**Barstow Community Hospital–Operated by Community Health Systems, Inc. *and* United Nurses Association of California, Union of Health Care Professionals, NUHHCE, AFSCME, AFL–CIO.** Case 31–CA–26057

August 18, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On February 23, 2007, Administrative Law Judge Lana H. Parke issued her supplemental decision following the Board's remand of this case.[1] The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party each filed an answering brief.

The National Labor Relations Board[2] has considered the decision, the supplemental decision, and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[3] findings, and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.[4]

On remand, the judge found that Registered Nurse Lois Sanders was not acting as a statutory supervisor when she temporarily filled in as relief clinical coordinator because she did not have the authority under Section 2(11) of the Act to assign or responsibly direct employees using independent judgment. For the following reasons, we agree.

The "burden of proving supervisory status rests on the party asserting that such status exists." *Oakwood Healthcare*, supra at 694 (quoting *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003)). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. Id. (citing *Dean & Deluca*, supra at 1047; *Bethany Medical Center*, 328 NLRB 1094, 1103 (1999)).

To establish possession of the authority responsibly to direct, the party bearing the burden of proof—here, the Respondent—must present evidence of "actual accountability." *Golden Crest Healthcare*, supra at 731. The Respondent failed to present any evidence that registered nurses were held accountable for their direction of others when acting as relief clinical coordinators. There is no evidence that relief clinical coordinators faced a prospect of material adverse consequences based on the perform-

[1] On August 29, 2003, Judge Parke issued her original decision in this proceeding. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief. The Board remanded the case to the judge on September 30, 2006, for further consideration in light of the Board's decisions in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006); *Croft Metals, Inc.*, 348 NLRB 717 (2006); and *Golden Crest Healthcare Center,* 348 NLRB 727 (2006) (hereinafter *Oakwood Healthcare,* et al.). See *Barstow Community Hospital*, 348 NLRB 957 (2006). On November 20, 2006, the Respondent filed a Motion to Reopen Record. The judge denied the motion and set a date for the parties to file briefs. The Respondent timely filed its brief, titled as Motion for Reconsideration of Motion to Reopen the Record. The General Counsel and the Charging Party each also timely filed briefs.

[2] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[3] The Respondent excepted to the judge's ruling at the 2003 hearing precluding the Respondent from introducing evidence concerning its affirmative defenses related to the Region's investigation of the unfair labor practice charges. The Respondent, however, fails to state with any degree of particularity, either in its exception or in its supporting brief, on what grounds it believes the judge's ruling should be overturned. Accordingly, we find, in accordance with Sec. 102.46(b)(2), that the Respondent's exception to this ruling should be disregarded. See, e.g., *Holsum de Puerto Rico, Inc.*, 344 NLRB 694, 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006).

The Respondent also excepted to the judge's denial of its post-remand motion to reopen the record, contending that it should have the opportunity to prove that the authority possessed by discriminatee Lois Sanders in her role as a registered nurse made her a statutory supervisor under the standards articulated in *Oakwood Healthcare,* et al. The exception is without merit. At the original hearing, the Respondent clearly limited the supervisory status issue to whether Sanders was a 2(11) supervisor when working as a relief clinical coordinator. Efforts to inject a new issue after the close of a hearing are normally deemed untimely. *Nursing Center at Vineland,* 318 NLRB 337, 337 (1995). Having earlier failed to argue that Sanders' duties as a registered nurse were supervisory, the Respondent cannot now introduce a new issue that could have been raised and litigated in the original hearing. See *Nursing Center at Vineland,* supra (denying employer's motion to reopen the record to present evidence that discharged employee was a supervisor in light of Supreme Court's intervening decision in *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571 (1994), where employer litigated the supervisory status of another employee and could have presented its arguments about discharged employee at the hearing). Having affirmed the judge's denial of the Respondent's request to reopen the record, we find it unnecessary to pass on the judge's determination that Sanders was not a 2(11) supervisor based on her duties as a registered nurse.

[4] The Respondent excepted to the judge's findings that it violated Sec. 8(a)(3) and (1) by suspending Sanders and Sec. 8(a)(1) by conducting an investigation of Sanders' union activity, because neither violation was alleged in the complaint. We adopt the judge's finding that Sanders' suspension was unlawful, as the issue was closely connected to the complaint allegations and was fully litigated. *Pergament United Sales, Inc.*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990). Sanders' suspension arose out of the same events as, and was a precursor to, her discharge, and the Respondent's motivation for both actions is undisputed. Thus, the suspension, like the discharge, stands or falls depending on whether Sanders was a supervisor, an issue the Respondent litigated fully.

Having affirmed the judge's finding that the Respondent unlawfully interrogated Sanders during its investigation, we find it unnecessary to pass on the finding that the investigation was unlawful, as it would not materially affect the remedy in this case.

ance of those they allegedly supervised. That one of the factors included on the registered nurses' evaluation form is how they perform "the role of clinical coordinator as needed" is not sufficient. See id. (finding insufficient, to show accountability, evidence that charge nurses were rated on the factor "directs [employees] to ensure quality of care," absent evidence that the rating might have an effect on their terms and conditions of employment). Accordingly, the Respondent has not shown that the relief clinical coordinators possess the authority to responsibly direct employees.[5]

The judge found that, although Sanders may have possessed authority to assign, she did not exercise independent judgment in doing so because any judgment exercised by her was dictated or controlled by the Respondent's detailed instructions and policies. See *Oakwood Healthcare*, supra at 693. However, the Board in *Oakwood Healthcare* also held that the mere existence of guidelines and policies is not necessarily incompatible with the existence of independent judgment. If there is room for discretionary choices by the putative supervisor, and if the degree of discretion exercised rises to the requisite level, a finding of independent judgment is warranted. Id. Specifically in the healthcare setting, if an individual weighs the individualized condition and needs of a patient against the skills or special training of the available nursing staff, the resulting assignment involves the exercise of independent judgment. Id.

