

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

**TRINITY SENIOR LIVING COMMUNITIES
d/b/a SANCTUARY AT THE ABBEY**

Employer

and

Case 07-RC-074765

SEIU HEALTHCARE MICHIGAN

Petitioner

APPEARANCES:

David E. Khorey, Attorney, of Grand Rapids, Michigan, for the Employer
Matthew B. Carpenter, Attorney, of Detroit, Michigan, for the Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,¹ the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

¹ The parties timely filed briefs, which were carefully considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. 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.

Overview

The Petitioner seeks to represent all full-time and regular part-time registered nurse (RN) unit managers and licensed practical nurse (LPN) unit managers employed by the Employer at its Warren, Michigan facility. The Employer contends that the petitioned-for unit is inappropriate inasmuch as the RNs and LPNs, who are designated by the Employer as unit managers,² are supervisors within the meaning of Section 2(11) of the Act based on their authority to assign, direct, and discipline certified nursing assistants (CNAs) using independent judgment or to effectively recommend the same, and that the petition should be dismissed. For the reasons set forth below, I conclude that the Employer has not satisfied its burden of proof regarding the nurses and find that they are not statutory supervisors and are eligible to vote. They do not exercise authority in the interest of the Employer requiring the use of independent judgment to responsibly assign, direct, or discipline employees required for a finding of supervisory status, and their role in the evaluation procedure does not affect the job status or tenure of other employees.

The Employer's Operations

The Employer operates a 189-bed extended care nursing facility in Warren, Michigan.³ Administrator Jennifer Matash oversees the entire facility. Debbie Gregg is the Director of Nursing (DON) and Sue Obarzanek is the Assistant Director of Nursing (ADON). There are four color-designated residential units at the facility: red, blue, green, and rust. The red, blue, and green units contain 50, 47, and 47 beds, respectively, all of which accommodate long-term care residents. The rust unit contains 45 beds and accommodates short-term rehabilitation residents. Clinical Care Coordinator (CCC) Patricia Lynch manages the red unit; CCC Vanessa Williams⁴ manages the blue unit; CCC Lisa Foucart manages the green unit, and CCC Vicki Scheuher manages the rust unit.⁵ Joy Williams is the Human Resources (HR) director.⁶ The Employer also employs

² The unit managers are collectively referred to as “nurses” for the purposes of this decision.

³ The Employer operates other facilities as well, the locations of which are not identified in the record. There are no employee transfers between facilities.

⁴ CCC Vanessa Williams is also referred to in the record as Vanessa Baker.

⁵ All of the CCCs are nurses.

⁶ The parties stipulated, and I find, that Administrator Matash, DON Gregg, ADON Obarzanek, CCC Foucart, CCC Scheuher, and HR Director Williams are supervisors within the meaning of Section 2(11) of the Act. Although the parties did not stipulate to the supervisory status of CCC Lynch and CCC Williams, I note that the record does not

staffing coordinator⁷ Stephanie Collins, a non-nursing employee responsible for nursing department scheduling and payroll matters.

The facility operates 24 hours a day, seven days a week, utilizing day, afternoon and midnight work shifts. The day shift is from 7:00 a.m. to 3:30 p.m., the afternoon shift is from 3:00 p.m. to 11:30 p.m., and the midnight shift is from 11:00 p.m. to 7:30 a.m. The DON generally works from 6:00 a.m. to 6:00 p.m., and the ADON starts work later in the day and stays past the DON's ending time. The four CCCs work during the day shift. During the week, from the time the ADON leaves the facility in the evening until 6:00 a.m. the next morning when the DON arrives, and on the week-ends, the DON as well as the CCC on-call manager is always on-call. The four CCCs regularly rotate as on-call manager for one week, every four weeks.

There are 16 RN unit managers⁸ and 18 LPN unit managers. The nurses, whether RN or LPN, have the same job duties and responsibilities, except that RNs are able to perform certain medical procedures, based on their licensure, that LPNs are not able to perform.⁹ State law requires that an RN be on staff at all times. Two nurses work on each unit on the day and afternoon shifts, and one nurse works on each unit on the midnight shift. Each unit is also staffed by certified nursing aides (CNAs). There are approximately 86 CNAs employed at the facility. Three to four CNAs work on each unit depending on the patient census and the shift. Nurses and CNAs have the same shift times. The CNAs are subject to a collective bargaining agreement between the Employer and Local No. 140, Michigan AFSCME Council 25 of the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME). AFSCME did not intervene in this proceeding.¹⁰

1. Assignments

(a) Scheduling and Assignment of Resident Rooms

Nurse schedules are prepared and posted on the assignment board by staffing coordinator Collins. The two nurses assigned per unit on the day and afternoon shifts separate their unit geographically, each taking one-half of the resident rooms and overseeing the CNAs assigned to those rooms.

distinguish them from Foucart and Scheuer, the two other CCCs, and the Petitioner seeks to exclude all CCCs from its petitioned-for unit.

⁷ This position is also referred to in the record as scheduler.

⁸ The parties stipulated that the RNs are professional employees within the meaning of Section 2(12) of the Act.

⁹ The extent of such RN medical procedures is unclear from the record.

¹⁰ The hearing officer indicated that he sent AFSCME, via facsimile transmission, the notice of rescheduled hearing and the petition prior to commencing the hearing. A representative of AFSCME left a voice message during the adjournment, that it was not interested in intervening in the instant proceeding.

