

Doctor's Community Hospital of Victor Valley, d/b/a Victor Valley Hospital and Victor Valley Registered Nurses' Association, United Nurses Association of California, Petitioner. Case 31-RC-2979

September 30, 1975

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND PENELLO

On January 7, 1975, the Regional Director for Region 31 issued a Decision and Order in the above-entitled proceeding in which he found inappropriate a unit limited to registered nurses. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a Request for Review of the Regional Director's decision.

On May 16, 1975, by telegraphic order, the request for review was granted. Subsequently, the Petitioner and the Employer filed briefs on review.

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 with respect to the issues under review and makes the following findings:

The Employer is a nonprofit California corporation operating a hospital in Victorville, California, where it employs approximately 211 employees assigned to 13 departments, including the nursing department. Of these, 38 employees are registered nurses (RN's) employed in the nursing department.

Petitioner contends that a unit composed solely of registered nurses is an appropriate unit. The Employer contends that if the RN's are found to be professional employees (which the Regional Director found them to be), they must be included in a unit with all other professional employees at the hospital. The Regional Director found that other professional employees employed by the Employer include pharmacists, the physical therapist, and the therapeutic dietician.¹ The Regional Director found that the smallest appropriate unit embracing registered nurses is a unit of all professional employees. Since Petitioner stated at the hearing that it was not willing to participate in an election broader than a unit composed solely of registered nurses, the Regional Direc-

¹ Although the Employer had employed a social worker in the past and was seeking a replacement at the time of the hearing, the Regional Director did not decide the professional status of the social worker since the position was at that time vacant.

tor dismissed the petition.²

Registered nurses in California are required to graduate from one of three programs: A 2-year associate of arts program consisting mainly of classroom education, usually at a junior college, with a small amount of practical experience; a 3-year diploma program primarily administered within the hospital with affiliated college courses; or a 4- to 5-year program administered by a college or a university, leading to a bachelor's degree. A graduate of any of these programs is entitled to take the examination administered by the State Board of Nursing Examiners. Upon passing the examination, a graduate of any of these programs becomes a registered nurse. As found by the Regional Director, the hospital's 38 RN's oversee and coordinate total patient care in the hospital, performing a variety of professional nursing duties, including signing physicians' orders, administering injections and medications, and beginning intravenous transfusions. The director of nursing services supervises nurses but does not appear to supervise any other professional employees.

Based upon the foregoing facts and our recent finding in *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB No. 131 (1975), we find that a unit limited to registered nurses is appropriate. As we stated in *Mercy Hospitals* "registered nurses possess, among themselves, interests evidencing a greater degree of separateness than those possessed by most other professional employees in the health care industries. These distinct interests derive not only from the peculiar role and responsibilities of registered nurses in the health care industries, but also from an impressive history of exclusive representation and collective bargaining."³ In accordance with the Joint Committee on Accreditation of Hospitals, the Employer maintains a separately administered department of nursing, under the direction of a director of nursing. The employees in the unit sought are required to possess the academic accreditation and uniform national licensing which is typically required of members of their profession. As in *Mercy Hospitals*, we are mindful of the congressional concern for the undue proliferation of bargaining units; but find, nevertheless, that the singularity of interest possessed by registered

² Although there is in issue the supervisory status of shift supervisors and charge nurses, the Regional Director found it unnecessary to consider this issue since he dismissed the petition.

³ In its brief, the Employer requests that the instant case be remanded to the Regional Director to reopen the hearing for the purpose of adducing evidence as to RN bargaining history. However, this Board takes recognition of the fact that it has in the past frequently established separate nurse units for collective-bargaining purposes (See, e.g., *Doctors' Hospital of Modesto, Inc.*, a wholly owned subsidiary of *National Medical Enterprises, Inc.*, 193 NLRB 833 (1971), enf. 489 F.2d 772 (C.A. 9, 1973).) Accordingly, we find it unnecessary to remand on this issue and, therefore, deny such motion.

nurses compels recognition.⁴ Accordingly, based upon the foregoing, we find that the registered nurses are entitled to be represented in a separate bargaining unit for the purposes of collective bargaining and shall direct, herein, an election in the aforementioned unit.

The Regional Director found it unnecessary to reach the issue of supervisory status of the shift supervisors and the charge nurses since he found the requested unit inappropriate. After a careful examination of the record, we find that the shift supervisors must be excluded from the unit as supervisory personnel, but the charge nurses do not possess supervisory authority and, consequently, must be included in the unit.

The shift supervisors evaluate employees' performances, make recommendations for wage increases and discipline, effectively recommend hiring and firing of employees under their immediate supervision, can call in or send home employees, and can issue oral or written reprimands. Accordingly, we find that these employees must be excluded from the unit as supervisors.

⁴ In its brief, the Employer argues that it has contracted out its pharmacy and, therefore, no longer employs pharmacists. It contends, therefore, that if the RN unit is found appropriate, a residual unit of professional employees would result in unwarranted fragmentations since there would be a minimal number of non-RN professionals. We are not persuaded that this consideration renders the RN unit inappropriate, particularly since the hospital's administrator testified that the hospital currently had an application with the Inland Counties Comprehensive Health Planning Agency to build a larger hospital which would replace the 60 beds with 200 beds and, correspondingly increase its complement of professional employees, including pharmacists.

There are about 15 charge nurses responsible for the total care of the patient and the unit to which the charge nurse is assigned. The director of nursing services testified that the shift supervisor is the immediate supervisor of the charge nurse and serves as a supervisory level between the charge nurse and the director. Normally, if a charge nurse has a problem with an employee under her immediate direction, the charge nurse discusses this with the shift supervisor who makes an independent investigation of the complaints. The shift supervisor, not the charge nurse, is expected to prepare a written evaluation of an employee under the charge nurse but she may consult with the charge nurse who may make an oral recommendation. A shift supervisor is present on each shift and, in the event the shift supervisor is on vacation, a "relief supervisor," who is not a charge nurse, routinely performs her duties. One charge nurse testified that during her 3-1/2 year experience as a charge nurse, she had never filled out any employee time schedules, had never reassigned an employee if there was a vacant spot to be filled, did not possess the independent authority to call in personnel in the event that there was an absence, did not have 24-hour responsibility for the floor for staffing, did not go to department head meetings, and did not evaluate personnel in writing. Based upon the above facts, we find the charge nurses do not possess supervisory authority within the meaning of Section 2(11) of the Act.⁵

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

⁵ *The Trustees of Noble Hospital*, 218 NLRB No. 221 (1975).