The record contains conflicting testimony on the issue of whether relief clinical coordinators exercise independent judgment in assigning nursing staff. Sanders testified that, in determining the number of nurses needed and where they should be assigned, she followed the nurse-to-patient ratios in the staffing grid, which in turn were based on the Respondent's guidelines and State regulations. Sanders also testified that, in making staffing decisions, she did not consider a patient's acuity or the particular skills or qualifications of the nurses, many of whom she said she did not know beyond their general qualifications as registered nurses.

Testimony from registered nurse Tina Lyle, who also filled in as relief clinical coordinator, as well as from the Respondent's medical/surgical manager, Donna Rollins, conflicted with Sanders' testimony in this regard. Lyle testified that in deciding whether to "float" (temporarily transfer) someone or to call someone in, she would take into account the patient's acuity and the level of experience of the available nurses. Rollins testified that, in deciding whom to call in or float, the relief clinical coordinator has to consider the patients' needs and the experience level of staff members who could be reassigned from one area to another or called in to work to meet those needs.

We need not resolve this testimonial conflict. Even crediting Lyle's and Rollins' testimony, we find the evidence insufficient to sustain the Respondent's burden of proving that relief clinical coordinators exercised independent judgment in assigning nursing staff. The respondent's evidence on this issue lacked sufficient specificity. It was devoid of any examples or details of circumstances showing that a relief clinical coordinator, in assigning nursing staff, actually "weighs the individualized condition and needs of a patient against the skills or special training of available nursing personnel." *Oakwood Healthcare*, supra at 693. Although Section 2(11) requires only possession of authority to carry out an enumerated supervisory function, not its actual exercise, the evidence still must suffice to show that such authority actually exists and that its exercise requires the use of independent judgment. *Avante at Wilson*, 348 NLRB 1056, 1057 (2006); see also *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995) (conclusory statements without supporting evidence do not establish supervisory authority); *Sears, Roebuck & Co.*, 304 NLRB 193, 193 (1991) (same).

In sum, we find that the Respondent has not met its burden of showing that Sanders, when acting as a relief clinical coordinator, exercised independent judgment in assigning nurses to patients and, consequently, has not established that she was a statutory supervisor.[6] We agree with the judge, therefore, that the Respondent unlawfully suspended and discharged Sanders for engaging in union activity while acting as a relief clinical coordinator.

## AMENDED CONCLUSIONS OF LAW

1. The Respondent violated Section 8(a)(1) of the Act by interrogating Sanders about her union or other protected concerted activities.
2. The Respondent violated Section 8(a)(3) and (1) of the Act by suspending Sanders on August 31, 2002.
3. The Respondent violated Section 8(a)(3) and (1) of the Act by discharging Sanders on September 26, 2002.

[5] Because the Respondent did not demonstrate that the relief clinical coordinators responsibly direct employees, we need not determine whether they exercise "independent judgment" in this regard. *Golden Crest Healthcare,* supra at 732 fn. 14.

[6] Because the Respondent has not established that when filling in as a relief clinical coordinator Sanders exercised sufficient independent judgment to qualify her as a statutory supervisor, we find it unnecessary to rely on the judge's further finding that Sanders was also not a supervisor because her relief clinical coordinator assignments were not "regular and substantial."

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Barstow Community Hospital–Operated by Community Health Systems, Inc., Barstow, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union or other protected concerted activities.

(b) Suspending any employee for engaging in union or other protected concerted activities.

(c) Discharging any employee for engaging in union or other protected concerted activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Lois Sanders whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the judge's initial decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge, and within 3 days thereafter notify Lois Sanders in writing that this has been done and that the suspension and discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Barstow, California, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 31, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their union or other protected concerted activities.

WE WILL NOT suspend employees because they engage in union or other protected concerted activities.

WE WILL NOT discharge employees because they engage in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above, which are guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Lois Sanders whole for any loss of earnings and other benefits resulting from her suspension and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to Lois Sanders' unlawful suspension and discharge and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the suspension and discharge will not be used against her in any way.

BARSTOW COMMUNITY HOSPITAL–OPERATED BY COMMUNITY HEALTH SYSTEMS, INC.

*Nikki N. Cheaney, Esq.,* for the General Counsel.
*Don T. Carmody, Esq.,* of Woodstock, New York, for the Respondent.
*Minh Nguyen, Esq. (Gilbert & Sackman*), of Los Angeles, California, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

LANA H. PARKE, Administrative Law Judge. This case was tried in Los Angeles, California, on June 30 and July 1, 2003.[1] Pursuant to charges filed by United Nurses Association of California, Union of Health Care Professionals NUHHCE, AFSCME, AFL–CIO (the Union), the Regional Director of Region 31 of the National Labor Relations Board (the Board) issued a complaint and notice of hearing (the complaint) on March 11, 2003.[2] The complaint alleges that Barstow Community Hospital–Operated by Community Health Systems, Inc. (Respondent) violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by interrogating an employee about her union and/or protected concerted activities and by terminating Lois Sanders (Sanders) because she engaged in union and/or protected concerted activities, and to discourage employees from engaging in such activities.

