

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT  
RELATIONS BOARD

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IN THE MATTER OF:	)	
	)	
LAKES REGIONAL HEALTHCARE,	)	
Public Employer/Petitioner,	)	
	)	
and	)	CASE NO. 8430
	)	
LAKES REGIONAL HEALTHCARE NURSES	)	
ASSOCIATION,	)	
Certified Employee	)	
Organization.	)	

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ORDER NUNC PRO TUNC

It has come to the ALJ's attention that the proposed decision issued in this case on April 16, 2013, inadvertently misstated the parties' stipulation to update the existing bargaining unit's description in certain respects and that the order entered in conjunction with the proposed decision contained the same inadvertent error when describing the amended bargaining unit and also inadvertently referred to the public employer by an incorrect name. These misstatements should be replaced by what was in fact intended by the ALJ at the time of the issuance of the proposed decision and order, as though the correct matter had been included therein.

IT IS THEREFORE ORDERED, nunc pro tunc, that the third paragraph of the Findings of Fact, appearing at pages 2-3 of the proposed decision and order, is stricken and replaced with the following:

There have been a number of changes in hospital positions since that time and the parties have stipulated to the appropriateness of the following updated unit description, subject to the determination of the appropriate placement of the PC supervisors and OB supervisor:

INCLUDED: The following position titles in the nursing division: Patient Care Supervisors (full-time and part-time), OB Supervisor, Registered Nurses, Licensed Practical Nurses, Operating Room Technicians, Nursing Assistants; and the following position titles in the homecare and public health divisions: Registered Nurses and Licensed Practical Nurses.

EXCLUDED: All other Lakes Regional Healthcare employees.

IT IS FURTHER ORDERED, nunc pro tunc, that the order appearing at page 16 of the proposed decision and order is stricken and replaced with the following:

ORDER

The petition for amendment of bargaining unit filed herein by Lakes Regional Healthcare is GRANTED.

The parties' stipulation of bargaining unit is approved, subject to the exclusions ordered in this Case No. 8430, and the bargaining unit previously described in Case No. 4574 is hereby amended to read as follows:

INCLUDED: The following position titles in the nursing division: Registered Nurses, Licensed Practical Nurses, Operating Room Technicians, Nursing Assistants; and the following position titles in the homecare and public health divisions: Registered Nurses and Licensed Practical Nurses.

EXCLUDED: All other Lakes Regional Healthcare employees.

THIS ORDER NUNC PRO TUNC DATED at Des Moines, Iowa this 10th day of May, 2013.



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Diana S. Machir  
Administrative Law Judge

File original

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STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF: )  
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 LAKES REGIONAL HEALTHCARE, )  
     Public Employer/Petitioner, )  
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 and )  
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 LAKES REGIONAL HEALTHCARE )  
 NURSES ASSOCIATION, )  
     Certified Employee )  
     Organization. )

CASE NO. 8430

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 PUBLIC EMPLOYMENT  
 RELATIONS BOARD

PROPOSED DECISION AND ORDER

Lakes Regional Healthcare (Lakes Regional or Hospital) filed a petition for amendment of bargaining unit with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.13 and PERB rule 621-4.6(20). Lakes Regional’s petition seeks the exclusion of two positions, patient care supervisor (PC supervisor) and obstetrics supervisor (OB supervisor), from the existing bargaining unit of Lakes Regional employees. Lakes Regional asserts that the positions at issue are representatives of the public employer and thus excluded from chapter 20’s coverage. Lakes Regional Healthcare Nurses Association represents the unit for the purposes of collective bargaining and resists the petition.

Pursuant to notice, the evidentiary hearing was conducted before the undersigned administrative law judge on November 4, 2011, and February 7, 2012. Attorney R.J. Stevenson represented Lakes Regional and Bonnie Winther represented the Association. The parties submitted briefs, the last of which was filed on May 29, 2012.

## FINDINGS OF FACT

Lakes Regional, formerly known as Dickinson County Memorial Hospital, is located in Spirit Lake, Iowa and is a public employer within the meaning of Iowa Code section 20.3(10). The Association, formerly known as Dickinson County Memorial Hospital Professional Nurses Association, represents the patient care bargaining unit at issue in this case and is a certified employee organization within the meaning of Iowa Code section 20.3(4).

