commons*, 320 NLRB 806,813 (1996); *New York University Medical Center v. NLRB*, 156 F.3d 405,413 (2nd Cir. 1998); *Lynwood Health Care Center, Minnesota, Inc. v. NLRB* 148 F.3d 1042,1046-1047 (8th Cir. 1998). Consequently, I do not find that the role of the charge nurses in the disciplinary and evaluation processes support a finding of supervisory status.

Further, I note that if the charge nurses are found to be supervisors, the ratio

of supervisors to employees would be quite high. *McAlester General Hospital*, 233 NLRB 589,589-590 (1977). Overall, there would be 52 supervisors, not including the ADON and DON, for approximately 100 to 125 CENAs.

The team leaders' and shift supervisors' participation in evaluating CENAs does not render them Section 2(11) supervisors for the reasons just stated for charge nurses. However, the team leaders and shift supervisors conduct individual in-service training sessions for CENAs. They are also involved in the first step of the CENA grievance procedure. Further, they evaluate the charge nurses. After doing so, they review the evaluation with the charge nurse. There is limited record evidence as to the affect these evaluations have, if any, on the wage rate, job tenure and status of the charge nurses. However, the evaluations contain corrective action plans for areas in which the charge nurse has deficiencies. These plans contain target dates for achievement. See e.g. *WedgewoodHealth Care*, 267 NLRB 525,526 (1983).

With respect to the asserted disciplinary authority of the team leaders and shift supervisors, the Employer's contention that they possess the authority to issue disciplinary corrective actions is established by the weight of the evidence. The team leaders and shift supervisors complete corrective action forms, including the level of any discipline, and meet with the employee to issue the discipline. Despite the requirement to notify and consult with the ADON and/or DON, for guidance and approval prior to the issuance of the discipline, the record evidence demonstrates that the team leaders and shift supervisors are authorized to issue, and have actually issued, verbal and written discipline, in accordance with the Employer's progressive discipline policy. In doing so, they have used their independent judgment. A single incident of disciplining an employee is sufficient to confer supervisory status. See e.g. *Sunnyside Home Care Project, Inc.*, 308 NLRB 346, 347 (1992); *Biewer Wisconsin Saw Mill*, 312 NLRB 506 (1993).

The midnight shift supervisor is responsible for attending to staffing concerns during the midnight shift, and is authorized to call employees in when understaffed and send employees home when overstaffed. Although members of nursing management are always on-call, the shift supervisors are the highest ranking employees on the premises for substantial periods during the afternoon and midnight shifts. The absence of other supervision is one of the secondary indicia which may be considered in establishing supervisory status. See *Essbar Equipment Company*, 315 NLRB 461 (1994). RN Team Leader Jones' substitution as ADON and/or DON, on a regular basis, is additional evidence of the team leaders' supervisory status under Section 2(11). Thus, I find that the team leaders and afternoon and midnight shift supervisors possess Section 2(11)

supervisory authority based on their staffing responsibilities, which require the use of independent judgment.

The Employer relies on several other secondary indicia of supervisory status. The existence of secondary indicia of supervisory status, such as the possession of keys, title, higher pay, and the like are, standing alone, insufficient to demonstrate supervisory status. *Shen Automotive Dealership Group*, 321 NLRB 586,594 (1996); *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993). However, in the instant case, the existence of secondary indicia is significant.

The DON holds monthly nursing administration meetings which are attended by the team leaders and shift supervisors, in addition to the ADON, MDS coordinator and restorative nurse. The team leaders and shift supervisors earn a premium of about \$1.50 to \$2.00 per hour. The team leaders and shift supervisors, unlike the charge nurses, wear name tags designating their supervisory positions.

Further, I note that if the team leaders and shift supervisors are found to be non-supervisor, the ratio of supervisors to employees would be quite low. Overall, there would be two supervisors for 52 charge nurses and approximately 100 to 125 CENAs. On the day and a portion of the afternoon shift, there would be one to two supervisors (the ADON and DON) for 11 charge nurses and 30 to 36 CENAs. On much of the afternoon shift and the entire midnight shift, there would be one absent supervisor for 6 charge nurses and 30 to 36 CENAs. *Wright Memorial Hospital*, 255 NLRB 1319,1320 (1980).