Respondent essentially denied the complaint allegations and asserted, as affirmative defenses, that Sanders was, at relevant times, a supervisor within the meaning of Section 2(11) of the Act and that it would have terminated Sanders irrespective of her union and/or protected activities.[3]

On the entire record and after considering the briefs filed by the Charging Party and Respondent[4] and the oral argument of the General Counsel, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent, a corporation, with a facility in Barstow, California (the facility or the hospital), is engaged in the operation of an acute-care hospital. During the calendar year preceding the complaint, a representative period, Respondent derived gross revenues in excess of $250,000 from the operation of its acute care hospital in Barstow. During that same period, Respondent purchased and received at the facility goods and services valued in excess of $50,000 directly from points outside the State of California. Respondent admitted and I find it to be an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. Respondent admitted, and I find the Union to be a labor organization within the meaning of Section 2(5) of the Act.[5]

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### *A. The Suspension, Interrogation, and Termination of Sanders*

Respondent hired Sanders in May 2001. The position title noted on her position description/evaluation of May 6 is "registered nurse . . . emergency room." Her duties included triaging patients, carrying out doctor orders, and transferring or discharging patients as directed. Her usual shift was from 7 p.m. to 7 a.m., the night shift, although she worked for a time on the day shift. The emergency room (ER) manager and a clinical coordinator (CC) provided ER oversight. When the CC was unavailable, other nurses filled in as assigned. Beginning a month or 2 after employment, Sanders filled in as CC once or twice a week on the night shift.

In early spring, Sanders told some of her coworkers she would contact a union for them so they could do something about their various employment complaints. Thereafter, she contacted various unions to set up a union information meeting for employees. On August 9, Sanders talked to Mary Capolupo (Capolupo), a registered nurse employed by Respondent, about the Union. Thereafter, Capolupo furnished a memorandum,

[1] All dates are in 2002, unless otherwise indicated.

[2] The General Counsel amended the complaint on April 10, 2003, changing certain charge filing and service dates.

[3] Respondent also raised affirmative defenses that the Region failed to conduct its investigation of these matters in compliance with the General Counsel's Memorandum OM 02-36 and the Board's Casehandling Manual and that the Region failed to afford Respondent sufficient time to cooperate in the investigation and produce evidence in its defense. I declined to receive evidence concerning these affirmative defenses. The adequacy of the General Counsel's investigation is not litigable in an unfair labor practice hearing, *Redway Carriers,* 274 NLRB 1359, 1371 (1985), and the Agency's Casehandling Manual provides guidance only and is not binding on General Counsel or the Board. *Starlite Cutting, Inc.,* 280 NLRB 1071 fn. 3 (1986). Evidence regarding these affirmative defenses is not relevant to the unfair labor practice proceeding herein.

[4] Respondent filed its brief on the due date but, through the inadvertence of the person charged with filing responsibility during counsel's absence from his office, filed it with the Regional Director of Region 31 rather than the Division of Judges as required. The following day, Counsel rectified the mistake, making proper filings to all parties. The Charging Party also untimely filed its decision with the Division of Judges on August 15, 2003. Thereafter, counsel for the Charging Party provided an affidavit explaining that in her absence her secretary, mistakenly believing the brief was to be mailed on August 12, did not effect timely filing. In light of counsels' detailed explanations of inadvertent errors, their diligent attention to them, and the fact that no undue prejudice has resulted to any party, I have considered Respondent's and the Charging Party's briefs. See *Elevator Constructors Local 2 (United Elevator Services Co.),* 337 NLRB 426 (2002).

[5] Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

dated August 9 to Maureen Bodine (Bodine), Respondent's director of nurses, which in pertinent part read:

> On the night of 8–9–02 Lois Sanders was clinical coordinator. She came by wing 300 and said oh I didn't know you were working tonight. I said actually I am working OB post partum tonight. I am relieving Brian . . . Lois then said I have something to say to you but I do not know how to say it. Ah! Well, I'll just come out and say it. I said what's that all about. She said have you heard anything about Carol and I trying to bring in the union for the nurses.
>
> She said well what do you think about it? I said you can do what ever you want it's a free country. Lois then said, since you know all the nurses on the floor I thought maybe you could talk to them about the union. . . . She then said maybe I shouldn't be asking you to do this because you might get written up and get in trouble.

On August 31, Bodine telephoned Sanders at home and informed her that Respondent was suspending her pending investigation but declined to explain why. At the hearing, Bodine testified that Respondent suspended Sanders while investigating whether Sanders had engaged in union activities while serving as a CC.

By letter dated September 6, Bodine informed Sanders, in pertinent part, as follows:

> This is to inform you that we desire to schedule an investigatory interview with you for the purpose of inquiring into your conduct while recently assigned as a Clinical Coordinator.
>
> We desire to schedule the interview for September 17, 2002 at 2:00 PM.