At issue is the exclusion of the PC supervisor (formerly called house supervisor) and OB supervisor positions from the patient care bargaining unit. PERB originally determined this patient care bargaining unit and a support bargaining unit in Case No. 2759 following an evidentiary hearing and subsequent appeal to the Board. In the unit determination, PERB included the OB supervisor in the unit and excluded the house supervisors.<sup>1</sup> In 1992, PERB approved the parties' stipulated amendment of unit in Case No. 4574, which among other things, resulted in the unit inclusion of “. . .House Supervisors (i.e. Shift Managers) . . . .” The OB supervisor was not specifically listed in the unit description.<sup>2</sup>

There have been a number of changes in hospital positions since that time and the parties have stipulated to the appropriateness of the following updated

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<sup>1</sup> In Case No. 3072, PERB certified the Association to represent the patient care bargaining unit for the purposes of collective bargaining.

<sup>2</sup> The House Supervisors and the OB supervisor were unaffected by other unit amendments or amendments to the Association's certification, which occurred in Case Nos. 3144, 3344, 5316, and 6605.

unit description, subject to the determination of the appropriate placement of the PC supervisors and OB supervisor:

**INCLUDED:** The following position titles in the nursing division: Patient Care Supervisors (full-time and part-time), OB Supervisor, Registered Nurses, Licensed Practical Nurses, Operating Room Technicians, Nursing Assistants; and the following position titles in the public health divisions: Registered Nurses and Licensed Practical Nurses.

**EXCLUDED:** All other Lakes Regional Healthcare Employees.

Lakes Regional operates on a 24/7 basis with an emergency room (ER), and obstetrics, critical care, medical/surgical, and several outpatient departments. It employs approximately 270 employees. The Hospital has a board of trustees and a president/CEO. Under the president/CEO there is senior administration/management consisting of an administrative staff and directors who oversee departments or major functional areas. Each department has a manager who reports to the senior administration.

The PC supervisors report to the vice president of nursing and the OB supervisor reports to the inpatient director. The parties stipulated that the two positions do not promote, discharge, reward, or have the responsibility to direct employees.

***Patient Care Supervisor***

Five full-time and one part-time PC supervisors work at Lakes Regional. There is always a PC supervisor on staff; one works every shift. During normal business hours, the PC supervisor is in charge of any given department in the absence of its manager or the director of nursing. Outside normal business hours, the PC supervisor is the highest ranking position at the Hospital and

employees from all areas, from housekeeping to lab, report to this position during those hours. This is reflected by policy, which provides that the PC supervisor has on-site administrative authority with access to the administrative person on call (APOC) during evenings, nights, weekends, and holidays. There is a separate hospital policy that lists examples of when the PC supervisor should notify APOC, such as a request for law enforcement, fire department contact, code white, and employee behavior requiring immediate suspension.

One of the PC supervisor's primary duties is to maintain adequate staffing in all nursing areas. Although there are six-week schedules made by administration, absent employees who call into the PC supervisor or fluctuating patient needs may impact staffing requirements. This requires the PC supervisor, daily to several times a week, to reassign staff between departments to meet staffing needs. As guidance, the PC supervisor follows a policy that sets out a staffing matrix of staff to patient ratios. However, according to the policy itself, the PC supervisor can deviate from the matrix and often does so based on her assessment of patient needs and acuity and consideration of available cross trained staff, their experience levels, and other factors deemed relevant by the supervisor. The PC supervisor has authority to call and request off-duty staff to come in when additional help is needed. If there is a low patient load, the PC supervisor can send employees home pursuant to a voluntary low census procedure that generally allows the first employee who volunteered to leave at such times. In the alternative, the PC supervisor can decide to have staff stay and stock or clean a department. They regularly authorize overtime for

additional time that an employee may need to finish his other duties after the end of a shift. They do not have the authority to authorize time off.

