

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

**PINE RIVER HEALTHCARE, LLC
d/b/a PINE RIVER HEALTHCARE CENTER**

Employer

and

Case 07-RC-081329

SEIU HEALTHCARE MICHIGAN¹

Petitioner

APPEARANCES:

Todd M. Nierman, Attorney, of Indianapolis, Indiana, for the Employer.

Matt Carpenter, Attorney, of Detroit, Michigan, for the Petitioner.

DECISION AND ORDER

OVERVIEW

The Petitioner seeks to represent all full-time and regular part-time licensed practical nurses (LPNs) employed by the Employer at its St. Louis, Michigan facility; but excluding office-clerical employees, registered nurses, guards and supervisors as defined in the Act.² The Employer contends that the unit is inappropriate and the petition should be dismissed because all of its LPNs are statutory supervisors based on their authority to discipline and effectively recommend discipline, and responsibly direct the work of the CNAs.

As discussed below, based on the record and relevant Board law, I conclude that the Employer has satisfied its burden of proof that the LPNs exercise authority in the interest of the Employer requiring the use of independent judgment to discipline employees, and thus are statutory supervisors. The petitioned-for unit is not appropriate for purposes of collective bargaining and I shall dismiss the petition.

¹ The names of the Employer and Petitioner appear as amended at the hearing.

² The unit is as amended at the hearing.

A. The Employer's Operations

The Employer operates an 81-bed, long-term nursing facility in St. Louis, Michigan. Administrator Diane McGourty oversees the facility and administrative department. Cheryl Sparr is the director of nursing (DON) and heads the nursing department. The facility has two units with nursing stations at each unit: Center Unit and East Unit. In addition, there is Long Hall between the two units which contains the Alzheimer/dementia unit. Long Hall does not have a separate nursing station; the nursing station on East Unit is responsible for Long Hall. Unit Manager (UM) Heather Brown manages both units.³ Penny Kingworth, from the human resources (HR) department, is the scheduler for the entire nursing department.

In addition to the nursing department, the Employer operates the following departments with department heads: maintenance – Tim Stamburski, director; activities – Rebecca Peak, department head; dietary – Louise McCarthy, department head; social work – Lauren Silverstein, department head; administrative (including billing) – Diane McGourty, administrator; admissions – Sarah Davis, department head; and minimum data sets (MDS) department – Dawn DeKamp, department head.⁴

The Employer employs six licensed practical nurse (LPNs), four full-time and two part-time, and five registered nurses (RNs), also referred to as charge nurses.⁵ The LPNs and RNs have the same duties and responsibilities, except that RNs perform certain medical procedures such as administering IV medications, based on their licensure, which LPNs do not perform. One nurse works on each unit each shift. Nurses work 12-hour shifts with a 30-minute overlap, 5:00 a.m. to 5:30 p.m., and 5:00 p.m. to 5:30 a.m. Each unit is also staffed by certified nurse aides (CNAs).

There are approximately 45 CNAs employed at the facility. Two to four CNAs work on each unit depending on the patient census and the shift. They work eight-hour shifts with a 10-minute overlap, 6:00 a.m. to 2:10 p.m. (first shift); 2:00 p.m. to 10:10 p.m. (second shift); and 10:00 p.m. to 6:10 a.m. (third shift). During the first shift, four CNAs are scheduled on Center Unit and three on East Unit/Long Hall. On the second shift, four CNAs are scheduled on Center Unit and two on East Unit/Long Hall, and on the third shift, two CNAs are scheduled on Center Unit and two on East Unit/Long Hall. The CNAs are represented by Petitioner for purposes of collective bargaining, and their terms and conditions of employment are subject to a collective bargaining agreement between the Employer and Petitioner.

³ The parties stipulated, and I find, that Cheryl Sparr and Heather Brown are supervisors within the meaning of Section 2(11) of the Act, based on their authority to hire, discipline, and discharge employees in the interest of the Employer.

⁴ The Employer's physical therapy and housekeeping/laundry departments are contracted to outside providers.

⁵ LPNs and RNs may be collectively referred to as nurses for purposes of this decision. The Petitioner is not seeking to represent the RNs.

The Administrator, DON, and UM, as well as all department heads, work from 8:00 a.m. to 4:30 p.m., Monday through Friday. Typically, from approximately 4:30 p.m. until 8:00 a.m., Monday through Friday, and on Saturdays and Sundays, there are no managers on the premises. The DON is always on call should a situation arise that requires attention, in addition to either the Administrator, UM, or MDS coordinator, who rotate weekly as on-call manager.

B. Board Law

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.” *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), *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. 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).

C. Application of Board Law to this Case

In reaching the conclusion that the LPNs are supervisors within the meaning of the Act by their authority to discipline CNAs, I rely on the following analysis and record evidence.