The nurses are not involved in scheduling CNAs for work. Staffing coordinator Collins is responsible for scheduling the work days and shifts for the CNAs. Collins also prepares the daily assignment sheet for each shift, which lists routine CNA tasks and pre-set break times. The date, patient census number, names of nurse(s) and CNAs, and the room numbers assigned to each CNA are written on the assignment sheets by the nurses. The daily assignment sheet is kept at the nurses station in an assignment sheet book. The record contains one example of a union grievance filed by AFSCME on behalf of a CNA regarding a nurse's assertedly improper handling of assignment sheet issues.¹¹

For the most part, CNAs are permanently placed in a specific unit for the term of their employment, and are assigned a set of resident rooms within the unit by Collins. In some units Collins may rotate the CNAs among resident rooms every two weeks or so. Each CNA generally cares for eight to ten residents per shift. CNA staff adjustments are sometimes made by nurses based on resident requests, patient census, or as a result of someone leaving early or calling off. Nurses are instructed to notify a CCC whenever a CNA re-assignment is made. The nurses do not have authority to permanently change CNA resident sets. Rather, the DON is responsible for making any permanent CNA transfers or final decisions as to the placement of CNAs. CNA shift changes are based on seniority under the collective bargaining agreement and likewise must be approved by the DON. CNA breaks are predetermined and required by the AFSCME union contract; break times are pre-set on the assignment sheet. The nurses are authorized to designate, rearrange, and adjust break times for the CNAs to meet the exigencies of patient care and staffing.

(b) Covering Staff Shortages

Nursing department staffing is dictated by patient census and a certain ratio of nursing personnel to resident is maintained at all times. All CNA and nurse call-ins during the day shift are handled by staffing coordinator Collins. During off-hours, call-ins are made to a call-in phone, which is maintained by either Collins, or the CCC on-call manager. Collins and the on-call manager are responsible for handling all call-ins and resulting scheduling issues and staffing shortages regarding CNAs and nurses. Regarding CNA no-call-no-shows resulting in staff shortages, nurses are instructed to immediately notify staffing coordinator Collins, who is responsible for securing another CNA to cover for the absence. Nurses are authorized in situations of understaffing to pull a CNA from another unit, according to a CNA "pull list," kept in the assignment sheet book. The pull list is drafted and maintained by a CCC. CNA names are regularly rotated on the pull list as these short-staffing incidents occur.

If a shift is overstaffed with CNAs, the nurses do not possess authority to send CNAs home. This is handled by staffing coordinator Collins during the day shift, or

¹¹ Nothing in the record indicates how or by whom or even whether the grievance was resolved.

Collins and/or the on-call CCC during off-hours. Nurses do not possess authority to approve employee absences or time-off requests. The DON or staffing coordinator, in conjunction with the HR director, approves all time-off requests. The attendance policy contained in the Employer's policies and procedures governs all attendance-related issues.

2. Responsible Direction

Resident Care and Direction over CNAs

The nurses assist the CCCs in completing resident care plans, which are entered in the Employer's "Care Tracker" (CT) computer system, as well as kept in a patient chart. The nurses routinely punch a fingerprint-coded time-clock upon reporting to work; check the assignment board to see which unit they are assigned to; report to their assigned unit; make rounds and take report from the outgoing nurse; complete the daily assignment sheet for the CNAs and meet with them to review the daily assignment sheet; and, provide resident care duties throughout their shift. Like the CNAs, nurses have routine daily tasks and spend most of their day providing patient care. One nurse witness testified she spends 75% of her shift performing patient care duties and another nurse witness testified she spends 90% of her shift performing patient care duties. Those duties include passing, counting and stocking medications and medical supplies; administering IVs and blood work; performing treatments¹² and patient assessments; terminal and post-mortem care; and charting and completing paperwork. These resident care responsibilities include the review of resident care plans to ensure that appropriate care is being provided. The job descriptions also note that the nurses are responsible for resident admissions, transfers, and discharges, including completing the required paperwork for such occurrences (although the record is absent of evidence that the nurses actually perform any of these duties). The Employer maintains separate job descriptions for the RNs and LPNs, but the duties enumerated therein are nearly identical.

For the most part, CNA job duties are routine, including taking and charting vitals; toileting, changing, bathing, feeding, and walking residents; alarm checks; wheelchair maintenance; and changing bedding. These tasks are listed on the daily assignment sheet. The daily assignment sheet also lists residents who have had multiple falls and are in the "red star" program for close monitoring. Upon starting their shifts, nurses consult with the nurses on the outgoing shift and discuss any changes in the condition of the residents. Nurses share this information with the CNAs. CNAs input vitals and other tasks completed into the CT computer system or patient chart, and the nurses routinely check to ensure that the CNAs are fulfilling their recording responsibilities. Nurses are responsible for updating the CNAs when a resident's condition changes and when amending their assignments, if necessary, in accordance with resident conditions.

¹² Treatments include catheterization services, tube feedings and suction services; applying and changing dressings, bandages, packs, and colostomy and drainage bags; and administering massages and range of motion exercises.

Likewise, CNAs inform nurses when they observe changes in residents' conditions. Most amended assignments are communicated orally by the nurse to the CNA and include additional routine duties. Nurses might also amend CNA assignments based on the CNA's noted experience and positive performance in a certain task such as feeding and nutrition, or safety-related tasks like the Heimlich maneuver or CPR. Nurses may add specific routine tasks to the assignment sheet on their own, or at the direction of a CCC, based on resident needs, such as timing for taking vitals, safety checks, toileting, and feeding; one-on-one feeding; leave of absence for medical appointments and/or therapy; notification regarding family visit; and resident wake times. Nurses are instructed to report such action to a CCC, who is responsible for further decisions regarding changes to the assignment sheet. On the day shift, the CCCs primarily take care of such amendments to the assignment sheet. During off-hours, nurses must contact the on-call CCC, as well as the DON, to update them regarding changes in a resident's condition, as well as emergencies such as a resident fall; seeking doctor or hospital care for a resident; or the death of a resident.

3. Discipline of CNAs

Corrective Action Notices are the official disciplinary forms used for CNAs. While nurse job descriptions note that an essential function is to "discipline department staff," the job descriptions further note that the nurses are to "notif[y] department manager of any interactions requiring attention." The Employer contends that the nurses possess authority on their own to issue disciplinary write-ups to CNAs.