The procedures for recall, layoff, and permanent transfers are provided for in the parties' collective bargaining agreement. The PC supervisors do not recall or layoff employees. They sit in as part of interview teams and can make recommendations on new hires. They can make recommendations of employees for cross-training or transfers. The administration gives weight to their recommendations, but there is not sufficient evidence to show that their recommendations are followed as a matter of course for either new hires or permanent transfers.

The PC supervisor provides guidance to staff on patient care. At the start of a shift, the PC supervisor checks the status of staffing and then spends a majority of her time making rounds of the departments to assist with patient care and relieve employees for breaks. They are not assigned a patient load.

The PC supervisors oversee employee performance and ensure compliance with policies and procedures. They assist with conflict resolution between two staff employees. They "coach" on the spot when necessary. Their job description requires that they provide immediate feedback to employees regarding performance, issue written reprimands when standards are not met, and suspend employees for serious misconduct or threatening behavior.<sup>3</sup> They and

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<sup>3</sup> The Hospital and its staff use the term "verbal warnings," which is misleading when in fact the disciplinary action is issued in an extensive written report that sets out the history of prior disciplinary action, the current issues, the conclusion and recommendations, the action plan, the corrective action to be re-evaluated, and the employee comments. Because the discipline is more comparable to a "written reprimand" than a "verbal warning," it will be referred to as "written reprimand" in this case in lieu of "verbal warning."

the senior management must notify human resources (HR) when the decision to impose discipline has been made and HR drafts the actual notice of disciplinary action. On April 6, 2010, Great Lakes' HR director attended the PC supervisors' meeting. She discussed evaluations and reminded the PC supervisors of their authority to issue written reprimands.

There are two examples in the record of PC supervisors initiating disciplinary action for employee misconduct. In one situation, the PC supervisor decided to give a written reprimand to an employee for sleeping on her shift. In another instance, the PC supervisor gave a written reprimand to an employee for smoking on the grounds.

There is conflicting evidence of the PC supervisor's authority to send an employee home or "suspend" the employee for appearing at work in an intoxicated, disruptive, or distraught state. Hospital policy clearly lists "employee behavior requiring immediate suspension" as an example of when the PC supervisor would be expected to call the APOC. Some do not believe they have the authority to deviate from the policy. On the other hand, it is the Hospital's expectation that the PC supervisor deal with the situation immediately before contacting APOC. Pursuant to the job description, the PC supervisor is required to suspend an employee for serious misconduct.

The PC supervisors and the vice president of nursing meet to discuss employee annual evaluations. All the supervisors are able to contribute negative or positive comments, which are put on sticky notes and attached to the respective employee's file. Each PC supervisor is assigned to complete the

evaluations for approximately 10 employees. In completing each evaluation, they use the comments that were put on the notes and rate whether the employee “meets expectations” for performance standards. Employees who do not meet a standard are put on a 60-day probation and subject to disciplinary action if they do not meet the standards when they are re-evaluated at the end of 60 days. The PC supervisor meets with each employee, discusses the evaluation, signs off on the form as the manager, and meets again with the employee if necessary. There was one example provided at hearing where a PC supervisor completed a “does not meet” evaluation and placed the employee on probation.

The PC supervisors share one office and carry master keys. They attend monthly supervisor meetings, but they do not attend weekly management meetings. They have access to patient satisfaction surveys and departments’ financial reports and budgets. The PC supervisors can deviate from hospital policies and procedures. Aside from staffing, there are other instances when PC supervisors have deviated from hospital policies or procedures: allowing a patient to smoke on the grounds, ordering special equipment such as a bed or feeding tube, exchanging (loaning or obtaining) medication with a nearby hospital when circumstances dictate. They accrue an additional week of vacation like senior administration/management.

### ***OB Supervisor***

The OB supervisor is a newer position with one person in the position. The OB supervisor is responsible for creating and updating all of the policies for the OB department. She works with University of Iowa physicians and Great Lakes’

medical staff to develop the policies. The Hospital's medical staff usually approves the policies with no substantive changes and the vice president of nursing "rubber stamps" them.

This position is responsible for making recommendations for OB equipment purchases. The current OB supervisor is a key person on the team making recommendations for the new OB unit.

The OB supervisor attends management meetings, assists the director of inpatient services with the department budget, and is the primary person who works with the staff coordinator to put together the OB staff schedule. The OB supervisor gives feedback to employees on patient satisfaction surveys or doctor complaints. She sits in on hiring interviews and makes recommendations for new hires. She is able to suspend an employee who shows up for work in an intoxicated, distraught, or otherwise unfit state. The OB supervisor can issue written reprimands. She completes job evaluations, including those where an employee does not meet standards and is put on probation. She is able to grant leaves of absence. The OB supervisor carries master keys and accrues an additional week of vacation like senior administration/management.

#### CONCLUSIONS OF LAW

The issue in this case is whether the PC supervisors and the OB supervisor should be excluded from the bargaining unit because they are representatives of the public employer within the meaning of Iowa Code section 20.4. Lakes Regional asserts that the PC supervisors are supervisory employees and the OB

supervisor is a managerial employee. Iowa Code section 20.4 excludes certain types of employees from the provisions of chapter 20, providing in relevant part:

**20.4 Exclusions.**

The following public employees shall be excluded from the provisions of this chapter:

\* \* \*

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, first assistant, and any supervisory employees.

"*Supervisory employee*" means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Iowa Code chapter 20 is interpreted to provide broad coverage for those eligible and the section 20.4 exclusions are read narrowly to promote the statute's broad application. *Iowa Ass'n. of Sch. Boards v. PERB*, 400 N.W.2d 571, 576 (Iowa 1987); *Black Hawk County*, 05 PERB 6702 at 9. The party asserting the applicability of a section 20.4 exclusion must establish that the exclusion applies. *City of Cedar Falls*, 06 PERB 6868 at 21; *Iowa City*, 02 PERB 6353 at 5.

***PC Supervisors/Supervisory Issue***

Supervisory status is a fact question involving a "case-by-case approach in which the agency gives practical application of the statute to the infinite and complex gradations of authority which may exist in employment." *City of Davenport v. PERB*, 264 N.W.2d 307, 313 (Iowa 1978). Pursuant to the statutory definition of "*supervisory employee*," the position must have authority to accomplish one of the enumerated functions listed. Because section 20.4(2) lists

the functions in the disjunctive, possession of any one justifies a finding of supervisory status. *Id. at 314.* As to the authority, the Supreme Court explained, in part:

. . . The power must exist in reality, not only on paper. However, it is the existence of the power and not its exercise which is determinative. What the statute requires is evidence of actual supervisory authority “visibly translated into tangible examples” . . .

*Id.*

Moreover, for each such function, the statute requires that a supervisor 1) have authority 2) to use independent judgment 3) in performing such supervisory functions 4) in the interest of management. *Id.* The employee’s regular, not occasional or temporary, functions and responsibilities are determinative. Routine, clerical, repetitive or rote tasks are not considered supervisory. Directing and assigning work by a skilled employee to a less skilled employee does not involve the use of independent judgment when it is incidental to the application of the skilled employee’s professional knowledge. *Id.* Further, for supervisory status to exist, the position’s responsibilities must substantially identify the employee with management. *Id.*

In this case, the Hospital makes no claim and there is no evidence to indicate that the PC supervisors are supervisory employees based on any authority to layoff, recall, hire, suspend employees, or adjust grievances.<sup>4</sup> The Hospital asserts that the PC supervisors possess the authority to assign staff, discipline employees, and effectively recommend transfers. Additionally, Great

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<sup>4</sup> The parties stipulated that the positions do not have the authority to direct, promote, discharge, or reward employees.

Lakes points to the supervisors' office, master keys, and accrual of vacation as secondary indicia of their supervisory status. While the record does not support a conclusion that the PC supervisors possess the authority to effectively recommend a transfer, it establishes that the PC supervisors possess supervisory authority to assign staff and discipline employees.