1. Independent Judgment and Discipline

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.” Id. Further, the judgment must involve a degree of discretion that rises above the “routine or clerical.” Id.

Regarding the asserted disciplinary authority of the nurses, under Section 2(11) of the Act, individuals are statutory supervisors if they have the authority, in the interest of the employer, to discipline other employees, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. *Oakwood Healthcare*, supra at 687; *Arlington Masonry Supply*, 339 NLRB 817, 818 (2003).

In the instant matter, if a nurse believes that a CNA is not providing adequate care, improperly conducting procedures, or not completing tasks in a timely manner, the nurse has authority and discretion to (1) do nothing; (2) verbally counsel the CNA without issuing any write-up; (3) complete a written “one-on-one in-service” form;⁶ or (4) record the incident on a “corrective action plan” (CAP).

The CAP forms are kept at the nurses’ station on each unit, as well as in the HR office. Nurses do not need approval from management to write a CAP to initiate the disciplinary process. The nurse may complete the entire CAP, including describing the issue in writing on the form under “reason for corrective action;” listing any prior discussions or disciplinary actions taken regarding the same concern; filling out the “expected level of performance” portion of the form; checking off the level of discipline under the “type of corrective action” section; filling in the “corrective action plan for improvement;” and signing it. In order to note previous disciplinary actions and the corrective action warranted, nurses access CNA disciplinary files which are kept under lock and key in the HR office in a CAP notebook. The nurse issuing a CAP can obtain prior disciplinary history information and include it on the form. Or, the nurse may leave blank the CNA’s prior disciplinary history, level of corrective action, and next disciplinary level to be assessed, and the UM, DON, or HR office will complete those sections. Once a nurse fills out a CAP, she discusses it with the CNA, in the presence of a union representative if the CNA chooses, and submits the CAP to the DON. A CAP is part of the Employer’s progressive discipline process.

⁶ The Employer also refers to this as an educational in-service or “coach and counseling.”

The record indicates that CAPs issued by nurses for discipline less than suspension are generally relied upon by the DON without conducting any independent investigation and become part of the CNA's disciplinary history.⁷ Nurses can issue CAPS indicating a suspension or discharge. Such discipline, however, is independently investigated by the DON. The DON seldom rescinds CAPS issued by nurses, including those indicating suspension or discharge; such rescissions occurring only about one per cent of the time.

The nurses have the discretion to write up an employee infraction on a CAP form. The nurses alone decide whether the CNA's conduct warrants a verbal counseling, one-on-one in-service, or written documentation. Because of this discretion, I find that the nurses are vested with the authority to exercise independent judgment in deciding whether to initiate the progressive disciplinary process against an employee. *Oak Park Nursing Care Center*, 351 NLRB 27, 29 (2007); *Oakwood Healthcare*, supra at 693 ("the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices."). The exercise of independent judgment in initiating an employer's disciplinary process constitutes a substantial role in the decision to discipline, and is indeed indicative of supervisory authority. *Oak Park Nursing Care Center*, supra at 29; see *Progressive Transportation Services*, 340 NLRB 1044, 1046 (2003); *Mountaineer Park, Inc.*, 343 NLRB 1473, 1475 (2004). Moreover, the CAPs issued to CNAs by nurses lay a foundation, under the progressive disciplinary system, for future discipline against an employee. *Oak Park Nursing Care Center*, supra at 28; *Bon Harbor Nursing and Rehabilitation Center*, 348 NLRB 1062, 1064 (2006). The CAP is an integral part of the Employer's progressive disciplinary system in that it is used to document each phase of the disciplinary process and routinely results in actual discipline. *Oak Park Nursing Care Center*, supra at 30; *Starwood Hotels*, 350 NLRB 1114, 1115-1117 (2007).

One LPN testified that while she has issued a number of one-on-one in-service educational forms to CNAs, she has never issued any discipline by completing a CAP. The LPN additionally testified that she understands that she possesses authority to issue such discipline. Contrary to the Petitioner's assertion in its brief that the disciplines contained in the record were completed by one former LPN who recently became the Unit Manager, 14 different LPNs completed the 27 CAPs in the record during the period from March 2008 to April 2012. I find the issuance of discipline by the LPNs to be more than of a sporadic nature as contended by the Petitioner.⁸ The weight of the evidence additionally demonstrates that nurses are trained regarding the disciplinary procedure and how to administer discipline during their orientation period, as well as during periodic in-service meetings. That some nurses choose not to exercise their disciplinary authority is not determinative as it is the

⁷ The DON or UM might review any disciplinary incident with the CNA to determine whether additional training or education for the CNA in the area of concern would be beneficial.