Four CNA corrective action forms are in the record, one each for the years 2007, 2008, 2009 and 2010.¹³ One of the corrective action forms, testified to by CCC Scheuher, is a termination issued to a CNA on December 6, 2011, signed by CCC Scheuher and ADON Obarzanek. The CNA was terminated for refusing to remove food trays despite multiple requests, and failure to apply cream to a resident's foot when directed to do so. The write-up lists the CNA's supervisors as nurse Monica Adams and CCC Scheuher. The food tray incident was brought to the attention of CCC Scheuher by nurse Adams. Adams notified CCC Scheuher regarding the CNA's poor job performance and insubordinate behavior, and Scheuher instructed the nurse to write a statement of the incident. Nurse Adams' statement did not include any recommendation for discipline or otherwise. CCC Scheuher then conducted her own independent investigation of the incident, including obtaining a written statement from the CNA and interviewing residents. While interviewing residents, Scheuher discovered that the same CNA failed to apply a topical cream to a resident's foot. Scheuher confirmed with the nurse (a different nurse from the tray incident) that she directed the aide to apply the cream. Scheuher then requested that the nurse write a statement regarding the foot cream incident. CCC Scheuher determined that discipline was warranted, and consulted with

¹³ It is unknown how many write-ups in total have issued to CNAs during the time period of these write-ups.

ADON Obarzanek and HR Director Williams as to the appropriate level of discipline. CCC Scheuher and ADON Obarzanek presented the termination write-up to the CNA.

The other three corrective action forms, testified to by HR Director Williams, are signed by nurses. One is marked as a verbal counseling dated November 11, 2007, for unsafe procedures and violation of patient rights, regarding the CNA watching television in a vacant resident room during her shift with the door closed; one is marked as a written counseling dated June 4, 2009, for gross negligence, regarding inadequate patient care and failing to answer call lights; and one dated May 14, 2008, for failing to properly pass fresh ice water to residents does not indicate any level of discipline. The circumstances of these write-ups were not adduced in the record. HR Director Williams was unaware as to who checked the level of discipline for the November 11 and June 4 write-ups, and was further unaware as to who completed the narrative section of the written warning write-up. There is no record evidence regarding whether these corrective action forms were presented to the CNAs in question, and by whom.

In regard to penalty, the Employer follows a progressive discipline system, set forth in its policies and procedures, and applicable to all CNAs as well as nurses and all other facility employees, under which repeated offenses trigger increasingly serious sanctions. Work rules are also set forth in the Employer's policies and procedures. Because the nurses do not have access to employee personnel files, they are neither expected, or even able, to assess the level of progressive punishment. Personnel files are maintained by HR Director Williams and all corrective action forms automatically go to her for designation of appropriate discipline level per the progressive discipline policy. The record does not indicate that the nurses are routinely made aware of disciplinary action taken regarding the CNAs. Discharge decisions are the province of the administrator and DON, in conjunction with the HR director. The progressive discipline policy specifically provides "All... terminations and recommendations must be reviewed by the next level of management and Human Resources, prior to rendering any termination decisions."

The Employer also argues that the nurses are subject to discipline for failing to oversee and supervise the work of the CNAs, and have been disciplined for such omissions. There are no disciplinary write-ups of nurses in the record. The only record evidence in this regard is the testimony of CCC Lynch, a 31-year employee, who testified generally that in the last two years nurses have been written up several times for refusing to discipline CNAs, and specifically that she once verbally counseled a nurse who refused to write-up a CNA for poor job performance.

4. Evaluations

(a) Evaluations of Nurses

Nurses are subject to a 90-day probationary period during which time their overall competency is assessed by a CCC, as well as a mentor nurse, according to a “Competency Tool” form. The competency tool form also provides a column for nurse self-evaluation. In this regard, the nurses’ competency is assessed with respect to assigning, directing, and monitoring nursing staff; calling in staff to report for work when needed, and authorizing staff requests to leave work; reviewing and evaluating; and disciplining, including suspending nursing staff from duty for acts of misconduct.

The nurses are also annually evaluated by CCCs in the areas of assigning and directing nursing staff; providing leadership to nursing staff; making daily rounds to ensure all nursing staff are performing work assignments in accordance with acceptable nursing standards; and issuing discipline to nursing staff. After completing the evaluation, the CCC discusses it with the nurse and then submits it to the HR director for further review and placement in the nurse’s personnel file. Three completed nurse “performance evaluations records” are in evidence, for the years 2008, 2009, and 2010, for one nurse. The 2008 performance evaluation record is incomplete, because it consists only of a page 2. On each form, there are handwritten notations under Part V, Recommendation for Development – “needs to improve dispensing disciplinary actions when warranted” [2008]; “needs to issue disciplinary action when warranted”[2009]; and “needs to be stronger in supervisory skills to assure care of residents follow POC & documentation is timely and accurately [sic]” [2010]. There is minimal testimony regarding these forms and the surrounding circumstances. It appears that the competency tool form may also be used by the nurse for self evaluation sometime during the appraisal process, which then becomes a part of the appraisal packet, but the record evidence is vague and unclear in this regard.

(b) Evaluations of CNAs

The record indicates that CNAs are also subject to a 90-day probationary period during which time their overall competency is self-evaluated and assessed by a nurse, as well as a mentor CNA, on a competency tool form. No competency tool forms for CNAs were introduced into the record. The CNAs are also evaluated annually by CCCs. Prior to each CNA evaluation, the CCC meets with the nurse that works with the CNA to discuss CNA job performance and get input. The CCC then completes the CNA evaluation form, presents it to and discusses it with the CNA and submits it to the HR director for further review and placement in the CNA’s personnel file.

5. Interviewing CNAs – Effective Recommendation to Hire

The Employer argues that nurses participate in interviews of prospective employees and make recommendations for hiring. The record contains one example of a nurse conducting an interview of a prospective nurse¹⁴ in about December 2011, at the request of HR Director Williams.¹⁵ The nurse applicant was also separately interviewed by CCC Sheuher, who consulted with the nurse interviewer. Both agreed that the applicant should not be hired and CCC Scheuher advised HR Director Williams accordingly. Consequently, the applicant was not hired. Besides this one example, the record is devoid of evidence demonstrating that the nurses regularly participate in interviewing prospective employees or otherwise in the hiring process. Moreover, nurses, as well as CCCs, lack independent authority to hire. Rather, all hiring decisions are made by the Administrator, DON, and ADON, in conjunction with the HR director.