On September 17, Sanders attended the scheduled investigatory meeting held in Bodine's office. Bodine and Michael Trumble (Trumble), Respondent's director of human resources, were present. Bodine refused to tell Sanders the purpose of the meeting, saying the questions she was about to ask would provide the answer. Bodine queried Sanders from a list of prepared questions. The questions and a summary of Sanders' answers[6] are as follows:

> 1. Where [sic] you the Clinical Coordinator on the night of 8/9/02? Ms. Sanders said she was.
>
> 2. What are the responsibilities of the Clinical Coordinator? Ms. Sanders answered that she had no sense of authority, could not reprimand or discipline, did staffing for the following shift, and dealt with the pharmacy needs, and that she often did the job under protest.
>
> 3. During the shift of 8/9/02, did you have any conversations with any employee about Unions or organizing Unions? Ms. Sanders said she did not recall.
>
> 4. Did you say anything to anyone about getting written up or getting in trouble in reference to union activities? Ms. Sanders again said she did not recall.
>
> 5. Have you ever engaged in Union Activity while assigned as Clinical Coordinator? Ms. Sanders denied doing so.

By letter dated September 26, Bodine notified Sanders, in pertinent part, "[B]ased upon our recent investigation into your conduct while assigned as a Clinical Coordinator, your employment with Barstow Community Hospital is being terminated."

At the hearing, Bodine testified that Respondent terminated Sanders because she was conducting union activity on August 9 while acting in a management position as a "supervisor or clinical coordinator." Bodine said that Sanders' engaging in union activity while acting in the role of management was "against [Respondent's] policy which [was] to remain union-free." Respondent reiterated the basis for Sanders' termination in its brief:

> Sanders, while vested with the responsibilities of Clinical Coordinator, sought to enlist Capolupo's assistance in organizing the Hospital's nurses. For this reason, and this reason alone, the Hospital rightfully decided to terminate Sanders' employment.[7]

### *B. Sanders' Supervisory Status*

As with all ER nurses, Respondent hired Sanders with the expectation that she would fill in as relief CC. Donna Rollins (Rollins), medical surgical manager, testified that Bodine tells all nurse-applicants for the ER that part of their roles will be to act as a clinical coordinator on the night shift in the absence of the CC or the manager, that it is mainly staffing they will be involved in, but they may have to deal with other issues that come up, at which time they may call a manager. As noted above, the position description/evaluation for Sanders signed by Schneider on May 6, states Sanders' position as "registered nurse . . . emergency room." There is no mention of any relief CC position, and Sanders was not regularly scheduled as relief or acting CC. Bonnie Lou Schneider (Schneider), manager of medical surgical department, generally informed her once or twice a week that she was to fill in as CC. Respondent did not require employees to accept the acting CC assignment, and on occasion, Sanders declined to fill in as CC or asked management to find someone else. Respondent paid acting CCs a 10-percent shift differential when they served in that capacity. I find that although Sanders served as an ad hoc acting CC as did other ER nurses, she did not have any regular, established assignment as a relief CC.

When nurses were directed to act as CC, a manager gave the assigned individual a staffing book containing staff guidelines, staffing grids,[8] master schedules, daily assignment sheets, a list of patients' names and rooms, an emergency call list, instructions on how to "stock" the emergency rosters, other pertinent

[6] Bodine's notations sometimes consist of only a word to denote the answer given. The answers set forth are based on the notations and correlative testimony.

[7] Respondent does not argue, and there is no evidence, that Sanders' brief discussion with Capolupo occurred on either employee's worktime. Bodine testified that she did not know whether Capolupo or Sanders was on break at the time of the conversation.

[8] The staffing grids set a nurse/patient ratio according to Respondent's guidelines and California regulations. Sanders had nothing to do with establishing Respondent's policies, guidelines, or staffing grids.

information for CCs, and contact phone or pager numbers of all supervisors. Rollins referred to the staffing book as "the brains." The manager told the nurse what to expect on the shift (e.g. staffing, patient issues, pending admissions, available beds). As noted by Rollins, Respondent "encouraged . . . absolutely" acting CCs to follow Respondent's written policies. The daily assignment sheets, prepared by the regular CCs, listed names of employees to be called in to work or "cut" (excused from scheduled work) along with Schneider's suggestions as to which employees were to be called in or excused. As Rollins testified, the notes were sometimes very specific: "These are the people that if you need to call people up these are the order to do it . . . it is their turn." On the one occasion Rollins could recall giving the book to Sanders, she told Sanders the staffing was already done and reviewed it with her. In assigning the acting CCs, the managers "usually tried to make sure that things were sorted out beforehand." Respondent's training for acting CCs consisted of showing them how to use the staffing book, how to read the staffing grid, where to obtain medications, and where the pharmacy keys were kept. When Sanders acted as CC, in addition to her normal nursing work, she performed the following duties, which accounted, at the most, for less than 17 percent of her time.[9]

1. Assessed the need for staff by applying the established staffing grids and "called in" or "called off" staff as required by patient flow, utilizing the employee lists in the staffing book.

2. Obtained necessary medications by going to the facility's locked pharmacy with security personnel, obtaining and signing for specified medications, and relocking the pharmacy.

3. When physicians determined that patients were to be admitted to the hospital from the emergency room, called the appropriate floor nurses and obtained a patient room number for admittance.

