Beverly Enterprises, Alabama Inc., d/b/a Riverchase Health Care Center *and* United Food and Commercial Workers, Local 1657, AFL–CIO, Petitioner.[1] Case 10–RC–14057

August 27, 1991

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On November 20, 1990, the Regional Director issued a Decision and Direction of Election in which he found appropriate the unit sought by the Petitioner, consisting of approximately 20 licensed practical nurses (LPNs) employed at the Employer's Birmingham, Alabama facility.[2] The Regional Director rejected the Employer's contention that the LPNs are supervisors under Section 2(11) of the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed with the Board a timely request for review of the Regional Director's Decision and Direction of Election. By Order dated December 20, 1990, the Board (Member Devaney dissenting) granted the request for review.

We have considered the entire record in this case, including the Employer's brief on review, and make the following findings.

I.

The Employer operates a 120-bed skilled nursing care facility in Birmingham, Alabama. The facility is laid out in two wings, with two nursing stations.

An administrator manages and directs operations at the facility. The nursing department is headed by a director of nursing (DON). The DON, an assistant director of nursing (ADON), and a staff development coordinator (SDC) report to the administrator.[3] There are also 2 or 3 supervisory registered nurses (RNs),[4] about 20 LPNs, and 60–70 nurses aides[5] in the nursing department.

The facility operates 7 days a week, 24 hours a day, on three shifts. The weekday shifts and staffing are as follows: the day shift, 7 a.m. to 3 p.m., is staffed by 5 LPNs and 20 nurses aides; the night shift, 3 p.m. to 11 p.m., staffed by 3 LPNs and 12 nurses aides; and the late night shift, 11 p.m. to 7 a.m., staffed by 2 LPNs and 6 nurses aides. There is also one RN on duty from 8 a.m. to 4:30 p.m. on weekdays. Either the DON or the ADON[6] are on duty on weekdays, from 7 a.m. to 7 p.m.[7] The SDC works weekdays from 8 a.m. to 4:30 p.m.

The weekend staffing varies from weekday staffing in several respects. The DON, ADON, and SDC are not on duty. The weekend RN is on duty only from 7 a.m. to 7 p.m. The LPNs work modified shifts: three work the day shift; four work from 3 to 7 p.m.; three work from 7 to 11 p.m.; and two LPNs work the late night shift. The nurses aides are scheduled for 12-hour shifts, with 20 nurses aides working from 7 a.m. to 7 p.m., and 12 on duty from 7 p.m. to 7 a.m.

II.

The Petitioner seeks to represent a unit of all LPNs employed at the Employer's Birmingham facility. The Employer contends that the LPNs do not constitute an appropriate unit because they are statutory supervisors. The Regional Director found, contrary to the Employer's contentions, that the LPNs are not supervisors. He reasoned, inter alia, that they do not effectively recommend promotions, raises, discipline, or retention of employment, and that their direction of nurses aides' work is routine and primarily concerned with patient care. The Employer raises two issues in its request for review. First, it contends that the Regional Director erroneously determined that the LPNs do not exercise the ''independent judgement'' required by the statute in regard to any of the supervisory indicia. Next, it contends that to the extent that the Board's decision in *Waverly-Cedar Falls Health Care*, 297 NLRB 390 (1989),[8] is controlling, there are compelling reasons for its reconsideration.

Our review of the facts and the precedent, as set forth below, does not persuade us that the Employer's LPNs are statutory supervisors.[9] Thus, we affirm the

[1] The United Steelworkers of America initially petitioned for an election in the unit, and the United Food and Commercial Workers, Local 1657, cross-petitioned. The Steelworkers subsequently withdrew from the proceeding.

[2] The Employer also contends that two LPNs, Marsha Shepard and Pat Bennick, are casual/as-needed employees who are ineligible to vote and should be excluded from the unit. The Regional Director found that these two LPNs have the option of working, when requested by the Employer's staff development coordinator, to cover for vacationing regular LPNs, and may become regular LPNs if a vacancy occurs. The record does not show the number of hours these two employees actually worked. The Regional Director ruled that Shepard and Bennick be allowed to vote subject to challenge. There was no request for review of this ruling.