6. Other Factors

Nurses do not layoff or recall employees from layoff. Nurses have no authority to resolve CNA grievances. Rather, the administrator, in conjunction with HR Director Williams, is responsible for handling CNA grievances pursuant to the grievance procedure set forth in the CNA union contract.

Nurses are college-educated in a licensed nursing program. CNAs are certified through an approved nurse aide training program. Nurse pay rates are determined according to a pay scale based on amount of experience and number of years worked. The CNA wage rate is dictated by the collective bargaining agreement. Nurses receive a first-year bonus and earn about twice the hourly rate of the CNAs: the average hourly wage rate for CNAs is \$12.00, while the average hourly wage rate for nurses is \$24.00. Nurses and CNAs are eligible to receive the same insurance benefits. The nurses wear badges designating them as unit managers. The CCCs, DON and other nursing management attend daily management meetings. Nurses do not attend these daily management meetings

CNAs and nurses punch a fingerprint-coded time-clock. When a CNA fails to punch in or out, for whatever reason, he/she completes a “missed punch” form which is initialed and signed by a nurse on the same unit. The nurse initials and signature merely verify the time information recorded by the employee. The missed punch sheet is given to the DON for approval, and then to the payroll department for processing of the time adjustment. The CCCs are salaried and do not punch the fingerprint-coded time-clock

¹⁴ The Employer’s brief at page 19 incorrectly notes that the nurse interviewed a prospective CNA, rather than another nurse.

¹⁵ Williams testified that she has also asked CNAs to participate in the interviews of prospective CNAs.

New CNAs participate in an orientation program normally conducted by the staffing development coordinator. However, because that position is currently vacant, a CCC, the ADON, or the DON is responsible for conducting such orientation. Nurses are not involved in CNA orientations.

Although the nurse job descriptions note that an essential function is to mentor CNAs, the record evidence demonstrates that CNAs are, for the most part, trained on the job by more experienced CNAs. In-service training is normally provided to CNAs and nurses by an “Educator,”¹⁶ but because the educator position is currently vacant, either a CCC, the ADON, or the DON is responsible for conducting such in-service training. On-line education services are provided to all nursing staff through the Employer program entitled “Trinity Continuing Care University” (TCCU). The Employer introduced a document referencing TCCU into evidence stating that “[a]ll employees in a leadership role (anyone with direct reports)[including the nurses] will be required to attend all classes in the Leadership Series.”

Analysis

Section 2(3) of the Act excludes from the definition of the term “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines a “supervisor” as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Individuals are “statutory supervisors if: 1) they hold the authority to engage in any one of the 12 listed supervisory functions, 2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and 3) their authority is held in the interest of the employer.” *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same.

The Board has reaffirmed that the burden to prove supervisory authority is on the party asserting it. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *NLRB v. Kentucky River*, supra, at 711-712. In addition, the Board’s long recognition that purely conclusionary evidence is not sufficient to establish supervisory status remains viable.

¹⁶ The record is not clear whether this is the same classification as the staffing development coordinator.

The Board requires evidence that the individual actually possesses supervisory authority. **Golden Crest Healthcare Center**, 348 NLRB 727, 731 (2006); **Chevron Shipping Co.**, 317 NLRB 379, 381 fn. 6 (1995) (conclusionary statements without specific explanation are not enough).

Although the Act demands only the possession of Section 2(11) authority, not its exercise, the evidence still must be persuasive that such authority exists. **Avante at Wilson, Inc.**, 348 NLRB 1056, 1057 (2006). Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority. *Id.*; **Golden Crest**, *supra* at 731, citing **Training School at Vineland**, 332 NLRB 1412, 1416 (2000).

Assignment of Work

The Board in **Oakwood Healthcare** defined assigning work as “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” **Oakwood Healthcare**, *supra* at 689.

Time

The record establishes that the CNAs’ scheduled hours are determined by the staffing coordinator. The nurses do not schedule CNAs’ work hours, or breaks, which are pre-determined and pre-set on the assignment sheet. If the facility is short-staffed due to CNAs calling off, the staffing coordinator or on-call manager is primarily responsible for handling these calls and procuring a replacement CNA. Nurses do not ever have authority to approve schedule changes. The Employer has not established the exercise of supervisory authority by LPNs in scheduling CNAs. See **Golden Crest**, *supra*, at 728-730.

The Employer cites **Caremore, Inc. v. NLRB**, 129 F.3d 365, 369 (1997), to support its argument that the nurses have the authority to assign and responsibly direct CNAs. In **Caremore**, the court found that the record established that the nurses had the responsibility to request (although they could not require) off-duty aides to come in to work, or to request on-duty aides to work overtime, when other aides failed to report to work as scheduled. No such similar evidence is present in this case.

Place and Tasks

In **Oakwood Healthcare**, the Board found that emergency room charge nurses designated nursing staff to geographic areas within the emergency room. The Board found that this assignment of nursing staff to specific geographic locations within the emergency room fell within the definition of “assign” for purposes of Section 2(11).

Oakwood Healthcare, supra at 695. Here, CNAs are assigned to their unit and rooms by the staffing coordinator. Once assigned, CNAs' daily tasks are largely defined by the assignment sheet generated by the staffing coordinator. CNAs routinely assist nurses, and vice versa, with various aspects of direct patient care. This may involve the nurse assigning a discrete task to a CNA. Nurses' assignments of these "discrete task[s]" in these circumstances is closer to "ad hoc assignments" described in *Croft Metals*, 348 NLRB 717, 721 (2006), rather than the emergency room assignments discussed in *Oakwood*. In *Croft Metals*, supra at 721, the Board found that the switching of tasks by lead persons among employees assigned to their line or department was insufficient to confer supervisory status.

Here, the nurses' assignment of discrete tasks to CNAs is insufficient to confer supervisory status. When a unit is short-staffed, there is some evidence that a nurse may pull a CNA from another unit according to the CNA pull list. Any occasional transfer due to short-staffing is nothing more than switching the tasks among employees, and does not confer supervisory status. *Croft Metals*, supra at 722. The Employer has not established that any isolated temporary reassignment of duties by a nurse for the balance of a shift denotes supervisory status.

