

Associated Hospitals of the East Bay, Employer-Petitioner and California Nurses Association. Case 32-UC-4

September 1, 1978

DECISION ON REVIEW

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On February 23, 1978, the Acting Regional Director for Region 32 issued a Decision and Order in which he clarified a unit of nurses. He found that none of Alta Bates Hospital nursing care coordinators (NCC's), a classification equivalent to that of a head nurse, were statutory supervisors.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review of this finding which was granted by telegraphic order dated April 4, 1978.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the Union's brief on review, with respect to the issue under review and makes the following findings:

Associated Hospitals of East Bay is a multiemployer bargaining group consisting of certain hospitals located in Berkeley and Oakland, California. For approximately the last 20 years, Associated Hospitals and the California Nurses Association have been parties to a series of collective-bargaining agreements covering a unit of nurses, including head nurses and assistant head nurses.

The Acting Regional Director implicitly found, and the record establishes, that at Alta Bates Hospital NCC's interviewed prospective employees and made recommendations about their hire. Nevertheless, the Acting Regional Director did not give this controlling weight, apparently because the coordinator of administrative nursing (CAN) overruled approximately "six out of ninety" recommendations made by NCC's in the last year. Moreover, he found that the employment functions of NCC's were not significantly different from those of charge nurses who were unit employees. Accordingly, the Acting Regional Director determined that Alta Bates Hospital NCC's were unit employees. We disagree.

¹ The Acting Regional Director also found that most of the head nurses at other hospitals in the multiemployer bargaining group were statutory supervisors. The Board previously denied the Union's request for review of these findings.

The CAN is in charge of hiring nurses for Alta Bates Hospital. However, NCC's conduct interviews and make effective recommendations concerning the hiring of nurses for specific vacancies on their respective units. The CAN has the authority to veto a recommendation made by an NCC. However, that veto may be appealed by the NCC, and, in fact, the CAN has followed approximately 90 percent of the recommendations made by NCC's.² In our opinion this constitutes effective recommendation about hiring by the NCC's.

There are also significant distinctions between the employment functions of NCC's and charge nurses. NCC's, rather than charge nurses, are primarily responsible for evaluating other nurses. NCC's are assigned to the day shift and evaluate their fellow nurses on that shift. They also evaluate the nurses who work on the night shift by occasionally assigning themselves to that shift in order to observe the performance of night-shift nurses. The NCC's supplement this observation by consulting staff people who work alongside the particular night-shift nurses. Charge nurses often evaluate nurses who work on the night shift. However, NCC's play a significant role in designating charge nurses, in assisting charge nurses in their evaluation duties, and in delegating this responsibility to those charge nurses who have demonstrated proficiency.

Moreover, NCC's, but not charge nurses, attend certain management meetings: the weekly meetings of "nursing resource group" personnel and the monthly meetings of department heads. NCC's also take "project days" on which they interview prospective employees, evaluate other nurses, consult hospital administrators, or attend specific medical committee meetings.

Conclusion

Upon the entire record and for the aforementioned reasons, we find that Alta Bates Hospital NCC's are supervisors as defined in the Act. Accordingly, they are excluded from the unit.

MEMBER TRUESDALE, dissenting:

Unlike my colleagues, I would affirm the Acting Regional Director's determination that the nursing care coordinators (NCC's) at Alta Bates Hospital are not supervisors and thus would not exclude them from the unit in which they historically have been included.

The majority relies primarily on the fact that

² Compare *Valley Hospital, Ltd.*, 220 NLRB 1339, 1341-42 (1975); *Newton-Wellesley Hospital*, 219 NLRB 699, 701 (1975); *The Trustees of Noble Hospital*, 218 NLRB 1441, 1443-44 (1975); *Wing Memorial Hospital Association*, 217 NLRB 1015, 1016 (1975).