[3] The parties stipulated that the administrator and DON are supervisors. The Regional Director found that the ADON and SDC are also statutory supervisors. There was no request for review of these findings.

[4] The supervisory status of the RNs is not in issue.

[5] The Petitioner and the Employer are currently parties to a collective-bargaining agreement covering a unit of the Employer's nurses aides, and its orderlies, dietary/kitchen, housekeeping, laundry, and maintenance employees at the Birmingham facility.

[6] The DON and ADON are RNs.

[7] The Employer contends that the record does not support the Regional Director's finding that either the DON or ADON are on call at all times. On at least one occasion during a night shift or late night shift an LPN telephoned the DON at home concerning a disciplinary incident. It is unclear, however, whether the DON and ADON are ''on call'' as part of their duties or whether the LPN made a personal decision to call.

[8] The unit certification in *Waverly* was subsequently affirmed. See *Waverly-Cedar Falls Health Care*, 298 NLRB 997 (1990), enfd. 933 F.2d 626 (8th Cir. 1991).

[9] The Employer asserts that its LPNs have supervisory authority. It admits, however, that at least to some extent LPNs have not exercised that authority. DON Virginia Getz, who had assumed her position about 9 weeks prior to the hearing, testified that she had noticed that LPNs were shirking supervisory duties and began attempting to induce the LPNs to supervise the nurses aides

Continued

Regional Director's decision and remand the case to the Regional Director for further processing in accordance with this decision.

III.

The LPNs' responsibilities primarily involve direct patient care. They assist attending physicians and implement physicians' orders by, inter alia, administering medications and treatments. They complete paperwork and perform various nursing duties and procedures such as irrigations, overseeing intravenous processes, and monitoring vital signs. In addition, they participate with nurses aides in feeding, turning, bathing, and changing patients. The Employer has provided to all nursing staff a detailed series of nursing manuals which prescribe patient care procedures. The DON sometimes meets with LPNs as a group to discuss scheduling and work assignments, patient care, and discipline of nurses aides. Additionally, LPNs have attended Employer-sponsored training sessions at which there were presentations about leadership, communications skills, and employee counseling, evaluation, and disciplinary techniques.

LPNs do not have the authority to hire, interview, lay off, or recall employees. They may assign work to nurses aides under some circumstances. The SDC prepares a detailed monthly work schedule assigning LPNs and nurses aides to specific workdays, shifts, wings, and blocks of rooms in the facility. LPNs can adjust the daily work schedule to meet exigencies, however, by transferring nurses aides to different work areas, requesting nurses aides to work beyond the end of their shifts, and requesting off-duty nurses aides to report for work.[10] In this regard, DON Virginia Getz testified that LPNs can authorize overtime if necessary. There was no evidence, however, of specific instances when an LPN actually had authorized overtime pay. On the other hand, the record indicates that LPNs, on their own authority, have released nurses aides from work. In one case an LPN permitted a nurses aide to leave early at the end of a shift; and in another case, an LPN authorized a nurses aide to leave the facility temporarily midshift to take care of a family emergency.

LPNs do not have exclusive authority or responsibility for daily staffing adjustments. Testimony regarding the extent to which LPNs are responsible for obtaining replacement workers for absentees and adjusting daily work schedules and work assignments revealed that some LPNs, the RNs, and the SDC all have performed those functions. Administrator Betty Thornburg testified that LPNs have the authority to make these daily staffing adjustments, but she admitted that the SDC does so ''as a convenience'' when she is on duty. Replacements must be obtained from the Employer's authorized call-in list but may be selected at random from that list. LPN Cassandra Bush testified that she has not obtained replacements for absentees and that she routinely refers call-ins and replacement needs to the LPNs in charge of the larger wings of the facility or to the SDC or RNs, if they are available. Although their job description requires LPNs to ''ensure proper staffing by calling in replacement personnel . . . and by transferring and reassigning nurses aides for proper coverage,'' there is no evidence Bush has been disciplined for her failure to do so or otherwise instructed to handle staffing matters herself. In contrast, LPN Deborah Short testified she has reassigned nurses aides to adjust for short staffing. According to Bush's uncontradicted testimony, LPNs assign nurses aides to designated breaktimes by entering their names on a preprinted break schedule form. DON Getz testified that when circumstances necessitate, LPNs can call nurses aides back from breaks or reschedule them.