During the periods she filled in as CC, Sanders spent the bulk of her worktime performing nursing duties. Like other acting CCs, she had no authority to discipline employees. Any employee misconduct was to be referred to management. No occasion occurred where she gave permission for any employee to leave work, and she believed she would have to contact management in such a situation. Schneider instructed Sanders that if a problem occurred, she was to call Schneider at home, and Rollins said that if acting CCs encountered any "issues, they would certainly call."

If staff members called in sick or were otherwise unable to fulfill their shifts, they had to be replaced so as to maintain the grid level or ratio. If patient numbers fluctuated in the course of a shift, nursing personnel had to be called in or released to maintain the appropriate grid level. Acting CCs had the authority to "float"[10] employees from one treatment area to another. Schneider's description of the process was that the CC might call another department and say, "Who can come over and help us get through this crisis?"

If unscheduled employees had to be called in to work, Sanders either utilized the staff lists in the staffing book or contacted a registry (contract service) to obtain personnel. In utilizing the staffing book, Sanders followed the prepared staffing log, starting with the top name and working down the list.[11] If staffing difficulty occurred, the acting CC could contact Rollins who would then make the calls for them. The acting CC had no authority to order any employee to work; if employees refused to report, the information would be passed on to a manager for determination of disciplinary action.[12] Contract nursing personnel were used when no employees were available to work. In summoning contract help, Sanders contacted the registry as designated by Respondent. If contract personnel were used, Sanders oriented them to the ER by following Respondent's checklist for ascertaining if they knew emergency procedures.

From the ER, patients were admitted to either the intensive care unit (ICU) or one of the two medical-surgery floors of the hospital, as designated by the attending physician. The system for determining to which of the medical-surgery floors the patient would be admitted was, according to Rollins, generally "pretty routine" and consisted of alternating admissions between the two floors. When, on one occasion, the staff of one floor refused to accept an admission, the acting CC called Rollins who handled the problem.

Although an acting CC needed to deal with the "concerns" of patient family members, physicians, and staff, Rollins knew of no specific occasion where an acting CC had occasion to resolve conflicts among staff. It was "not uncommon" for CCs to call Rollins at home when problems developed or for her to return to the hospital to deal with issues arising during acting-CC stints.

## III. DISCUSSION

When Sanders spoke briefly about union organizing to Capolupo on August 9, she was engaged in protected activity as described in Section 7 of the Act. There is no dispute that Respondent thereafter suspended Sanders pending its investigation of whether she had engaged in union activities as reported by Capolupo.[13] There is no dispute that Respondent, in the course of the investigation, interrogated Sanders about her union activities, and there is no dispute that Respondent fired Sanders on August 26, because she had engaged in union activities. An employer's investigation undertaken to determine an em-

[9] Respondent's witnesses agreed that the time an acting CC spent on CC duties might be as little as 30 to 40 minutes in a 12-hour shift.

[10] Floating is the temporary assignment of employees to various departments to meet workload demands.

[11] Sanders' method of calling in employees was consistent with manager expectations. As Rollins testified, if additional staff was needed, the acting CC looked to "the staffing sheets [to] find out if . . . somebody else . . . could fill that position, and if there wasn't then [the acting CC] would start calling around other staff members to see who could come in and cover that shift."

[12] However, if unscheduled staff declined to work, managers generally filled in as needed.

[13] Although the General Counsel did not allege the investigation of Sanders and her corollary suspension as violations of the Act, as the facts surrounding them were admitted by Respondent, were fully and fairly litigated, and as the issues are closely connected to the subject matter of the complaint, I have considered the lawfulness of the investigation and the suspension herein. *Gallup, Inc.*, 334 NLRB 366 (2001); *Letter Carriers Local 3825 Postal Service,* 333 NLRB 343 fn. 3 (2001); *Parts Depot,* 332 NLRB 733 (2000).

ployee's involvement in protected activities is unlawful as are all the disciplinary consequences flowing therefrom. See *Preferred Transportation,* 339 NLRB 1 (2003), citing Accord *Business Products–Division of Kidde, Inc*., 224 NLRB 840 fn. 3 (1989). It does not matter that the employer may have believed, in good faith, that the statutory employee was a supervisor within the meaning of the Act. See *General Security Services Corp.,* 326 NLRB 312, 313 (1998). Respondent's conduct in investigating Sanders' union activity, suspending her during the pendency of the investigation, interrogating her about her union activity, and firing her is unlawful on its face under Section 8(a)(3) and (1) of the Act.

Respondent defends its conduct on the ground that Sanders lost the protection of the Act when she engaged in union activities because she was, at the time, acting CC and a supervisor within the meaning of Section 2(11) of the Act. Respondent carries the burden of proving supervisory status. *NLRB v. Kentucky River Community Care, Inc.,* 532 U.S. 706 (2001); *Dean & Deluca New York, Inc.,* 338 NLRB 1046, 1047 (2003) ("The party asserting [supervisory] status must establish it by a preponderance of the evidence [citations omitted]"). I find Respondent has not met its burden of showing that Sanders was or acted as a supervisor at any relevant time hereto.

According to the Board, "An employee's temporary assumption of supervisory duties is not sufficient to establish statutory supervisory status [citations omitted]." *Health Resources of Lakeview*, 332 NLRB 878 (2000). The Board, quoting *Aladdin Hotel,* 270 NLRB 838, 840 (1984), has stated that "[T]he appropriate test for determining the status of employees who substitute for supervisors is whether the part-time supervisors spend a regular and substantial portion of their working time performing supervisory tasks." *St. Francis Medical Center-West,* 323 NLRB 1046 (1997).[14] There is no evidence Sanders exercised or possessed any supervisory authority when she filled in as a CC. Rather, the evidence shows that Sanders followed established written procedures and policies as an acting CC and that she did not exercise independent judgment within the meaning of Section 2(11) of the Act. See *Beverly Health & Rehabilitation*, 335 NLRB 635 (2001) (exercise of only routine authority); *Dean & Deluca, New York, Inc.,* supra (direction and scheduling of employees does not establish an employee as a supervisor). Sanders' responsibility in any disciplinary process was nothing more than reportorial, and there is no evidence she exercised even that limited role. See *Ken-Crest Services,* 335 NLRB 777 (2001). Although Sanders made certain work assignments and called in employees as needed, work assignments made by following plans and schedules of management do not establish statutory supervisory status,[15] neither does requesting off-duty employees to come in to work. *Health Resources of Lakeview*, supra. Sanders oriented registry-nursing employees when they were called in, but such orientation does not confer supervisory status, especially where orientation consists of referring employees to established procedures and policies. *Chrome Deposit Corp.,* 323 NLRB 961 (1997).

Even assuming Sanders exercised some supervisory authority during those occasions when she acted as a CC, Respondent has not established that Sanders spent a regular and substantial portion of her worktime doing so as required by *Aladdin Hotel*, supra. Sanders was assigned CC responsibility irregularly and when she was, the performance of those responsibilities did not involve a substantial portion of her working time. Accordingly, the evidence does not support Respondent's contention that Sanders was a supervisory employee at any time. Specifically, the evidence does not show that Sanders was a supervisory employee when, on August 9, she discussed union organization with a fellow employee.

Sanders, having been a statutory employee at all relevant times and specifically on August 9 when she engaged in union activity, was entitled to exercise the rights guaranteed by Section 7 of the Act. When Respondent placed Sanders on suspension on August 31, pending its investigation of her union or other concerted protected activities and when Respondent terminated her for having engaged in such activities on September 26, Respondent violated Section 8(a)(3) and (1) of the Act.[16] When Respondent instituted an investigation of Sanders' union or other concerted protected activities between August 9 and September 17, and when Respondent interrogated Sanders about her union or other concerted protected activities on September 17, Respondent violated Section 8(a)(1) of the Act.

## CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(1) of the Act by investigating Sander's union or other concerted, protected activities.
2. Respondent violated Section 8(a)(1) of the Act by interrogating Sanders about her union or other concerted, protected activities.
3. Respondent violated Section 8(a)(3) and (1) of the Act by suspending Sanders on August 31, 2002.
4. Respondent violated Section 8(a)(3) and (1) of the Act by terminating Sanders on September 26, 2002.

## REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent having discriminatorily suspended and terminated Lois Sanders, it must offer her reinstatement and make her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of suspension to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus

[14] I cannot agree with Respondent that the Board's reasoning in *St. Francis* does not apply to this situation because Sanders' "right to vote is not at issue." The Board's analyses of supervisory status are not dependent on issues but apply to all cases commonly.

[15] *Dean & Deluca*, supra; *Arlington Electric, Inc.*, 332 NLRB 74 (2000).

[16] As Respondent concedes it disciplined Sanders for her union activities, I agree with Respondent that it is unnecessary to apply the Board's analytical framework for deciding cases turning on employer motivation set forth in *Wright Line,* 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.,* 462 U.S. 393 (1983).

interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[17]

## ORDER

Respondent, Barstow Community Hospital–Operated by Community Health Systems, Inc., Barstow, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Investigating employees' union or other concerted, protected activities.

(b) Interrogating employees about their union or other concerted, protected activities.

(c) Suspending any employee for engaging in union or other concerted, protected activities.

(d) Terminating any employee for engaging in union or other concerted, protected activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Lois Sanders whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(c) Remove from its files any reference to Lois Sanders' unlawful suspension and termination and thereafter notify her in writing that this has been done and that the suspension and/or termination will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Barstow, California, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 31 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 9, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT investigate employees' union or other concerted, protected activities.

WE WILL NOT interrogate employees about their union or other concerted, protected activities.

WE WILL NOT suspend employees because they engage in union or other concerted, protected activities.

WE WILL NOT terminate employees because they engage in union or other concerted, protected activities.

WE WILL NOT in any like or similar manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Lois Sanders full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Lois Sanders whole for any loss of earnings and other benefits resulting from her suspension and termination.

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[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL remove from our files any reference to the unlawful suspension and termination of Lois Sanders and WE WILL notify her in writing that this has been done and that the suspension and termination will not be used against her in any way.

BARSTOW COMMUNITY HOSPITAL–OPERATED BY COMMUNITY HEALTH SYSTEMS, INC.

*Nikki N. Cheaney, Esq.,* for the General Counsel.
*Don T. Carmody, Esq.,* of Woodstock, New York, for the Respondent.
*Cynthia L. Hernandez, Esq. (Gilbert & Sackman),* of Los Angeles, California, for the Charging Party.