⁸ Petitioner relies on *St. Francis Medical Center-West*, 323 NLRB 1046 (1997), a pre-*Oakwood* case, in which the Board found that a dietary employee of a hospital was not a supervisor. The putative supervisor substituted in the absence of his supervisor, was the highest ranking employee in the facility on Saturdays and in the late afternoon; could authorize overtime in emergency situations, and resolve "squabbles" between employees. However, in *St. Frances*, the disciplinary authority of the employee was not at issue as it is in the instant case. Petitioner's reliance on *Biewer Wisconsin Sawmill, Inc.*, 312 NLRB 506 (1993), also a pre-*Oakwood* case, is similarly misapplied.

authority to discipline, not the exercise of that authority, that is relevant. See *Barstow Community Hospital*, 352 NLRB 1052, 1053 (2000).

I find that the CAPs issued to CNAs by nurses as described above are an integral part of the Employer's disciplinary process, and can have an impact on the CNAs' employment. The Employer has satisfied its burden to show that, by virtue of this activity, the nurses are statutory supervisors. *Bon Harbor Nursing and Rehabilitation Center*, supra at 1064.

2. *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.

(a) *Time*

The record establishes that the CNAs' scheduled hours are determined by the scheduler. The nurses do not schedule CNAs' work hours, and CNAs and nurses schedule their breaks according to the facility practices. If the facility is short-staffed due to CNAs calling off, the nurses either attempt to get an on-shift CNA to stay over, rearrange the scheduled staff by dividing up the work of the missing CNA, or call in additional CNAs. If the nurses call additional CNAs into work, they follow a call list of off-duty CNAs, taking into account who would and would not be subject to overtime pay. Nurses sign employee absence reports for CNAs who call off work, noting the reason for the absence. A replacement CNA who is called into work for coverage is entitled to a call-in bonus if he/she works 3.5 or more hours and a nurse signs and checks off the call-in bonus category on the CNA's overtime permit slip. Nurses have limited authority to approve overtime work for CNAs in situations of mandation, including mandating a CNA to stay over-shift, or calling in a CNA for necessary coverage. In this regard, when overtime is involved, the nurse must notify the Administrator, DON, or UM. The Employer has not established the exercise of supervisory authority by nurses in scheduling CNAs. See *Golden Crest Healthcare Center*, supra, at 728-730.

(b) *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 resident group by the scheduler. Once CNAs are assigned to rooms, their daily tasks are largely defined by the care plans and assignment sheet generated by management. Nurses tell CNAs when residents need changes to their care plans. They may write special instructions on the assignment sheet or share the changes with the CNAs. The nurses' assignment of these

“discrete task[s]” is closer to “ad hoc assignments” described in *Croft Metals*, 348 NLRB 717, 721 (2006). In that case, 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. *Croft Metals*, supra at 722. Here, the nurses’ assignments of discrete tasks to CNAs is insufficient to confer supervisory status.

Similarly, when a unit is short-staffed, there is some evidence that a nurse sometimes may seek to have an additional CNA transferred to the nurse’s unit for the shift. However, the record does not establish that any nurse who may choose to transfer a CNA takes into account the CNA’s abilities. 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 of a CENA for the balance of a shift denotes supervisory status. *Croft Metals*, supra at 722.

(c) *Independent Judgment and 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 resident 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.

As noted above, the scheduler, not the nurses, makes initial patient assignments to CNAs, and their overall tasks are largely defined by the care plans and assignment sheets generated by management, not the nurses. 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. CNAs may get to know the residents in their assigned group, but there is no evidence that these relationships are taken into consideration by the nurses when reassigning CNAs to a particular task. Rather, the record demonstrates that the nurses’ assignments for CNAs are routine in nature and not based on any particular expertise

possessed by the CNA. 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 does not require the use of independent judgment.

I further conclude that, even if the nurses "assign" by appointing CNAs to a particular time or schedule, or by giving them significant overall duties, 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 scheduler, involves no choice at all on the nurses' part. In addition, the Employer's practice and the CNA contract does not allow for choices by the nurses with regard to calling CNAs into work or requesting them to stay over their shift. The nurses' limited role in signing overtime permit slips does not constitute a "discretionary choice." It does not require the use of independent judgment.

3. *Responsible Direction*

In *Oakwood Healthcare*, the Board interpreted the Section 2(11) phrase "responsibly to direct" as follows: "If a person on the shop floor has men under him, and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both 'responsible' (as explained below) and carried out with independent judgment." *Oakwood Healthcare*, supra at 690-691. The Board, in agreement with several U.S. courts of appeals, held that, for direction to be "responsible," the person directing the performance of a task must be accountable for its performance. *Oakwood Healthcare*, supra at 691-692. The Board defined the element of "accountability" as follows:

[T]o establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps. *Oakwood Healthcare*, supra at 692.

The Employer has established that its nurses *direct* other employees within the meaning of Section 2(11). The record demonstrates that the nurses oversee CNAs' job performance and act to correct the CNAs when they are not providing adequate care, up to and including discipline. For example, a nurse will correct the CNA if she perceives that the

CNA is not using proper procedures in transferring a resident, or elevating a resident's head during fluid intake. The record also 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 resident alarms, perform a one-on-one feeding, or increase the frequency of taking residents' vital signs. This evidence is sufficient to establish that the nurses responsibly "direct" the CNAs within the meaning of the definition set forth in *Oakwood Healthcare*. See *Golden Crest*, supra at 731.

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 Employer has not met its burden to establish that the nurses are accountable for their actions in *directing* the CNAs. The Employer argues that nurses have been disciplined for the conduct of CNAs. In that regard, the record contains two written employee coaching plans (ECPs)⁹ issued to two LPNs, signed by the DON and Administrator. One LPN received an ECP level two in January 2012 for failure to "perform her expected duty to care for her patients and look after their well-being." This incident concerned two residents in one room who did not receive proper care, and specifically were not turned in their beds, had urine-soaked beds, and had leakage from their feeding tubes onto their beds. Another LPN received an ECP level one in March 2011 for inaccurate and untimely documentation procedures, improper medication procedure, and not answering call lights. A handwritten comment in the "Corrective Action/Coaching Plan" section of the ECP indicates "It is everyone's responsibility to answer call lights and direct nursing staff it is a[n] expectation." The Employer contends that the subject of the write-ups, i.e., failure to provide adequate patient care, was the direct responsibility of the CNAs, and this is arguable evidence of actual accountability. I find that there is insufficient record evidence to establish actual accountability as required under *Oakwood Healthcare*. The record does not demonstrate 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. Moreover, although the testimony indicates that the nurses who received these write-ups were subsequently terminated, the supporting documentation is either not present, or is inconsistent with the testimony. Finally, patient care is ultimately and undeniably the direct responsibility of the nurses, and the two ECPs in the record do little to distinguish this responsibility from any accountability for a CNA's failure to provide adequate or appropriate care. See *Frenchtown Acquisition Co., Inc. v. NLRB*, No. 11-1418 et al., 2012 WL 2330619, 10, 11 (6th Cir 2012), enfg. 356 NLRB No. 94 (2011).

⁹ The nurses are also subject to an unwritten progressive discipline policy. The disciplinary form issued to nurses is called an "employee coaching plan" (ECP). The ECP level one "indicates the need for immediate improvement in the area(s) identified...[and] become[s] part of the employee record." Four level one ECPs in a 12-month period subjects the employee to termination. The ECP level two "is to be completed when an employee is being suspended for suspected violation(s) of Customer Service Standards-Level 2."

4. *Evaluation of CNAs*

Nurses are involved in the 90-day post-hire evaluations and annual evaluations of CNAs. These evaluations do not impact CNA wages or bonuses which are determined by the CNA contract, and nothing in the record indicates that there is a merit pay component for CNAs. All evaluations go to the DON for independent evaluation. Evaluating employees is not a statutory indicia of 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. *Ten Broeck Commons*, 320 NLRB 806, 813 (1996); *Brown & Root, Inc.*, 314 NLRB 19, 21 (1994); *New York University Medical Center v. NLRB*, 156 F.3d 405, 413 (2nd Cir. 1998).

5. *Secondary Indicia*

Further support for the finding of supervisory status is certain secondary indicia of supervisory status. 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). However, they can be a factor as warranted herein. The job descriptions of the nurses note their supervisory authority. *Wedgewood Health Care*, 267 NLRB 525, 526, fn. 11 (1983). From 4:30 p.m. to 8:00 a.m., Monday through Friday, and on the weekends, the nurses are the highest ranking employees at the facility. *St. Francis Medical Center-West*, supra at 1047-1048. The nurses also participate in regular meetings with the Unit Manager, during which managerial and supervisory issues are discussed, and CNAs do not. *McClatchy Newspapers, Inc.*, 307 NRB 773 (1992).

CONCLUSIONS AND FINDINGS

Based on the foregoing discussion and on the entire record,¹⁰ I find and conclude as follows:

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.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No 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.

¹⁰ Both parties filed timely briefs, which were carefully considered.

5. The LPNs exercise authority in the interest of the Employer which requires the use of independent judgment regarding their authority to discipline employees, and are supervisors within the meaning of Section 2(11) of the Act. Thus, the petitioned-for unit is not appropriate for the purposes of collective bargaining.

ORDER

IT IS ORDERED that the petition is dismissed.

Dated at Detroit, Michigan, this 26th day of June 2012.

(SEAL)

/s/ Raymond Kassab

Raymond Kassab, Acting Regional Director
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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 **July 10, 2012**. The request may be filed electronically through the Agency's website, **www.nlr.gov**,¹¹ but may **not** be filed by facsimile.

¹¹ To file a Request for Review electronically, go to the Agency's website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.