In support of its argument regarding the nurses' authority to schedule and assign CNAs, the Employer offered a grievance into the record grieving a nurse's assertedly improper handling of assignment sheet issues. The Employer contends that such evidence demonstrates acknowledgement of nurse supervisory authority by AFSCME, the CNAs' union representative. The Employer urges that its argument is further bolstered by AFSCME declining interest in representing the nurses. It is accurate that AFSCME did not participate in the hearing, and has not intervened in this proceeding. However, it is a stretch to interpret AFSCME's inaction in this regard to mean anything more than what it is: simply, AFSCME did not intervene in this proceeding. As far as the grievance, nothing in the record indicates what, when, how or by whom it was resolved, if at all. I find that the Employer's evidence and argument is based on mere speculation and does not support a finding of supervisory status based on the nurses' schedule and assignment of duties with respect to CNAs.

Independent Judgment

In *Oakwood Healthcare*, the Board, consistent with *Kentucky River*, adopted an interpretation of "independent judgment" that applies to any supervisory function at issue "without regard to whether the judgment is exercised using professional or technical expertise." The Board explained that "professional or technical judgments involving the use of independent judgment are supervisory if they involve one of the 12 supervisory functions of Section 2(11)." *Oakwood Healthcare*, supra at 692. The Board then set forth standards governing whether the exercise of the Section 2(11) acts are carried out with independent judgment: "actions form a spectrum between the extremes

of completely free actions and completely controlled ones, and the degree of independence necessary to constitute a judgment as ‘independent’ under the Act lies somewhere in between these extremes.” *Oakwood Healthcare*, supra at 693. The Board found that the relevant test for supervisory status utilizing independent judgment is that “an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, supra at 693. Further, the judgment must involve a degree of discretion that rises above the “routine or clerical.” *Oakwood Healthcare*, supra at 693.

I now examine whether the nurses exercise independent judgment regarding assignment of work. In *Oakwood Healthcare*, the Board found that the term “assign” encompassed a charge nurse’s responsibility to assign nurses and aides to particular patients. *Oakwood Healthcare*, supra at 689. The Board found that “if the registered nurse weighs the individualized condition and needs of a patient against the skills or special training of available nursing personnel, the nurse’s assignment involves the exercise of independent judgment.” *Oakwood Healthcare*, supra at 693. The Board found that the charge nurses who worked outside of the emergency room used independent judgment in matching patients and nursing staff. For example, nurses who were proficient in administering dialysis were assigned to a kidney patient. The charge nurse assigned staff with skills in chemotherapy, orthopedics or pediatrics to the patients with needs in those areas. Charge nurses also assigned the nursing personnel to the same patient to ensure continuity of care. The nurses who were assisting a patient with a blood transfusion were not assigned to other ill patients. Charge nurses determined whether a mental health nurse or an RN should be assigned a psychiatric patient. *Oakwood Healthcare*, supra at 696-697. In contrast, the Board found that the emergency room charge nurses did not “take into account patient acuity or nursing skill in making patient care assignments.” The evidence did not show “discretion to choose between meaningful choices on the part of charge nurses in the emergency room.” *Oakwood Healthcare*, supra at 698.

Here, the staffing coordinator, not the nurses, makes the initial patient assignments for CNAs. For the most part, CNAs remain assigned to the same residents. To the extent the nurses make isolated reassignments, the Employer has not shown that they perform a detailed analysis of CNAs’ abilities and residents’ needs. Unlike the nurses who have extensive training and skills, CNAs do not possess specific training or skills in various medical areas. The record demonstrates that the CNAs’ assignments are routine in nature and based on their title, rather than on any particular expertise.

I earlier found that nurses do not assign by appointing CNAs to a time or by giving them significant overall duties. I further conclude that, even if they do so, they do not exercise independent judgment in such assignments. Concerning the nurses’ assignments of CNAs to particular “times” of work, the Board held in *Oakwood Healthcare* that “the mere existence of company policies does not eliminate independent judgment from

decision-making if the policies allow for discretionary choices;” but that “a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policy or rules, the verbal instructions of higher authority, or in the provisions of a collective bargaining agreement.” *Oakwood Healthcare*, supra at 697-698. The initial scheduling, performed by the staffing coordinator, involves no choice at all on the nurses’ part. In addition, the Employer’s practice does not allow for choices by the nurses with regard to calling CNAs into work or requesting them to stay over their shift.

The Employer argues that nurses use independent judgment in directing the CNAs but the record testimony presented on this issue is leading and conclusionary. Rather, as for the assignment of duties, the record more clearly demonstrates that CNAs’ overall tasks are largely defined by the routine assignment sheet (vitals, bathing, toileting, feeding, wheelchairs) generated by the staffing coordinator, not the nurses. In the spectrum set out by the Board, the nurses’ assignment of discrete tasks and the isolated temporary switching of tasks by nurses falls closer to “completely controlled” actions, rather than “free actions.” They do not involve a “degree of discretion that rises above routine or clerical.” *Oakwood Healthcare*, supra at 693. Thus, the assignment of tasks by nurses does not require the use of independent judgment.

Responsible direction and discipline

For direction to be responsible, the person directing must have oversight of another’s work and be accountable for the other’s performance. To establish accountability, it must be shown that the putative supervisor is empowered to take corrective action, and is at risk of adverse consequences for others’ deficiencies. *Oakwood Healthcare*, supra, 691-692, 695.

The first question is whether the Employer has established that its nurses *direct* other employees within the meaning of Section 2(11). The record demonstrates that the nurses will direct the CNAs to perform certain tasks when the nurse determines that such tasks are necessary. For example, the nurses will direct CNAs to apply and check residents’ alarms, perform a one-on-one feeding, or enforce specific wake times for residents. The nurses rely on the CNAs’ computer data input and/or manual charting indicating that they have completed their tasks. The evidence is insufficient to establish that the nurses “direct” the CNAs within the meaning of the definition set forth in *Oakwood Healthcare. Golden Crest Healthcare Center*, supra at 731.