LPNs play a role in the Employer's time-and-attendance process. They have on occasion initialed nurses aides' timecards and can verify attendance when nurses aides neglect to punch the timeclock. According to DON Getz, however, the Employer's policy is that the DON is responsible for verifying timecards and, in her absence, the ADON.

LPNs have participated in the Employer's disciplinary system by issuing warnings and, in cases of flagrant violations, by temporarily suspending nurses aides. There is evidence, however, that LPNs generally have deferred disciplinary matters to the DON, ADON, SDC, or the RNs instead of handling them personally.

Elements of the disciplinary system are set out in a manual which is available to LPNs. The manual defines offenses by degree of seriousness—category I and II offenses—and governs the appropriate level of discipline for each category. Category I offenses are flagrant violations which result in discharge. Category II offenses are lesser misconduct which can result in employee counseling, oral or written warnings, suspension, and discharge. Both category I and II offenses are recorded on ''employee memorandum'' forms, which become part of an employee's personnel file. An accumulation of three or more category II employee memoranda within 12 months can result in discharge.

The record contains several category I employee memoranda prepared initially by LPNs. In at least one instance, an LPN temporarily suspended a nurses aide

more actively. Nonetheless, the Employer apparently would have us find as a matter of law, based on its mere assertions that LPNs have supervisory authority, that the LPNs are supervisors. Although the Employer correctly points out that it is the possession of supervisory power rather than its exercise that determines supervisory status, the Employer is not absolved, in the first instance, of establishing that LPNs actually possess supervisory authority. Thus, we examine the evidence in light of the 2(11) criteria to determine whether LPNs employed by this Employer possess sufficient authority to warrant a finding they are statutory supervisors.

[10] There is no evidence LPNs can compel or ever have compelled nurses aides to work overtime or on scheduled days off.

without pay for refusing an assignment, a category I offense. In that case the administrator made the final decision to discharge. In other cases, the administrator either overruled an LPN's discharge recommendation or downgraded the level of offense determined by the LPN. Other category I employee memoranda were initiated by personnel other than LPNs. For example, one was prepared by the ''DNS'' (identified as director of nursing services). An RN made a subsequent notation on one employee memorandum that she—not the initiating LPN—had discharged the employee.

Also in the record are a number of category II employee memoranda prepared by a DON, an ADON, RNs,[11] and LPNs. At the top of the employee memorandum form there is a section captioned ''Type of Action Taken'' with blocks to be checked to indicate the appropriate level of discipline—oral warning, written warning, suspension/number of days, and discharge. Under the Employer's progressive system, it would be necessary to determine from the personnel files an employee's disciplinary history to determine the appropriate discipline. The evidence does not clearly establish who is responsible for making that determination. LPNs do not have access to employee personnel files where prior employee memoranda are maintained. DON Getz testified that an LPN's recommendation to terminate a nurses aide could effectively result in termination. There is no evidence, however, that any nurses aide actually has been suspended or terminated as a result of accumulated category II employee memoranda.

Employee memorandum forms also contain a section for recommending corrective action. On occasion LPNs have completed this section. However, on some employee memoranda prepared initially by LPNs, the type-of-action section or corrective action recommendation is in different colored ink or different handwriting from the rest of the writeup. Administrator Thornburg acknowledged, but could not explain, these circumstances.

LPNs perform written evaluations of nurses aides' work; however, they do not recommend promotions, raises, awards, or retention of employment. Getz testified that LPNs are expected to initiate corrective action, if necessary, when they evaluate nurses aides. LPN Cassandra Bush testified that she forwarded evaluation forms to the DON without recommending further action. LPN Deborah Short testified she recommended corrective action and counseled employees on work performance. There was no evidence that any employee's job status was actually affected by an LPN's evaluation.