SUPPLEMENTAL DECISION

REMAND ORDER

By Order dated September 30, 2006, the National Labor Relations Board (the Board) remanded this matter for further consideration in light of its recent decisions in *Oakwood Healthcare, Inc.,* 348 NLRB 686 (2006); *Croft Metals, Inc.*, 348 NRLB 717 (2006); and *Golden Crest Healthcare Center,* 348 NLRB 727 (2006), which addressed the meaning of terms "assign," "responsibly to direct," and "independent judgment," as used in Section 2(11) of the Act, under the framework of the Supreme Court's decision in *NLRB v. Kentucky River Community Care,* 532 U.S. 706 (2001).

The Respondent's Motion for Reconsideration of Motion to Reopen the Record

The Board's Order allowed the parties to file briefs on the remand issues and, if warranted, directed reopening the record to obtain evidence relevant to the principles enunciated in *Oakwood Healthcare, Croft Metals,* and *Golden Crest*. By motion to reopen record dated November 20, 2006, Respondent sought to reopen the record to present additional testimony and documentary evidence regarding alleged supervisory responsibilities of Lois Sanders (Sanders) whose supervisory status is at issue. By Order dated November 27, I denied Respondent's motion as unwarranted and set a date for the filing of briefs.[1] All parties have filed timely briefs herein concerning the issue of whether Sanders is a supervisor within the meaning of Section 2(11) of the Act. Although titling its submission as a brief on remand and motion for reconsideration of motion to reopen the record, Respondent has presented argument only on its motion for reconsideration. Respondent asserts that the filing of a brief based upon the record presently developed is pointless:

> Thus, inasmuch as the hospital never undertook during the Trial . . . to prove, let alone argue . . . that Ms. Sanders' responsibilities strictly as a Registered Nurse, irrespective of her role as a Clinical Coordinator, involved the performance of "supervisory" functions, the Record is barren of evidence of Ms. Sanders' supervisory status strictly in her capacity *qua* Registered Nurse—that is to say, the Record already developed instead only contains evidence and legal argument of Ms. Sanders' supervisory status as Clinical Coordinator. Consequently, there is no basis, let alone an insufficient basis, for Barstow to argue from the existing Record that, under the principles articulated by the Board in *Oakwood,* Ms. Sanders' status as a Registered Nurse, alone, was supervisory.

While it is true, as the Respondent contends, that the primary focus of the parties' examination in the underlying hearing was on Sanders' duties as relief CC, it is not true that the record is silent regarding Sanders' responsibilities as an RN. The record provides pertinent information regarding Sanders' RN duties in the ER.

During the relevant period, core staffing in the emergency room (ER) of the Respondent's 40–50 bed acute-care facility consisted of two registered nurses (RN), an ER technician, and two additional staff members who worked part of the daytime ER shifts. The ER manager and a clinical coordinator (CC) had overall responsibility for nursing activities on the ER day shift. On the night shift, a CC provided ER oversight. The CC insured that the hospital ran efficiently and smoothly, dealt with interpersonal employee conflicts, gathered supplies, and handled staffing. In making staffing decisions and assignments, the CC took into account the acuity of patients and the relative skills, experience, and trustworthiness of the available staff. The CCs gave no patient care, although they might fill in as needed for an absent RN. On occasion, the ER registered nurses were called upon to fill in as relief clinical coordinator on the night shift.

At all times relevant, Sanders worked as an RN in the ER. The position title noted on her position description/evaluation of May 6, 2002, was "registered nurse . . . emergency room," and her position description was summarized as follows: "The Registered Nurse shall be responsible for planning, supervising and evaluating the nursing care of patients and for correlating the nursing process, the medical plan of care and policies." Sanders usually worked the ER night shift from 7 p.m. to 7 a.m., and her duties included triaging patients, carrying out doctor orders, and transferring or discharging patients as directed. In fulfilling her duties as an RN, Sanders did not make assignments to other workers, evaluate their performance, or discipline them; her only involvement with corrective action was to report problems to the CC or ER manager. Beginning a month or two after employment, Sanders filled in as CC once or twice a week.

Regarding Sanders' work as an RN, the following is clear from the record: (1) at all relevant times, the Respondent's ER had a complement of only two RNs who were overseen by a CC; (2) the CC had full oversight responsibility for the ER; (3) the CC was responsible for staffing in the ER; (4) as an RN, Sanders had no responsibility for making work assignments to other employees; and (5) as an RN, Sanders had no responsibility for evaluating the work performance of other employees or disciplining them.

The Board's decision in *Oakwood Healthcare, Inc.,* supra, deals with the issue of whether certain charge nurses are supervisors within the meaning of the Act. In arriving at its conclusions, the Board adopted definitions for the terms "assign," "responsibly to direct," and "independent judgment," as used by Section 2(11) of the Act in denoting supervisory authority.

[1] The original due date of January 4, 2007, for the filing of briefs was extended upon Respondent's request to January 16, 2007.

As to the term "assign," the Board construed it to mean designating an employee to perform significant overall duties. Directing an employee to perform discrete tasks within such an assignment, as in giving an ad hoc instruction, is not, in the Board's view, indicative of supervisory authority to "assign."[2] With regard to the term "responsibly to direct," the Board concluded that for an individual's action to be so described, the directing person "must be accountable for the performance of the task so as to fundamentally align the person with management.[3] Finally, the Board considered that "independent judgment" is exercised when an individual acts or recommends action free of the control of others, which action rises above the merely routine or clerical.[4]

With the Board's definitions in mind, it is apparent that Sanders' performance of RN functions, in and of itself, does not fit the Board's denotation of supervisory status. The Respondent ceded oversight responsibility in its ER to a CC. The CC, not Sanders, was responsible for staffing the ER, making work assignments, and evaluating the work performance of ER employees. In such a limitedly staffed department as the Respondent's ER, it is highly improbable that two individuals would possess 2(11) authority to exercise independent judgment in assigning and directing employees. Since clearly the CC possessed such authority, a fortiori, Sanders, when functioning as an RN, did not. Accordingly, the Respondent's motion for reconsideration of motion to reopen record in order to adduce evidence of Sanders' RN responsibilities, irrespective of her role as a relief CC, is denied.

Consideration of Underlying Decision in Light of *Oakwood Healthcare, Croft Metals,* and *Golden Crest*

While the Respondent's brief on remand appears to concede that the Board's decisions in *Oakwood Healthcare, Inc., Croft Metals, Inc.*, and *Golden Crest Healthcare Center would* not alter the findings in the underlying decision, the Board's Order to reconsider those findings dictates further review. In the recent decisions, the Board reiterated that the burden of proving supervisory status rests on the party asserting it. After reconsideration of the underlying findings of fact in light of *Oakwood Healthcare, Inc., Croft Metals, Inc.*, and *Golden Crest Healthcare Center*, I find that the Respondent has failed to meet its evidentiary burden.

The question of Sanders' supervisory status rests on her work as a relief CC. In *Oakwood Healthcare, Inc.,* supra at 696, the Board addressed the status of individuals who are engaged part of their worktime in supervisory roles and held to its established legal standard that determination of supervisory status in such situations depends on whether the individual spends a regular and substantial portion of worktime performing supervisory functions. As the Board did not modify its standard for assessing the regularity and substantiality of part-time performance of supervisory functions, there is no basis for revising the earlier finding that Sanders served as a relief CC only on an ad hoc basis and did not have any regular, established assignment as such.

Even assuming Sanders spent a regular and substantial portion of her worktime as relief CC, utilizing the Board's definitions set forth in *Oakwood Healthcare, Inc.,* and reiterated in *Croft Metals, Inc.*, and *Golden Crest Healthcare Center,* the evidence fails to establish that Sanders exercised independent judgment in assigning or responsibly directing any employee when she served as relief CC. In *Oakwood Healthcare, Inc.,* the Board construed the authority "to assign" to involve the act of designating an employee to a specific place in which to perform his or her work, appointing an employee to a particular time during which to perform that work, or giving an employee significant overall duties or tasks to perform. The authority "responsibly to direct" involves deciding which job shall be undertaken and who shall do it, provided that the direction is both responsible and given with independent judgment. For the direction to be responsible, the person giving the direction must be accountable for the performance of the task under penalty of adverse consequences for improper execution. "Independent judgment" does not exist if directions are dictated or controlled by detailed instructions that do not allow for discretionary choices.[5]

During the periods she filled in as CC, Sanders spent the bulk of her worktime performing nursing duties and was instructed to contact management regarding any nonroutine issues. As relief CC, Sanders was expected to follow a staffing book prepared by higher authority, which contained detailed staff guidelines, staffing grids, master schedules, daily assignment sheets, and other pertinent administrative information and instructions. Sanders assigned admitted ER patients to the nursing staffs of two medical-surgery floors by alternating between the two floors. Any disagreement over patient placement was referred to upper management. Sanders could request help as needed from other departments or call in unscheduled employees but had no authority to affix consequences to any refusal to comply and was not accountable for other employees' performance of tasks. Any employee misconduct was to be referred to upper management. Clearly, when functioning as a relief CC, Sanders was not free from the control of others but followed the detailed instructions and policies provided in the staffing book and formed no opinions or evaluations by discerning and comparing data. In such circumstances, following the instruction of *Oakwood Healthcare, Inc.,* I find that Sanders did not responsibly direct other employees' work. While Sanders may, in a broad sense, have assigned work to employees by requesting help, calling in unscheduled employees, and making bed assignments for patients admitted to the hospital from the ER, she did not exercise independent judgment in doing so. Any judgment exercised by Sanders was dictated or controlled by detailed instructions and policies established by a higher authority that did not allow for discretionary choices and, thus, was not "independent."

[2] *Oakwood Healthcare, Inc*., supra at 689–690.

[3] *Oakwood Healthcare, Inc*., supra at 693.

[4] Id. at 694–695. The concepts detailed in *Oakwood Healthcare, Inc.* are echoed in *Croft Metals, Inc.*, supra, and *Golden Crest Healthcare Center,* supra.

[5] Id. at 689–695.

Accordingly, having reviewed the evidence in the light of the Board's recent decisions construing Section 2(11) of the Act, I find the evidence does not establish that Lois Sanders was a supervisor within the meaning of that section on August 31 and/or September 26, 2002, when Respondent respectively suspended and fired her.

[Recommended Order omitted from publication.]