The next question is whether the Employer has established that the nurses are *accountable* for their actions in directing the CNAs. I find that the Employer has not met its burden. While CCC Lynch testified that nurses can be and have been held accountable for CNA deficiencies, this testimony is conclusionary. The record lacks evidence that any nurse has been disciplined for failure to oversee or correct a CNA or as a result of a CNA's failure to adequately perform her/his duties. This is in contrast to the

asserted RN supervisors in *Beverly California Corp. v. NLRB*, 970 F.2d 1548, 1550-1551 (6th Cir. 1992), relied on by the Employer, who were counseled by Beverly regarding their responsibilities in administering employee discipline and one of the RNs was individually counseled regarding her failure to discipline a nurse's aide. The only specific example offered by CCC Lynch, who has worked for the Employer for 31 years, related to a single incident in which she assertedly verbally counseled a nurse who refused to write-up a CNA for poor job performance. Otherwise, there is no evidence that the Employer imparted clear and formal notice to the nurses that they will be held accountable for the job performance of aides. See *Golden Crest*, supra at 731.

The nurse job descriptions list oversight responsibilities for CNAs, as does the nurse performance evaluation record. Three performance evaluation records in evidence include handwritten notes from the CCC in the recommended development section identifying the nurse's need to improve dispensing disciplinary action [2008], to issue disciplinary actions [2009], and to be stronger in supervisory skills to assure care of residents [2010], but there is no evidence that the nurse suffered any negative consequences. Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Golden Crest*, 348 NLRB 727, 731 (2006), citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000). Moreover, the record does not disclose that the Employer has trained nurses on the ramifications of their being held responsible for the performance of others.

Overall, the record shows that the nurses' responsibility in the area of discipline is solely to serve as a conduit by reporting misbehavior. The only evidence of arguable discipline consists of four CNA corrective action forms, either signed by nurses or the underlying incident orally reported by a nurse, from 2007 to 2011. It is unknown how many write-ups in total were issued to CNAs during this same time period.

One of the corrective action forms, involving the termination of a CNA, was not signed by a nurse. Rather, it was signed by a CCC and the ADON. A nurse orally advised the CCC on-call unit manager regarding a CNA's failure to remove food trays upon repeated requests, and wrote out an incident statement at the direction of the CCC, which did not contain any recommendation for discipline or otherwise. The CCC conducted an independent investigation of the incident, including obtaining a written statement from the CNA and interviewing residents. As a result of interviewing residents, the CCC obtained an additional statement from another nurse regarding the CNA's failure to apply topical cream to a resident's foot, as directed by the nurse, and determined that discipline was appropriate. The CCC further consulted with the ADON and HR director as to the appropriate level of discipline, and the discipline was issued and presented to the offending CNA by the CCC and ADON. The final discharge decision was made by the DON or administrator, in conjunction with the HR director, as

are all termination decisions. The nurses' contributions were anecdotal, making their role reportorial. This example demonstrates that nurses are limited to making factual reports that are subject to additional scrutiny and investigation by a CCC, the ADON and HR director. The Board will not find supervisory status on that basis. *Hillhaven Rehabilitation Center*, 325 NLRB 202, 203 (1997); *Ten Broeck Commons*, 320 NLRB 806, 813 (1996); *Northwest Nursing Home*, 313 NLRB 491, 597-498 (1993); *The Ohio Masonic Home*, 295 NLRB 390, 394 (1989).¹⁷

The other three corrective action forms issued to CNAs were signed by nurses but the circumstances surrounding these write-ups were not adduced in the record. The record fails to establish that any nurse-initiated discipline has ever issued without investigation and review by higher management. Nurses do not have access to employee personnel files, and there is no evidence that they have been trained on any dimension of their disciplinary role. Conclusionary statements without specific explanation are not enough. *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995). The Employer argues that the dearth of written disciplines in the record, if anything, constitutes evidence of the nurses' authority to issue discipline, and their use of independent judgment in determining *whether* to issue discipline. However, there was no evidence adduced in the record to support the Employer's argument in this regard. Moreover, the Board cautions against finding supervisory authority based only on infrequent instances of its existence. *Family Healthcare, Inc.*, 354 NLRB 254, 259-260 (2009); *Golden Crest Healthcare*, supra at 730 n. 9. Indeed, the Employer's reliance on *In re Progressive Transportations Services, Inc.*, 340 NLRB 1044 (2003), does not advance its argument. In contrast to the instant matter, the putative supervisor therein issued 33 discipline notices to dispatchers, recommending a disciplinary course of action, and in each instance, the recommended discipline was always imposed. Additionally, those 33 discipline notices were in the record, which is not the case herein.

Citing *Oak Park Nursing Center*, 351 NLRB 27, 28 (2004), and *Promedica Health Systems, Inc.*, 343 NLRB 1351 (2004), the Employer also argues that the noted corrective action forms purportedly issued by nurses lay a foundation for further discipline under the progressive discipline policy. However, in *Oak Park Nursing Center*, unlike the instant record, the disciplines completed by the purported nurse supervisors were written in detail by the nurses, who met with the DON, ADON, and CNA to discuss the discipline. Each of the disciplines issued by the *Oak Park* nurses resulted in suspension and discharge of the offending employee. Thus, the Board found that the nurses' role in discipline was more than reportorial. *Promedica Health Systems, Inc.*, an unfair labor practice case, involved coaching and counselings issued to alleged discriminatees and the question was whether those disciplines could be used by the

¹⁷ The Employer cites *Glenmark Associates v. NLRB*, 147 F.3d 333, 344 (4th Cir. 1998), for the proposition that the decision to file a written report rather than orally counsel a CNA is disciplinary action. That case is distinguishable because nurses who filed written verbal correction reports included recommendations for discipline, which were relied on by the employer. There is no similar evidence in the instant matter.

employer for further and increased discipline in the progressive discipline system, and thus constituted grounds for an 8(a)(3) violation. In the instant record it is unknown whether one of the write-ups, the May 14, 2008, corrective action form, resulted in discipline at all. As to the November 4, 2007, and the June 4, 2009 write ups, their effect, if any, on the offending employees is also unknown.