5. Accordingly, for the reasons stated above, and based on the record as a whole, I find that the following employees may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:⁹

All full-time and regular part-time registered nurses and licensed practical nurses, including charge nurses, employed by the Employer at its Bloomfield Hills, Michigan facility; but excluding all administrators, assistant administrators, directors of nursing, assistant directors of nursing, MDS coordinators, in-service directors, restorative coordinators, team leaders, shift supervisors, office clerical employees, contingent employees, service and maintenance employees, managerial employees, and guards and supervisors as defined in the Act.

The unit set forth above includes both professional and non-professional employees. The Board is prohibited by Section 9(b)(1) of the Act from including

⁹ The parties stipulated that the unit petitioned for is appropriate if any of the contested classifications were found to be non-supervisory.

professional employees in a unit with non-professional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professionals must be ascertained as to inclusion in a unit with non-professional employees.

I shall, therefore, direct separate elections in the following voting groups:

Voting Group A:

All full-time and regular part-time licensed practical nurses, including charge nurses, employed by the Employer at its Bloomfield Hills, Michigan facility; but excluding all registered nurses, administrators, assistant administrators, directors of nursing, assistant directors of nursing, MDS coordinators, in-service directors, restorative coordinators, team leaders, shift supervisors, office clerical employees, contingent employees, service and maintenance employees, managerial employees, and guards and supervisors as defined in the Act.

Voting Group B:

All full-time and regular part-time registered nurses, including charge nurses, employed by the Employer at its Bloomfield Hills, Michigan facility; but excluding all licensed practical nurses, administrators, assistant administrators, directors of nursing, assistant directors of nursing, MDS coordinators, in-service directors, restorative coordinators, team leaders, shift supervisors, office clerical employees, contingent employees, service and maintenance employees, managerial employees, and guards and supervisors as defined in the Act.

The employees in Voting Group A will be polled to determine whether they wish to be represented by the Petitioner.

The employees in Voting Group B will be asked the following two questions on their ballot:

(1) Do you desire to be included in a unit with licensed practical nurses of the Employer for the purposes of collective bargaining?

(2) Do you desire to be represented for the purposes of collective bargaining by Local 79, Service Employees International Union, AFL-CIO?

If a majority of the registered nurses in Voting Group B vote "yes" to the first question, indicating their wish to be included in a unit with non-professional

employees, they will be so included. Their votes on the second question will then be counted together with the votes of the licensed practical nurses in Voting Group A to determine whether the employees in the overall unit wish to be represented by the Petitioner. If, on the other hand, a majority of the registered nurses in Voting Group B do not vote for inclusion, they will not be included with the non-professional employees. Their votes on the second question will then be separately counted to determine whether they wish to be represented by the Petitioner.

Thus, the unit determination is based, in part, upon the results of the election among the registered nurses. However, I make the following findings in regard to the appropriate unit.

1. If a majority of the registered nurses vote for inclusion in the unit with licensed practical nurses, I find the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time registered nurses and licensed practical nurses, including charge nurses, employed by the Employer at its Bloomfield Hills, Michigan facility; but excluding all administrators, assistant administrators, directors of nursing, assistant directors of nursing, MDS coordinators, in-service directors, restorative coordinators, team leaders, shift supervisors, office clerical employees, contingent employees, service and maintenance employees, managerial employees, and guards and supervisors as defined in the Act.

2. If a majority of the registered nurses do not vote for inclusion in the unit with the licensed practical nurses, I find the following two groups of employees will constitute separate units appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

Unit A:

All full-time and regular part-time licensed practical nurses, including charge nurses, team leaders and shift supervisors employed by the Employer at its Bloomfield Hills, Michigan facility; but excluding all registered nurses, administrators, assistant administrators, directors of nursing, assistant directors of nursing, MDS coordinators, in-service directors, restorative coordinators, team leaders, shift supervisors, office clerical employees, contingent

employees, service and maintenance employees, managerial employees, and guards and supervisors as defined in the Act.

Unit B:

All full-time and regular part-time registered nurses, including charge nurses, employed by the Employer at its Bloomfield Hills, Michigan facility; but excluding all licensed practical nurses, -- administrators, assistant administrators, directors of nursing, assistant directors of nursing, MDS coordinators, in-service directors, restorative coordinators, team leaders, shift supervisors, office clerical employees, contingent employees, service and maintenance employees, managerial employees, and guards and supervisors as defined in the Act.

Those eligible shall vote, as set forth in the attached Direction of Election, subject to the provisions set forth above.

Dated at Detroit, Michigan this 21st day of July 2003.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board
Region Seven
Patrick V. McNamara Federal Building
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Classification

177 8580 8050