

**McAlester Hospital Foundation, Inc., d/b/a McAlester General Hospital, Employer-Petitioner and Oklahoma State Nurses Association. Case 16-UC-73**

November 17, 1977

**DECISION ON REVIEW AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND MURPHY

On August 31, 1976, the Regional Director for Region 16 issued a Decision and Clarification of Bargaining Unit in this proceeding. In it, he excluded certain registered nurses formerly included within the following stipulated unit, certified on July 23, 1975:

All regular full-time and part-time registered nurses, including those classified as "supervisors" who are employed at the employer's two hospital facilities . . . [but excluding the] Director of Nursing, Assistant and Associate Directors of Nursing . . . and supervisors within the meaning of the Act.

The former included<sup>1</sup> registered nurses, excluded in the Regional Director's clarification, are classified as charge nurse, renal dialysis supervisor, and central services supervisor.<sup>2</sup>

On November 19, 1976, we granted<sup>3</sup> the Union's request for review of those exclusions.

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.

<sup>1</sup> Although the Petitioner, at various times during the hearing, suggested that the basis for its request for clarification stemmed from an inherent ambiguity in the unit description's simultaneous inclusion and exclusion of "supervisors" (as opposed to other occasions during the hearing in which the basis for clarification was assertedly to be found in a change in function of various nurse classifications), we believe the stipulated unit becomes relatively free from ambiguity once a limited history of the involved classifications is presented. To begin with, the stipulated unit excludes "supervisors *within the meaning of the Act*." The clear and only implication in the further inclusion of "those classified as 'supervisors'" is that, at the time of the stipulation, certain registered nurses held classifications which utilized the word "supervisor" in their nomenclature (e.g., "unit supervisor"), but the utilization of that word did not mean such nurses were supervisors "within the meaning of the Act" and, as the fact of stipulation would seem to evince, the parties agreed such nurses were not. It is true, of course, that if such nurses were, indeed, also statutory supervisors, no obstacles in their subsequent clarification out of the unit could, by virtue of jurisdictional necessity, be presented. *Peerless Publications, Inc.*, 190 NLRB 658 (1971), the contrary stipulation notwithstanding. But the fact remains that, at the time of the stipulation, the Petitioner employed nurses in the classification of "unit supervisor" (now charge nurse) and "house supervisor" (now assistant director of nursing-evening night) which would explain a seeming inconsistency between a simultaneous inclusion and exclusion of "supervisors," an explanation further supported by the failure to include those classifications in the specific exclusions set forth in the unit description. We therefore conclude that the charge nurses involved here (formerly unit supervisors), as well as the renal dialysis and central service supervisors, were included, by agreement, in the former unit. That we do

The Board has reviewed the entire record in this proceeding and concludes that the Regional Director erred.

The nursing department is headed by an assistant administrator-director of nursing. An associate director reports to the director of nursing and four house supervisors, or assistant directors, report to the associate director. There are eight<sup>4</sup> additional assistant director slots for the specialty areas of the hospitals (i.e., one for obstetrics, one for intensive care, etc.), one of which was unfilled at the time of the hearing. Although the organizational chart of the nursing department further indicates that a charge nurse is assigned to each of the eight specialty areas, charge nurses, at the time of hearing, were assigned only to two such areas, medical-surgical (east) and medical-surgical (west). There are two charge nurses in the former, four in the latter. All work the day shift, the same shift worked by the assistant directors for those areas. There are approximately 28 registered staff nurses within the unit. Thus, even assuming the vacant, and admittedly supervisory, assistant director position remains unfilled and charge nurses have not been assigned to the remaining six specialty areas allotted a charge nurse, a finding that the disputed classifications of charge nurse, renal dialysis supervisor, and central services supervisor are held by statutory supervisors would result in the nursing department being composed of 28 unit employees and 21 statutory supervisors.<sup>5</sup> We

means that to exclude them now the Petitioner must demonstrate they were, in fact, statutory supervisors at the time of the stipulation or that, since the stipulation, their functions have changed to a degree justifying their exclusion now. That the Petitioner, as we find, agreed they were not statutory supervisors at the time of the stipulation, although by no means controlling, *Peerless, supra*, is considerable in assessing any conflict that may arise, as it has in this proceeding, out of markedly contrasting testimony as to the duties and responsibilities of the nurses involved here.

<sup>2</sup> The Petitioner also sought the exclusion of additional nurses on supervisory or lack of community of interests grounds. The Union did not object to the contended supervisory exclusions and the Regional Director excluded those classifications. The Regional Director did not, however, exclude those nurses sought to be excluded on community of interests bases. No request for review of the latter finding has been filed by the Petitioner.

<sup>3</sup> Member Murphy dissented.

<sup>4</sup> All eight positions did not exist at the time of the certification, but the Union does not contest the Petitioner's request that these assistant directors be excluded. See fn. 1, *supra*.

<sup>5</sup> The director of nursing testified there were 48 regular full- and part-time registered nurses in the department. Her total apparently accounts for the vacancies in the assistant director slot and the charge nurse slots unfilled at the time of the hearing. Our total of 49 registered nurses is based on the assumption the central services supervisor position is filled. It does not appear on the organization chart but, given its contested status and that no one testified to a possible vacancy there as of the date of the hearing, the assumption is reasonable. In any event, the supervisory/employee ratio is not greatly affected by excluding the central services supervisor from the computation.

are inclined to accord such an unrealistic<sup>6</sup> ratio considerable weight.

The policy considerations at work in the exclusion of statutory supervisors exist predominantly within a unit structure, especially where, as here, the evidence irrefutably indicates that the nurses in the disputed categories spend the greater, by far,<sup>7</sup> percentage of their worktime in functions not colorably related to "supervision" in the interest of the Petitioner. *Adelphi University*, 195 NLRB 639, 643-644 (1972).

In terms of the actual day-to-day functions of the charge nurses,<sup>8</sup> there is a seeming testimonial conflict. Charge nurse Pitchlynn testified she effectively recommends the hiring and firing of individuals assigned to her station<sup>9</sup> and that she has disciplined employees for a variety of reasons, has the authority to authorize overtime, determines work schedules for her shift (within the contours of the 24-hour scheduling done by the assistant director over her), and grants employees time off. She also evaluates employees under a procedure which, it is argued, effectively controls the rate of pay of her subordinates. Her testimony is, for the most part, supported by that of Hospital Administrator Pozza and Director of Nursing Adams.

Three charge nurses testified on the Union's behalf. Charge nurse Snow testified that she has never exercised nor been told by any hospital official of an authority to fire, hire, transfer, adjust the grievance of, discipline, or authorize overtime for another employee. She has interviewed, on two occasions, applicants for nonunit employment, but did so at the express request of the director of nursing, who testified, at another point in the hearing, that all unit personnel are hired by the director. Upon conclusion of the interviews, Snow was asked by the director of nursing for her "impressions" of the applicants. On one of those occasions, her impressions were reduced to writing. As indicated earlier, Snow spends, on a "normal" workday, 100 percent of her time, in her estimation, on direct patient care activities. On cross-examination, she testified that she "frequently" has asked her immediate supervisor for additional

staffing, based on patient load assessments, and been denied the request and that she has never granted an employee time off without referring that employee to her supervisor, an assistant director of nursing. Charge nurse Sullivan testified similarly, but did indicate that she has, on rare occasions and without higher approval, let an employee leave work early "as far as going to a dentist, something like [that]," but also indicated no registered staff nurses work in her department. Viola Fain has worked for the Petitioner for 11 years, is listed on documentary evidence as a charge nurse, and yet did not know whether she was a "charge" nurse or not. Associate Administrator Rollins also testified that Fain was a charge nurse for "years" but would, shortly after the hearing, "assume the position of staff nurse."