The Employer argues that the nurses have authority to suspend CNAs for resident abuse, or falling asleep during shift. Regarding resident abuse issues, if the incident occurs during the day shift hours, it is handled by the CCCs or other stipulated supervisor. During off-hours, nurses possess authority to remove a CNA from the facility for suspected abuse, however, they must immediately report such an incident to the on call manager for independent investigation. Thus, whatever authority a nurse possesses to send a CNA home for abusive or repeatedly insubordinate behavior, the record is clear that any such incident is subject to independent review and investigation by higher management authority. The taking of limited action in response to a flagrant violation has long been held insufficient by itself to establish supervisory status. *Regal Health and Rehab Center, Inc.*, 354 NLRB 446, 474 (2009); *Vencor Hospital – Los Angeles*, 328 NLRB 1136, 1139 (1999); *Phelps Community Medical Center*, 295 NLRB 486, 491-492 (1989). Although the Employer argues that nurses have authority to recommend discipline for no-call-no-show employees, the nurses are instructed to immediately notify the staffing coordinator or the on-call manager regarding CNA no-call-no-shows resulting in staff shortages, who is responsible for securing another CNA to cover for the absence. Moreover the Employer's attendance policy governs all attendance-related issues.

Thus, while the record shows that nurses are responsible to report deficient CNA job performance to the CCC, there is no substantive evidence that they recommend that discipline or any consequence result from the deficient performance. Rather, the record provides that nurses are limited to making factual reports that are subject to additional scrutiny and investigation by CCCs, the ADON, and the DON. There is no evidence that any of the nurses have been trained regarding administration of discipline to employees. The authority to "point out and correct differences in the job performance of other employees does not establish the authority to discipline." *Regal Health and Rehab Center, Inc.*, supra at 473 (2009), citing *Franklin Hospital Medical Center*, 337 NLRB 826, 830 (2002); *Crittenton Hospital*, 320 NLRB 879 (1999), citing *Passavant Health Center*, 284 NLRB 887, 889 (1987).

I conclude that the record fails to establish that nurses either discipline or make such recommendations. Nor does the record establish that the nurses are authorized to make such disciplinary decisions using independent judgment.

Evaluation of CNAs

The Employer argues that the nurses assess CNAs' job performance during their 90-day probationary period on a competency tool form, and provide input which could lead to discipline. However, no competency tool forms for CNAs were introduced into the record. I give no weight to the involvement of the nurses in completing the CNA competency forms, as the record is unclear as to what role, if any, these forms play in the evaluation process. See ***Chevron Shipping Co.***, 317 NLRB 379, 381 fn. 6 (1995) (conclusionary statements without specific explanation are not enough).

The Employer also argues that the nurses participate in the annual performance evaluations of the CNAs. While nurses may provide oral input regarding CNA job performance at the request of the CCC (and in this regard the evidence is minimal and conclusionary), the overwhelming record evidence demonstrates that CCCs are responsible for completing and issuing annual evaluations to the CNAs. The nurses do not participate in any meetings with CNAs regarding their evaluations. All employee evaluations go to the HR director for final review and placement in the employee personnel files. The Employer has not established any practice of nurse involvement in the CNA evaluation process that establishes supervisory authority. The Board has consistently declined to find supervisory status based on evaluations without evidence that they constitute effective recommendations to reward, promote, discipline, or likewise affect the evaluated employee's job status. ***Coventry Health Continuum***, 332 NLRB 52, 53-55 (2000); ***Ten Broeck Commons***, 320 NLRB 806, 813 (1996).

Interviewing of CNAs - Effective Recommendation to Hire

The Employer argues that the nurses make effective recommendations to the Employer regarding the hiring of new employees by interviewing prospective employees. However, there is only one example in the record of a nurse interviewing a nurse applicant, at the request of the HR director. The applicant was separately interviewed by a CCC, who consulted with the nurse interviewer. Both agreed that the applicant should not be hired and the CCC notified the HR director accordingly. This scant evidence merely indicates that one nurse recommended to a CCC that one applicant not be hired, but does not conclusively establish anything else. All hiring decisions are made by the administrator, DON, and ADON, in conjunction with the HR director. CNAs have also participated in interviews of prospective CNAs, at the request of the HR director.

Secondary Indicia

The existence of secondary indicia, such as title and higher pay, standing alone, is insufficient to demonstrate supervisory status. ***Shen Automotive Dealership Group***, 321 NLRB 586, 594 (1996); ***Billows Electric Supply***, 311 NLRB 878 fn.2 (1993). The job descriptions of the nurses purport to vest them with authority over CNAs to make

assignments, evaluate, train, counsel, and discipline. However, the record does not establish that the nurses perform such functions for the Employer, unlike in *Beverly California Corp*, supra at 1550-1551, cited by the Employer, where the disciplinary authority referenced in the RN job description was frequently exercised by the asserted RN supervisors, most often in the form of counseling. I conclude that the job description is a mere paper conveyance of supervisory authority that does not impart actual supervisory authority. *Golden Crest*, supra at 731, citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000); *Loyalhanna Health Care Associates* 352 NLRB 863, 864 (2008); *Chevron U.S.A., Inc.*, 309 NLRB 59, 62 (1992) (job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority).

The Employer urges that the nurses working during off-hours are the highest level nursing personnel in the building, and as a result possess supervisory authority. However, the absence of supervisors does not imply that nurses must be supervisors. Nothing in the statutory definition of supervisor suggests that service as the highest-ranking worker on site requires a supervisory finding. *Loyalhanna Health Care Associates*, supra at 865; *Spirit Construction Services, Inc.*, 351 NLRB 1042, fn. 2 (2007); *Training School at Vineland*, supra at 1412 fn. 3. The Employer's reliance on *Glenmark Associates*, supra, in this regard is misplaced. Glenmark maintained a general call-in procedure for when absences occurred, however on some occasions the nurses decided to operate the nursing home or their floor shorthanded, unlike in the instant record. Additionally, the record in *Glenmark* demonstrated that the nurses possessed authority to approve CNAs' early departures and assign CNAs to different areas of the nursing home, unlike the record herein. In the instant matter, the reality that the staffing coordinator and on-call unit manager are responsible for on-call duties, and the DON is always on-call, and the nurses are directed to call them, undercuts the Employer's argument imputing supervisory status to the nurses because they are the highest-ranking employees on duty. *Loyalhanna Health Care Associates*, supra at 865, citing *Golden Crest*, supra at 730 (finding that service as highest-ranking employee on duty was "even less probative where management is available after hours").