NCC's interview applicants and on their conclusion that the recommendations on hiring NCC's make to the coordinator of administrative nursing (CAN) are "effective." However, the record does not support the determination that the authority of NCC's in this regard is supervisory in nature. Thus, Stephanie Walsh, the current CAN, testified with respect to such recommendations:

Q. And are these recommendations generally followed?

A. [By Ms. Walsh] I consider their input very valuable, and in the majority of instances, I would say that if the NCC felt positive about the person that I would certainly take that into consideration.

I think the distinction has to be made—if there is a consensus among the both of us, and the person is a good candidate for hire, I guess you could say the NCC is recommending, but if there is a difference, I make that decision.

Thus, it is clear that the CAN makes an independent decision and retains the ultimate authority to hire.

Further, the very manner in which applicants are screened suggests that when interviewing, the NCC's merely are acting in a routine capacity and not a supervisory one. The CAN screens all applicants and sets up appointments for interviews. For some categories of nurses, the CAN does all the interviewing. For permanent positions, the CAN directs the screened applicants to an NCC whose unit has a specific vacancy.³ However, before NCC's are permitted to interview applicants, the CAN works closely with the NCC until the CAN determines that the NCC has developed adequate interviewing skills. Also, NCC's use a standard interview form during the interview. Their notes, along with the application, are then sent back to the CAN, who makes the final hiring determination. Thus, it can be seen that the "recommendations" of the NCC's pertain to only several individuals at best, all of whom have been culled carefully by the CAN from all applicants, and that only if an individual is acceptable to the CAN will that individual be hired.⁴ Indeed, the CAN has re-

³ In some instances, only one applicant is sent to be interviewed by the NCC; in some cases, the CAN may arrange as many as four candidates to be interviewed.

jected fully 10 percent of the NCC's recommendations. The significance of this fact becomes greater when it is recalled that these rejections come after the CAN has previously screened all candidates and sent only persons considered acceptable for hire in the first instance. Moreover, there have been occasions when charge nurses or staff nurses performed interviewing, especially when a new NCC was being hired. In these circumstances the actions of the NCC's do not indicate that they retain authority contemplated in the statutory definition of a supervisor but rather reflect their professional knowledge and experience in passing on the qualifications of a less experienced person.

Finally, comparison of the tasks of NCC's with those of charge nurses reveals similarity of duties and responsibilities between the two classifications. The majority concedes that charge nurses perform evaluations of other nurses. Indeed, when charge nurses are familiar with employees, evaluation duties may be delegated to the charge nurse. Further, the NCC's work with the charge nurses on such evaluations until the charge nurses are experienced to handle the responsibility, much like the CAN's relationship with the NCC's regarding interviews. Charge nurses, like NCC's, can approve overtime, and both are consulted on scheduling. Moreover, although NCC's attend meetings which charge nurses do not, there is nothing in the record which shows that these meetings are concerned with supervisory issues.⁵

In sum, I cannot agree with my colleagues' determination on the facts of this case. When it is considered that the NCC's also perform direct patient care⁶ and perform other nursing functions during much of their remaining time, it seems an inescapable conclusion that the NCC's are not supervisors.⁷ I therefore respectfully dissent.

⁴ The majority alludes to the fact that an NCC can appeal a veto by the CAN of the NCC's recommendation. However, the CAN testified that to her knowledge no such appeals had ever been taken and, in any event, there had been no reversals of her decisions.

⁵ See, e.g., *The Trustees of Noble Hospital*, 218 NLRB 1441 (1975); *Brattleboro Memorial Hospital*, 226 NLRB 1036 (1976). In both of these cases, it was deemed relevant in deciding that head nurses were not supervisors, that the head nurses performed work similar to charge nurses, who, as here, were not asserted to be supervisors.

⁶ There was testimony in the record that NCC's may spend as much as 50 percent of their time engaged in direct patient care.

⁷ *Valley Hospital, Ltd.*, 220 NLRB 1339, 1340 (1975); *St. Rose de Lima Hospital, Inc.*, 223 NLRB 1511 (1976); see S. Rept. 93-766, 93d Cong., 2d sess. 6 (April 2, 1974).