For a number of reasons, we conclude such conflicts as outlined above are better resolved on the side of the Union and that the charge nurses are not statutory supervisors. Charge nurse job descriptions in evidence in no way reflect the description of their duties provided by the Petitioner's witnesses. These descriptions, about which the Petitioner's witness Pitchlynn stated "really the duties [in them] were the same then as they are now," expressly state that decisions "regarding hiring, retaining and paying employees" are made by the charge nurses' superior. Under a general heading of "Daily Job Duties—Management Work," there is no authorization for the charge nurses to exercise numerous other powers attributed to them by the Petitioner, such as the adjustment of grievances, the transfer of personnel, and disciplinary authority. Specifications for the job indicate that only 1 year's experience is required for the job. Under a heading denominated "Judgment and Complexity of Work," the "problems" confronted by charge nurses are "to be solved under general guides, some of which are complex and most of which are subject to check." Their work, it is stated, "involves some discretion to decide what to do, such as giving medications, calling physicians, etc." The only reference in the specifications to charge nurse responsibilities arguably meeting statu-

<sup>6</sup> See *Brattleboro Memorial Hospital, Inc.*, 226 NLRB 1036 (1976); *Newton-Wellesley Hospital*, 219 NLRB 699 (1975).

<sup>7</sup> The evidence on this point stands uncontroverted. Charge nurse Pitchlynn, the only charge nurse to testify on the Petitioner's behalf, stated that the majority of her immediate superior's working time was spent in direct patient care. Charge nurse Snow spends, in her estimation, almost 100 percent of her working time directly administering to patients.

<sup>8</sup> The testimony on the renal dialysis supervisor's functions is scant. She supervises "an outpatient department." Only one other employee, a nonunit LPN, works in the department. She has the "authority" to evaluate, and fire, the LPN, according to the director of nurses' "uh-huh" responses to leading questions. But no examples of the exercise of such or related authority are found on the record. She did not hire the LPN. She is hourly paid and punches a timeclock. Her rate of pay is higher than, but comparable to, most staff nurses' (\$5.59 an hour; several staff RNs are paid \$5.30 an hour). The Petitioner's contention, in the brief, that "her salary is considerably higher than the other subordinate nurses who report to her is, in this regard, plainly

misleading. There is only one "nurse" that "reports to her" and that individual is not a registered nurse. With regard to the central services supervisor, neither she, her immediate supervisor, nor the director of nurses testified on her duties. No other unit employee works, apparently, in her department. The personnel director testified that she has the authority to hire her nonunit subordinates but also testified that, in her tenure with the Petitioner, she has not actually hired anyone. Over one-third of the staff RNs receive higher pay than she does. The evidence on both the renal dialysis and central services supervisor is, in our judgment, insufficient to justify finding them statutory supervisors. See fn. 1, *supra*.

<sup>9</sup> She concluded elsewhere that initial hiring is done by her superiors. Her testimony makes it clear that her assessment of her authority with regard to "hiring" was based on her authority to recommend the retention of individuals hired on a probationary basis, which, it appears, most of her subordinates are; that is, she makes effective recommendations concerning the decision whether a probationary employee should be removed from that status.

tory criteria is the conclusional statement that the charge nurse "supervises a small group, generally 4-7 employees, assigns, checks and maintains flow of work. Decisions regarding hiring, retaining and paying employees are made by superiors." Apart from the clear conflict between such a statement and the testimony of the Petitioner's witnesses, particularly with regard to the authority of charge nurses to make decisions on "hiring," "retention," and "pay," the "supervisory" activities described flow naturally, as do others in the job descriptions outlined above, from the professional character of charge nurses' work and cannot be said to constitute the exercise of statutory supervisory authority in an employer's interest.

The pay scale of the charge nurses does not reflect the Petitioner's portrayal of their responsibilities either. One staff nurse is paid more than *any* charge nurse; three others are paid as much as the two highest paid charge nurses; seven staff nurses are paid more than one charge nurse and as much as three other charge nurses.