Finally, I note that if the nurses are found to be supervisors, the Employer would employ no non-supervisory nurses. Overall there would be 38 supervisors, including all unit managers and CCCs, but excluding the other stipulated supervisors, for approximately 86 CNAs; about 30.6% percent of the Employer's nursing department staff of 124 employees would be supervisory. This is an unusually top-heavy ratio. *Oakwood Healthcare*, supra at 715-716; *Beverly California Corp.*, supra at 1555-1556 (classifying 25% of nursing home staff as supervisors makes ranks of supervisors "pretty populous"); *NLRB v. Res-Care, Inc.*, 705 F.2d 1461,1468 (7th Cir. 1983) (33% found to be high); *Airkaman, Inc.*, 230 NLRB 924, 926 (1977) (one to three ratio is unrealistic and excessively high).

The Contingent Nurses

The Employer employs an unknown number of contingent nurses, who apparently perform the same duties as the other nurses.¹⁸ The Employer and Petitioner stipulated that any nurses characterized as contingent will be eligible to vote subject to the average-hours-worked formula set forth in *Davison-Paxon Co.*, 185 NLRB 21 (1970). For on-call employees who work on a regular basis, the Board utilizes the eligibility formula set forth in *Davison-Paxon Co.*, supra, and *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990). Accordingly, contingent nurses are eligible to vote in the election ordered herein if they regularly average four hours or more of work per week during the quarter immediately prior to the eligibility date. The record is devoid of evidence regarding the number of hours worked by the contingent nurses, thus I am unable to determine whether they regularly averaged four hours or more per week during the quarter immediately prior to the eligibility date. As I am unable to determine the voting eligibility of the contingent nurses based on the present record, they shall be permitted to vote under challenge if they are otherwise eligible.¹⁹

Conclusion

5. The following employees of the Employer **may** constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its facility located at 12250 East 12 Mile Road, Warren, Michigan; but excluding all clinical care coordinators, MDS nurses, office-clerical employees, managers, and guards and supervisors as defined in the Act.

The unit set out above includes professional and nonprofessional employees. However, the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with nonprofessional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees must be ascertained as to inclusion in a unit with nonprofessional employees.

¹⁸ The record is silent regarding the number of contingent nurses employed, or their wage and benefit rates.

¹⁹ I reserve for future resolution, if necessary, whether it is more appropriate to utilize the eligibility formula of *Marquette General Hospital*, 218 NLRB 713 (1975), if there exists a significant difference in the number of hours worked by contingent nurses.

Therefore, I shall direct separate elections in the following voting groups:

VOTING GROUP A:

All full-time and regular part-time licensed practical nurses employed by the Employer at its facility located at 12250 East 12 Mile Road, Warren, Michigan; but excluding all clinical care coordinators, MDS nurses, office-clerical employees, managers, and guards and supervisors as defined in the Act.

VOTING GROUP B:

All full-time and regular part-time registered nurses employed by the Employer at its facility located at 12250 East 12 Mile Road, Warren, Michigan; but excluding all clinical care coordinators, MDS nurses, office-clerical employees, managers, and guards and supervisors as defined in the Act.

The nonprofessional employees (Voting Group A) will be polled to determine whether they wish to be represented by the Petitioner. The professional employees (Voting Group B) will be asked the following two questions on their ballot:

1. Do you desire to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by Service Employees International Union Healthcare Michigan?

If a majority of the professional employees (Voting Group B) vote “Yes” to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their votes on the second question then will be counted together with the votes of the nonprofessional employees (Voting Group A) to determine whether the employees in the overall unit wish to be represented by the Petitioner. If, on the other hand, a majority of the professional employees vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will be separately counted to determine whether they wish to be represented by the Petitioner in a separate unit.

Thus, the unit determination is based, in part, upon the results of the election among the professional employees. However, I make the following findings in regard to the appropriate unit:

If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, I find the following single unit will constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its facility located at 12250 East 12 Mile Road, Warren, Michigan; but excluding all clinical care coordinators, MDS nurses, office-clerical employees, managers, and guards and supervisors as defined in the Act.

If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, I find the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A:

All full-time and regular part-time licensed practical nurses employed by the Employer at its facility located at 12250 East 12 Mile Road, Warren, Michigan; but excluding all clinical care coordinators, MDS nurses, office-clerical employees, managers, and guards and supervisors as defined in the Act.

Unit B:

All full-time and regular part-time registered nurses, including the MDS nurse, employed by the Employer at its facility located at 12250 East 12 Mile Road, Warren, Michigan; but excluding all clinical care coordinators, MDS nurses, office-clerical employees, managers, and guards and supervisors as defined in the Act.

Those eligible shall vote whether they wish to be represented for the purposes of collective bargaining by Service Employees International Union Healthcare Michigan.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 2nd day of April 2012.

(SEAL)

/s/ Terry A. Morgan
Terry A. Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **SEIU Healthcare Michigan**. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have quit or been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on

the list should be alphabetized (overall or by department, etc.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **April 9, 2012**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website at *www.nlr.gov*,²⁰ by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

²⁰ To file the eligibility list electronically, go to the Agency's website at *www.nlr.gov*, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001**. This request must be received by the Board in Washington by **April 16, 2012**. The request may be filed electronically through the Agency's website, *www.nlr.gov*,²¹ but may **not** be filed by facsimile.

²¹ To file the request for review electronically, go to the Agency's website at *www.nlr.gov*, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions