

Wing Memorial Hospital Association and Massachusetts Nurses Association, Petitioner. Case 1-RC-13490

May 19, 1975

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer S. Anthony Di Ciero of the National Labor Relations Board. Following the hearing, the Regional Director for Region 1 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs with the Board which have been duly considered.

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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.¹

Upon the entire record in this proceeding, the Board finds:

1. The Employer, a private nonprofit hospital in Palmer, Massachusetts, is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. 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.
4. The Petitioner seeks to represent a professional unit of all registered nurses excluding all other employees and supervisors as defined in Section 2(11) of the Act. The Employer agrees as to the appropriateness of such a unit but contends, contrary to the Petitioner, that the following registered nurses should be excluded as supervisors within the meaning of the Act: supervisors,² head nurses, the operating room supervisor, and the community health center department head.

The hospital, which is licensed for 98 beds, has approximately 325 employees including about 42 full-time and 39 part-time registered nurses (RN's), and an unspecified number of physicians, licensed practical nurses (LPN's), nurses aides, orderlies, laboratory employees, office employees, and general maintenance employees. Executive Director Edwin Thorn is the ad-

ministrators of the hospital.³ Marilyn Corey serves as the director of nursing⁴ and is in charge of the nursing service department.⁵

*Shift supervisors.*⁶ The hospital is staffed three shifts per day, 7 days a week. Six RN's—Mary Beynor, Helen Colburn, Ann Duggan, Ann Walker, Betty Davis, and Regina Janosz—work at least 2 days a week as supervisors.⁷ Each is in complete charge of all nursing personnel working on a particular shift in the following sections of the hospital: coronary care, acute care, extended care, routine care, pediatrics, and emergency.

The supervisors are in the highest pay grade⁸ and are responsible and accountable for their shift. They receive reports from the supervisors on the preceding shift, make the rounds on their own shift, and brief the supervisor on the succeeding shift. Although the basic weekly staffing pattern is prepared in advance by the director of nursing, the supervisors handle timecards and must make daily adjustments in scheduling. They also authorize overtime, call in nurses who are off duty, and make transfers from one section to another. Supervisors may permit employees to come in late or leave early and have the authority to evaluate, reprimand, and discipline nursing personnel. While supervisors do not hire employees, their recommendations in this regard carry weight with the director of nursing.⁹ Finally, the supervisors attend supervisory meetings.

As the Senate Committee on Labor and Public Welfare stated in its report on the *Coverage of Nonprofit Hospitals Under the National Labor Relations Act*,¹⁰ "the Board has carefully avoided applying the definition of 'supervisor' to a health care professional who gives direction to other employees in the exercise of professional judgment, which direction is incidental to the professional's treatment of patients, and thus is not the exercise of supervisory authority in the interest of the employer." Although the shift supervisors herein may give some direction to other nursing personnel "in

³ As indicated below, there is also an assistant director-controller

⁴ The parties stipulated to Corey's supervisory status

⁵ However, as noted below, the director of nursing is not in charge of the personnel in the community health center department of the hospital.

⁶ The director of nursing provided a comprehensive description of this category. The only other information was supplied by Kathleen Seavers, a former part-time supervisor, who testified she did not fill out evaluation forms or interview applicants and could not recall being told that she had the authority to discipline employees. Seavers restricted her testimony to herself and there is no evidence to show that her duties were broader in scope than those of Judith Fisher, a relief supervisor who was stipulated to be a nonsupervisor. We therefore rely on the account which pertains to the entire group of shift supervisors

⁷ As indicated above, Fisher, who fills in as a shift supervisor and whose primary functions appear to be those of a staff nurse, was stipulated to be a nonsupervisor

⁸ Grade 13 had a starting hourly rate of \$4 80. In contrast, Fisher is in grade 9 with an hourly starting rate of \$4.

⁹ Prior to 1972, they also made recommendations for salary increases which were given weight by the executive director. However, there have been no recommendations of this type since that time because of the Employer's practice of making general wage increases.

¹⁰ S. Rept. 93-766, 93d Cong., 2d sess. 6 (April 2, 1974)

¹ The request of the parties for oral argument is hereby denied as the record and briefs adequately set forth their contentions.

² Also referred to below as shift supervisors.

the exercise of professional judgment," the traditional standards for determining supervisory status remain applicable to the RN's. It is clear that the supervisors, who are in charge of nursing and other personnel on their shift, responsibly direct them and possess such indicia of supervision as authorizing overtime, calling in off-duty employees, revising schedules, making assignments, transfers, and evaluations, and effectively recommending action with respect to hiring. Accordingly, we conclude that the six shift supervisors named above are supervisors within the meaning of the Act and we shall therefore exclude them from the unit.

Head nurses: As noted above, there are six sections in the hospital with the following head nurses, who are in pay grade 11,¹¹ in charge of the day shifts:¹² Arlene Cadieux directs the coronary care section which has one other RN. Ann Celona directs the routine care section which includes three other RN's, senior nurses aides, orderlies, and ward secretary. Catherine Grabowsky directs the acute care section which includes two other RN's and two or three other employees. Ann Manning directs the pediatric care section which usually has only one other employee who is not required to be an RN. Mary O'Brien directs the extended care facility which has one other RN and four other employees. Beverly Wilson, who is relieved by another RN on her day off, is usually the only individual who serves the physician in the emergency room. However, on those occasions when a senior nurses aide is present, she is under Wilson's direction.