[11] The Employer's administrator, Betty Thornburg, identified some of the officials who signed employee memoranda as RNs. It is unclear whether those officials were operating under an RN job description or encumbered other jobs traditionally held by RNs, such as DON, ADON, or SDC, or whether, as sometimes happens, the RNs were working in positions rated for LPNs.

The parties' collective-bargaining agreement covering nurses aides includes a grievance-arbitration provision which applies to disciplinary actions. The first, informal, step permits a nurses aide (with or without a shop steward) to present a grievance to the immediate supervisor before invoking the formal, three-step procedure. DON Getz testified that LPNs have the authority to handle a nurses aides' grievance, although she is unaware of any instances of an LPN doing so. As a practical matter, according to Getz, LPNs usually contact the SDC when presented with a grievance. The Petitioner introduced into evidence 16 employee memoranda constituting all such documents in its possession which were issued to nurses aides during approximately 3 years prior to the hearing and which resulted in written grievances. Elaise Fox, the Petitioner's business agent who has represented employees in the nurses aides unit at the Employer's Birmingham facility since about late 1987, testified without contradiction that all of these employee memoranda were written or prepared by the DON or ADON, not by LPNs. Fox also testified that she processes grievances only with the DON or the administrator, that she ''avoids'' dealing with the ADON. According to Fox, participation by LPNs in the formal grievance process is limited to attesting to what an LPN has recorded on an employee memorandum.

IV.

To establish that an individual is a supervisor record evidence must affirmatively show that one or more of the statutory criteria have been met. *Ohio Masonic Home*, 295 NLRB 390, 392 (1989), and cases cited there. We find here that the record as a whole fails to establish that the LPNs possess supervisory authority.

It is undisputed that the LPNs have no authority to hire, interview, lay off, or recall employees. Neither do they effectively recommend such action. The Employer asserts, however, that the LPNs are supervisors based on their responsibilities in assigning and directing work and transferring employees, granting overtime, evaluating and disciplining employees, adjusting employee grievances, and their being ''in charge'' during the late shifts and on weekends.

A. *Assigning and Directing Work, Transferring Employees, and Granting Overtime*

LPNs' assignment of work is routine and primarily concerned with patient care. Similarly, we find that the ability of LPNs to transfer nurses aides to different assignments and to grant overtime is limited to considerations of routine patient care.

The SDC is responsible in the first instance for assigning all nursing department personnel, not only to shifts, but also to wings and blocks of rooms. Further, the SDC is generally responsible for adjustments to the

monthly work schedule. LPNs have authority to adjust nurses aides' work schedules only in the event of exigencies such as employee absenteeism or personal conflicts between nurses aides which affect patient care.

Although LPNs can call in replacements, request nurses aides to work overtime, or transfer nurses aides to different wings of the facility if circumstances require, we cannot find under the circumstances here that in doing so they exercise independent judgment. *Waverly-Cedar Falls Health Care*, supra at 393. First, they refer decisions of this kind to the SDC when she is at work, or even to an RN who is the senior employee on duty. Further, LPNs must follow the Employer's policy to obtain replacements from its list of preapproved employees. We find that only routine judgment is required to select replacements at random from a list of candidates the Employer has already judged competent to serve as replacement employees. In addition, LPNs can request but not compel—that is, not actually direct or assign—nurses aides to work overtime. Finally, transfers by LPNs of nurses aides to meet exigencies are directly motivated by the day-to-day requirements of patient care rather than the business interests of the Employer, which may or may not coincide. The evidence does not suggest that LPNs are authorized to transfer employees permanently to other assignments within the facility.

That on two occasions LPNs made ad hoc decisions to permit nurses aides to leave work during assigned work hours does not change the result here. See *Waverly-Cedar Falls Health Care*, supra. In both instances, releasing the nurses aides from work was consistent with the dictates of patient care. In one case, a nurses aide was permitted to leave early when she had completed all assigned duties and was no longer needed. In the other case, the nurses aide was allowed to take care of a family emergency so she could return and continue with her duties. There is no evidence that LPNs have general authority to grant time off.

We further find that assignment and direction of nurses aides' work by LPNs is routine and primarily in connection with patient care and does not establish that the LPNs are supervisors. *Beverly Manor Convalescent Center*, 275 NLRB 943, 944–947 (1985). They follow physicians' orders to administer medication and treatments; perform various standard nursing procedures pursuant to the Employer's nursing manuals; and assist nurses aides in routine activities to ensure that the nutritional, personal comfort, and safety needs of patients are met. The fact that LPNs also request nurses aides to reschedule or postpone breaks does not align the LPNs with the Employer. These requests are routine, made to ensure adequate staff is available to care for patients. *Waverly-Cedar Falls Health Care*, supra; *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

For the reasons given, we find that LPNs' limited responsibilities in regard to assignment and direction of work, transferring employees, and granting overtime do not support a finding that LPNs possess supervisory status.

B. *Evaluation of Employees*

LPNs assess the job performance of nurses aides; however, their responsibilities do not include recommending promotions, raises, awards, or retention of employment. One LPN has initiated corrective action in connection with an unsatisfactory element of a nurses aide's evaluation, but another LPN has not. This is not necessarily inconsistent with testimony by DON Getz that LPNs are expected to initiate corrective action *if necessary*. In any event, there is no evidence that any nurses aide's job status was ever affected by an LPN's evaluation. The authority simply to evaluate employees without more is insufficient to establish supervisory status. *Passavant Health Center*, 284 NLRB 887, 891 (1987), and cases cited there. Thus, this case is distinguishable from *Wedgewood Health Care*, 267 NLRB 525 (1983), where nurses were found to be supervisors in part because their poor evaluations of employees resulted in adverse personnel actions.

C. *Discipline of Employees*

The LPNs play a role in the Employer's disciplinary system pursuant to policies set out in its disciplinary handbook. For the following reasons, however, we find that the evidence does not establish that the LPNs exercise independent judgment sufficient to support a finding of supervisory status.

The Employer's LPNs issue oral and written warnings by recording factual accounts of the alleged misconduct on employee memorandum forms that become part of the employees' personnel files. The record does not establish that these employee memoranda automatically lead to any further discipline or adverse action against an employee. There is no evidence that any nurses aide has ever been suspended or terminated as a result of accumulated employee memoranda. Further, the record is contradictory as to who is responsible for finally determining the appropriate level of discipline based on a nurses aide's disciplinary history. In our view, the LPNs' lack of access to personnel files containing prior disciplinary history tends to show that LPNs generally are not in a position to determine the appropriate level of discipline.

We find that the LPNs perform only a reportorial function when they issue employee memoranda. Passavant Health Center, supra at 889. In any event, the LPNs' concern in the disciplinary process does not extend beyond the realm of patient care. Compare

Wedgewood Health Care, supra; *Wright Memorial Hospital*, 255 NLRB 1319 (1981). For reprimands or warnings to reflect supervisory authority, the warnings must not only initiate or be considered in determining future disciplinary action, but also they must be a basis of later personnel action without independent investigation or review by the Employer. *Passavant Health Center*, supra at 890. When written reports and warnings do not, without more, affect job tenure or status, they do not establish statutory supervisory authority. Id. at 889.

Discharge is mandated by the Employer in cases involving flagrant violations of the Employer's disciplinary policy. The Employer's published disciplinary policy directs that the employee committing the offense be suspended without pay. The policy further provides that ''[T]he department head/supervisor and the administrator will then investigate the facts of the events leading up to the suspension, preparing the documentation as necessary . . . [T]he administrator and the department head collectively will make the final decision, both signing the termination action form, if discharge is decided upon.'' According to DON Virginia Getz, the administrator makes the final decision in any case whether discharge is warranted. Further, the administrator can overrule a disciplinary recommendation or downgrade the seriousness of the offense.

Authority that is limited to a response to flagrant violations of ''common working conditions'' is insufficient by itself to establish supervisory status. *Phelps Community Medical Center*, supra. Also, suspensions in connection with patient care that are reviewed at a higher level do not establish supervisory status. Ibid. We cannot find that the Employer's LPNs exercise independent judgment in disciplining employees or that they can affect employee job status.[12]

D. *Grievance Adjustment*

The Employer contends LPNs adjust nurses aides' grievances, exercising independent judgment. LPNs have responded to informal complaints about personality conflicts among nurses aides and unequal workload distribution by reassigning nurses aides. The reassignments, however, were routine and were motivated by patient care concerns. The resolution of minor employee complaints regarding workload, lunch and break schedule conflicts, or personality conflicts is insufficient to establish supervisory status. *Ohio Masonic Home*, 295 NLRB 390 (1989).

Formal grievances are handled, in the first instance, by the SDC, according to DON Getz. Formal grievance meetings are between the union business agent and the DON or the administrator. LPN participation in grievance meetings is limited to attesting to information recorded by LPNs on employee memoranda.

We find that LPNs do not resolve employee grievances through the exercise of independent judgment.

E. *Other Factors*

When none of the factors listed in Section 2(11) indicate supervisory status, the Board has also examined certain secondary factors. *Phelps Community Medical Center*, supra, and cases cited there. One is the designation of the employee in question. Here their job description designates LPNs as ''LPN/Supervisor'' and provides, inter alia, that they are [r]esponsible for providing quality care for residents through the supervision of assigned personnel . . . .'' We have already found the evidence insufficient to support a finding that LPNs exercise independent judgment with regard to the primary, statutory supervisory factors. Further, there is no evidence that LPNs attend general management or supervisory meetings. They have attended meetings and training sessions where they discussed responsibilities and skills required to ensure patient care. Neither title nor newly redefined authority is sufficient to establish supervisory status if they are illusory. *Pine Manor Nursing Home*, 238 NLRB 1654, 1655 (1978). We find that this factor does not support a finding of supervisory status.

Finally, the Employer asserts that the LPNs are supervisors because LPNs are ''in charge'' of the facility on the night and late night shifts during the week and the 7 p.m. to 7 a.m. shift on weekends. Thus, it argues that unless LPNs are supervisors the facility would be without supervision 76 percent of the time. We do not find this argument persuasive. The record does not clearly establish that neither the DON nor ADON are on call, available for consultation, during these shifts. Additionally, nursing department handbooks containing detailed procedures and instructions and other policy manuals are available at all times. In these circumstances, we do not find that LPNs are required to exercise independent judgment. *Waverly-Cedar Falls Health Care*, supra.

Based on the foregoing, we agree with the Regional Director that the LPNs do not exercise independent judgment in regard to any of the factors establishing supervisory status under Section 2(11) of the Act, and that the LPNs are not supervisors under the Act.

ORDER

The Regional Director's decision is affirmed and the case is remanded to him for further appropriate action.

[12] Contrary to Member Oviatt's dissenting opinion, we view the Employer's published disciplinary policy as a substantial limitation on the judgment required of LPNs. The policy sets out a detailed classification of offenses by type and degree of seriousness and prescribes the appropriate disciplinary action. Thus, the disciplinary role of LPNs is to follow the Employer's standard procedures and does not require the exercise of independent judgment.

MEMBER OVIATT, dissenting.

For the following reasons, I find that licensed practical nurses (LPNs) employed by the Employer at its Birmingham, Alabama facility are supervisors within the meaning of Section 2(11) of the Act. In my view, the majority too readily discounts the degree of independent judgment exercised by LPNs in fulfilling their responsibilities under the Employer's progressive disciplinary policy. Accordingly, I would reverse the Regional Director and dismiss the petition.

LPNs can temporarily suspend nurses aides without pay for any one of 22 category I disciplinary violations. Similarly, they can issue employee disciplinary memoranda in response to 23 category II[1] violations. An examination of the Employer's categories of punishable conduct shows that LPNs necessarily exercise independent judgment in order to determine the appropriate offense. Because the prescribed discipline is linked to the offense, that effectively can determine the extent of discipline.

Distinctions between category I and category II conduct are often simply a matter of degree. Compare, for example, category I offense No. 5, ''theft from the facility, residents, or other employees,'' with category II offense No. 18, ''Conversion of company or resident's property to one's own use.'' Category I offense No. 20, ''flagrant violation of safety rules,'' is strikingly similar to category II offense No. 6, ''failure to follow safety rules''; and category I offense No. 7, ''verbal or physical threats against the facility, resident, visitor or other employee,'' is subsumed under category II offense No. 7, ''discourtesy to the residents, families or fellow employees.'' Further, the Employer's disciplinary policy provides that ''[T]he philosophy behind progressive discipline is that it gives the employee an opportunity to take corrective action, inorder [sic] to retain an affiliation with the facility.'' It is plain that the Employer intends that its disciplinarians—here, the LPNs—will categorize each violation by balancing the severity of the offending conduct with the effect sought to be achieved by disciplinary action. That balancing process is the essence of independent judgment.

Moreover, the disciplinary authority exercised by LPNs extends beyond the realm of immediate patient care to enforcement of the Employer's personnel policies. LPNs may impose discipline on nurses aides for, inter alia, absenteeism and falsification of timecards, failure to maintain confidentiality of records, violations of safety rules, unauthorized use of bulletin boards, use of improper language, and inappropriate dress. Disciplinary authority which extends to the enforcement of an employer's major personnel policies and is not merely incidental to patient care is sufficient to warrant a finding of supervisory status. *Wedgewood Health Care*, 267 NLRB 525 (1983); *Avon Convalescent Center*, 200 NLRB 702 (1972).

Contrary to my colleagues, I further find that rather than serving a mere reportorial function, the disciplinary notices generated by LPNs set in motion a process which has both immediate and long-term effects on an employee's job status. The notices are adverse actions in themselves. Also, they are intermediate steps to more severe forms of discipline. Section 2(11) requires a finding of supervisory status even where an individual has only the authority ''effectively to recommend'' discipline. The LPNs here have, at least, that authority.

Several other facts buttress my findings. First, the LPNs' job description encompasses the daily supervision of nurses aides. In addition, on their own authority LPNs have released nurses aides from work early or during a shift. The Employer's disciplinary policy provides that it is a category II offense to ''stop work before time specified for such purposes,'' or to ''leave work area without permission of the supervisor.'' Thus, in releasing nurses aides from work, LPNs exercise independent judgment to exempt employees from the disciplinary rules. Further, LPNs can call off-duty nurses aides to work and can authorize nurses aides to continue working beyond the end of a shift. Both of these actions entail authorizing overtime pay. Finally, I note that if LPNs are not supervisors, nurses aides at the Employer's facility would be without onsite supervision during significant portions of the workweek. *Beacon Light Nursing Home*, 825 F.2d 1076 (6th Cir. 1987), enf. denied 277 NLRB No. 109 (1986) (not reported in Board volumes).

I am concerned that the Board's present position does not sufficiently recognize the unique circumstances present in smaller-scale, long-term health care facilities that do not necessarily employ people who are clear-cut supervisors within a niggling definition. These employees nonetheless may stand in the shoes of the employer for extended periods, during which, they are the employer's presence on the job. This case illustrates my concern. Whether or not these LPNs appear on the Employer's formal organization chart as a discrete level of supervision they, nonetheless, are the true supervisors of the work force. They are responsible for the quality of the patient care and the manner in which it is provided for significant portions of the workweek. We should shun any tendency to decide supervisory status based on isolated factors. Instead, the purposes of the Act are better served by an examination of alleged supervisory responsibilities in the context of their relationship to the whole organization.

[1] Category II offense No. 23, by its terms, requires that an independent judgment be made. It provides for discipline in ''other extreme instances of improper conduct not specifically listed.''

I find that the LPNs exercise substantial independent judgment particularly in their role in the Employer's disciplinary scheme. Further, I find that LPNs are the Employer's presence on the job for substantial periods of time. Accordingly, I conclude that they are statutory supervisors.