It is noteworthy also that, unlike charge nurses found in most Board cases involving their statutory status, the ones found here are not "in charge" of evening or night shifts, when the normal supervisory hierarchy is, typically, not working. These charge nurses work only the day shift, when the full supervisory hierarchy of McAlester's nursing department, with four exceptions,<sup>10</sup> is present. To adopt the Petitioner's portrayal of the charge nurses' duties would, as the record clearly reflects, amount to equating their duties, in most respects, with those of the assistant directors, and such an overlap of powers is sufficiently suspect to be considerable in evaluating the conflicting testimony given by the various witnesses.

Apparently, the most persuasive evidence, from the Regional Director's and the Petitioner's viewpoint, of the charge nurses status is their role in the evaluation of subordinate employees, by virtue of which, it is contended, the charge nurses exercise effective control over the pay of the subordinates. But here too, we are not persuaded. The evaluations are completed on a form which, under a variety of work performance headings, e.g., "attitude and cooperation," "performance of duties," etc., sets forth five statements attempting to describe the evaluated individual's performance. The charge nurse is supposed to pick one. Points are allotted the selections of the evaluator, but the evaluator does not know the number of points. That figure is computed by the personnel office. If the evaluated individual achieves a total of 50 points or more, he or she is awarded an

increase. In this sense, of course, the evaluator exercises some control over the evaluated employee's rate of pay, but we think it significant that whether or not the employee receives an increase is not directly the result of the evaluator's judgment.

The form provides a box wherein the evaluator is to indicate whether or not the evaluated employee is to receive the merit increase. The record indicates an example where, although the charge nurse recommended an increase, no increase was given because the point total did not reach 50.<sup>11</sup> It is not contested, in the absence of an example of it, that in the reverse case; namely, an employee not being recommended for the increase, the employee would nonetheless get the raise if the evaluator's selections resulted in a point total of 50 or more.

It is clear then that this evaluation technique vests the charge nurse with considerably less authority than appears at first glance. The charge nurse does not know the point values. He or she has no input on those values or, for that matter, on the wording of the assessments. He or she can recommend an increase and the increase can be denied. No increase can be recommended and an increase nonetheless given. In all, we consider the procedure, especially standing alongside the other factors we have described, unpersuasive.

For all the above reasons, we find the charge nurses and the central service and renal dialysis supervisors are included in the Union's bargaining unit and will clarify the unit accordingly.

## ORDER

It is hereby ordered that the existing certified unit of regular full-time and part-time registered nurses employed by McAlester Hospital Foundation, Inc., d/b/a McAlester General Hospital, and represented by the Oklahoma State Nurses Association, be clarified to read as follows:

All regular full-time and part-time registered nurses, including certified registered nurse anesthetists, educational coordination department registered nurses, charge nurses, central services supervisor and renal dialysis supervisor, employed at the Employer's two hospital facilities located at Seventh and Creek, and at West and Harrison Streets in McAlester Oklahoma, but excluding all other employees, educational coordination department supervisor, associate and assistant directors of nursing, the director of nursing, guards, watchmen, and supervisors as defined in the Act.

out, from the personnel office, that her selections did not enable the employee to receive the increase.

<sup>10</sup> The evening and night directors of nursing (two each shift).

<sup>11</sup> The charge nurse simply reevaluated the employee when she found

MEMBER MURPHY, dissenting:

Contrary to my colleagues, I would find the charge nurses and the renal dialysis supervisor to be supervisors within the meaning of Section 2(11) of the Act under the express facts in this case.

The charge nurses are responsible for the 8-hour operation of their area of the hospital. In carrying out those responsibilities, they assign the employees their daily job duties and file disciplinary reports on employees. Charge nurse Pitchlynn, an Employer witness, testified that she transferred employees, changed employees' work schedules, effectively recommended the hiring of employees, and effectively recommended the discharge of employees.<sup>12</sup> This testimony was in large measure supported by charge nurse Snow, a union witness. Snow testified she revised employees' work schedules, transferred employees' job duties on a temporary basis, and filed disciplinary reports. Although Snow testified she did not have the authority to effectively recommend the hiring of employees, she did testify that on the two occasions she interviewed prospective employees, she recommended that they be hired, and they were hired. She also recommended that an employee be dismissed, and thereafter the employee was transferred and subsequently discharged. Furthermore, there was no evidence that these or other charge nurses' recommendations for hiring and transferring employees were independently investigated; and while the terminations were reviewed, the evidence establishes such was done only for legal reasons.