The shift supervisor selects the personnel for each section and the head nurse in turn assigns them to certain patients. If an employee desires to go home because of illness or for some other reason, the head nurse notifies the supervisor. When additional personnel is needed in her section, the head nurse contacts the supervisor who makes the necessary arrangements. While the head nurse may reprimand employees in her section, she informs the supervisor in the event she needs help in disciplining them. When an employee desires a change in scheduling, the request is submitted to the shift supervisor. Head nurses are asked by the supervisor for an evaluation of the employees in their unit. At the meetings held by head nurses alone or jointly with the supervisors, the principal topics discussed are those pertaining to medical and nursing problems.

The head nurses serve basically as team leaders. They are essentially the "source persons" who are looked to by the other RN's and nursing personnel for advice and counsel in the care of patients.

As stated above, the Board has carefully avoided applying the definition of "supervisor" to a health care professional who gives direction to other employees which is incidental to the professional's treatment of patients. As already indicated, the head nurses function as team leaders of other RN's and auxiliary personnel. Their duties and authority in assigning employees to particular patients and directing their work are principally the product of highly professional skills and do not, without more, constitute an exercise of supervisory authority in the interest of their Employer. Unlike the shift supervisors, who responsibly direct the RN's and other nursing personnel on each shift, the head nurses do not possess the authority to make effective recommendations as to hiring, and do not revise schedules, authorize overtime, make transfers, or call in off-duty employees.¹³ Nor do they discipline employees beyond the stage of a verbal reprimand.¹⁴ Finally, the duties and responsibilities of head nurses do not appear to be significantly greater than those of the RN's who function as charge nurses, a category which, as noted above, was stipulated by the parties to be nonsupervisory. Accordingly, we find that the head nurses are not supervisors as defined in the Act and we shall include them in the unit.

Operating room supervisor: Patricia Zambito, a grade 13 RN, controls the operating room, the recovery room, and the central supply room. The four employees working in that area are an RN who is the recovery room nurse, an LPN, an operating room (OR) technician, and a central supply employee.

Although Zambito does not make the final decision as to hiring, she has interviewed applicants and her judgment as to their qualifications is "highly regarded" and given considerable weight by the director of nursing and the executive director. On many occasions, Zambito also provides OR personnel to help in other parts of the hospital and arranges with a shift supervisor for extra coverage in the OR area.

Zambito fills out timecards, does scheduling, and assigns personnel to specific tasks relating to surgery. She has the authority to reprimand employees and to excuse their tardiness. In addition, Zambito evaluates employees in her area and attends supervisory meetings whenever possible.¹⁵

While it appears that Zambito acts as the team leader of her group, we nevertheless find that she is a supervi-

¹³ Cf. *Doctors' Hospital of Modesto, a wholly owned subsidiary of National Medical Enterprises, Inc.*, 183 NLRB 950 (1970)

¹⁴ As indicated above, head nurses often refer to and depend upon the shift supervisors for decisions as to discipline, changes in scheduling, and granting time off to employees

¹⁵ The foregoing description of Zambito's duties is principally based on the testimony of the director of nursing. Although Zambito stated that she was not told that she had the authority to discipline employees, her less complete testimony as to her duties is not otherwise inconsistent with the more comprehensive account of the director of nursing

¹¹ The hourly starting rate is \$4.18.

¹² During the second and third shifts, the sections are directed by charge nurses who were stipulated to be nonsupervisors.

sor within the meaning of the Act because, *inter alia*, she also evaluates, schedules, and transfers employees, and, most significantly, because she interviews applicants for employment as to whom she makes effective recommendations. We shall therefore exclude Zambito from the unit.

Community health center department head: Maureen Burkavange, an RN,¹⁶ is responsible for the management of the community health center, a department of the hospital which provides outpatient care. The center is staffed by two other RN's, LPN's, medical assistants, and clerical employees. Although she reports to the executive director and the assistant director-controller rather than the director of nursing, she coordinates her department with the rest of the hospital.

Burkavange may spend as much as a majority of her time assisting the physicians at the center and directing the other two RN's at the center in the interest of patient care. She also interviews applicants referred to her by the executive director and it is she who decides who is hired.¹⁷ Burkavange has "wide discretion" to discipline employees and her recommendations as to discharge "outweigh" any contrary opinion of the executive director.

¹⁶ She receives a salary the amount of which was not contained in the record

¹⁷ The record shows that Burkavange hired one of the RN's and that her approval was required before the other RN was transferred to the center from another part of the hospital.

Burkavange schedules, assigns, and evaluates certain employees, and has the authority to call in part-time personnel in the event an employee fails to come to work. She also has the authority to transfer employees from the center to another location in the hospital.

It is clear from the foregoing that, in addition to her professional duties, Burkavange has the authority to hire RN's and other employees, makes effective recommendations as to discharge, and is empowered to discipline, schedule, assign, and transfer employees. We therefore find that Burkavange is a supervisor within the meaning of the Act and we shall exclude her from the unit.

Upon the entire record, we find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All registered nurses employed by the Employer at its hospital in Palmer, Massachusetts, including the diabetic teaching nurse, the admissions coordinator, the nurse anesthetist, charge nurses, and head nurses, but excluding all other employees, the director of nursing, (shift) supervisors, operating room supervisor, community health center department head, and all other supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]