If there remains any doubt as to the charge nurses' supervisory status we need look only to the facts, that charge nurses alone evaluate the employees and such evaluations determine whether the latter will receive wage increases, to reach the inescapable conclusion that charge nurses are supervisors.<sup>13</sup> Thus, charge nurses prepare the evaluations on the employees that report to them and their evaluations are not independently investigated. These evaluations consist of multiple choice entries regarding various employee performance matters—the charge nurse

<sup>12</sup> The majority finds an unrealistic ratio of supervisors to nonsupervisors by engaging in a misleading analysis which ignores the many nonunit employees under the control of the charge nurses. Each charge nurse directs the work of several employees. Thus, the nursing service department has 255 employees, exclusive of the charge nurses and admitted supervisors, virtually all of whom are under the charge nurses. The three charge nurses as to whom we have specific information supervise employees as follows: Charge nurse Pitchlynn directs 2 unit employees and 16 nonunit employees; charge nurse Sullivan directs 1 unit employee and 12-14 nonunit employees; and charge nurse Snow directs 1 unit employee and 4 nonunit employees. I find that these ratios support the conclusion that the charge nurses are supervisors.

<sup>13</sup> Although Snow testified that 100 percent of her time was spent on

checking off the ones she deems descriptive of the employees' performance—and a short written evaluation of the employee. The charge nurse also checks whether she recommends that the employee receive a merit increase. The evaluation is then forwarded to the personnel department where, based upon a chart that sets a numerical value for each choice on the evaluation, the personnel department computes a total point figure. This figure, which depends solely on the choice selected by the charge nurse,<sup>14</sup> is the ultimate step in the process of determining whether an employee will receive a wage increase. Numerically, an employee must receive more than 50 points in order to qualify for the increase. And in one instance where an employee was denied a recommended wage increase because he did not receive 50 points, the charge nurse simply reevaluated him and, as a result thereof, he received sufficient points to receive an increase. In these circumstances, it is evident that through their evaluations of employees the charge nurses essentially control employee wage increases.

In agreement, therefore, with the Regional Director, I would find that the duties and responsibilities of the charge nurses extend beyond the professional direction of the employees assigned to them and involve the exercise of substantial supervisory authority.<sup>15</sup> Accordingly, I would exclude them from the unit.

The renal dialysis supervisor oversees an outpatient department consisting of two artificial kidney machines and one LPN. She has the authority to establish schedules, to authorize overtime, to hire and fire, and to allow people to leave early. She also attends management meetings. Although the record does not indicate whether she has had an opportunity to exercise such authority, we have customarily classified individuals who possess supervisory authority as supervisors, even though such authority has not been used.<sup>16</sup> Accordingly, I find, contrary to the majority, that the renal dialysis supervisor is a supervisor as defined in Section 2(11) of the Act.

direct patient care, she included the preparation of employee evaluations and the filing of employee disciplinary reports as part of her "patient care" activities.

<sup>14</sup> The fact that the charge nurse does not know the numerical value of each choice does not detract from the fact that she makes the evaluation which determines whether an employee receives a wage increase.

<sup>15</sup> As to the majority's reliance on the job description of charge nurses, the hospital administrator testified that it was in the process of revision and that the functions expected from the charge nurses were different from those set forth in the job description.

<sup>16</sup> *United States Gypsum Company*, 93 NLRB 91, 92 (1951); *Yamada Transfer*, 115 NLRB 1330 (1956); *Hirsch Broadcasting Company*, 116 NLRB 1780 (1956).