There is insufficient evidence to find that the PC supervisors have authority to effectively recommend employee transfers. The Hospital's assertion that the PC supervisor "effectively recommends" employees for a transfer is not persuasive. An effective recommendation is one which is made under normal policy and circumstances by the chief executive level or below and is adopted by higher authority without independent review or *de novo* consideration as a matter of course. *Id.* at 321. A mere showing that the recommendations were followed does not make the recommendation "effective" if there is an independent review by upper management. *Id.*; see *City of Dubuque*, 89 PERB 3317 at 22 (recommendation not "effective" when upper management completed independent review of discipline).

In this case, the senior management gives weight to the PC supervisors' recommendations on cross-training and transfers. Nonetheless, the PC supervisors' recommendations for transfers are not accepted as a matter of course or without further review by senior management. Great Lakes did not establish that the PC supervisor possesses supervisory authority to effectively recommend transfers.

The record warrants a finding that PC supervisors have the authority to assign employees. The PC supervisors' staffing duties are similar to those of house supervisors who were found to be supervisory employees in prior PERB cases. The ability to reassign employees between departments, call in additional nursing help from among off-duty employees, authorize overtime, and decide whether to call in replacements, all without prior authorization, conferred supervisory status for house supervisors. *Mitchell County Memorial Hospital*, 76 H.O. 499 at 8-9. In the original determination of this unit, the house supervisor's authority and discretion in determining staffing levels, telling staff to stay home or sending staff home, and calling in staff which necessitated overtime, all without prior approval, warranted a finding that the position was supervisory. *Dickinson County Memorial Hospital*, 84 H.O. 2759 at 22-23.

There is evidence of similar duties in this case. On a daily basis, the PC supervisory on duty must assess staffing levels in conjunction with patient needs and has the authority to reassign staff to other departments, call in off-duty staff, or send employees home. The PC supervisor can authorize overtime. While the PC supervisor uses the staffing policy for guidance, she has discretion to deviate from it based on her consideration of the myriad of factors that compact staffing on a day-to-day basis. Further, the PC supervisor makes these determinations without prior approval. Lakes Regional has established that the PC supervisors possess supervisory authority to assign employees.

The record warrants a finding that the PC supervisors have supervisory authority to discipline employees. There is evidence that they have the authority

in form and substance, the former of which is reflected in their job description and was affirmed by the HR director in their April 2010 meeting. Substantively, they have the authority as reflected by the tangible examples of PC supervisors making an independent judgment to discipline an employee and issuing written reprimands for misconduct. There is no evidence to indicate that a PC supervisor's decision regarding disciplinary action has been subject to further review. It is insignificant that human resources is consulted and writes up the document. This requirement applies equally to all management, even the vice president of nursing, and it serves one of the principal purposes behind any human resources department. Thus, Lakes Regional has established that the PC supervisors possess supervisory authority to discipline employees.

Based on an evaluation of these functions to assign and discipline employees, I conclude that the PC supervisor is a supervisory employee excluded from the coverage of chapter 20 as a representative of the public employer and not eligible for inclusion in the bargaining unit.

***OB Supervisor/Managerial Issue***

The Board has long recognized so-called "managerial" employees as "representatives of a public employer" within the meaning of section 20.4(2). Managerial employees, while not supervisory, are excluded from coverage because they are significantly, and not peripherally, involved in formulating, determining and effectuating the employer's policies and programs. *See, e.g., Davenport Community Schools, 75 PERB 72 at 17; State of Iowa and SPOC, 93 PERB 4600 at 20-21.*

The Board has generally followed the NLRB conjunctive “test” for examining the managerial status of an employee:

1. Whether the employee is so closely related to or aligned with management as to place the employee in a position of potential conflict of interest between his employer on one hand and his fellow workers on the other, and
2. Whether the employee is formulating, determining and effectuating his employer’s policies or has discretion, independent of an employer’s established policy, in the performance of his duties.

*City of Manchester*, 06 PERB 6917 at 9. Each case requires an evaluation of the totality of facts and circumstances. *Davenport*, 75 PERB 72 at 17.

In *Davenport*, the Board found that coordinators were representatives of the employer based on the totality of facts: the coordinators played a major role in the development and implementation of academic programs that were subsequently approved by the school board; they were directly and significantly involved in budget preparation; and were consulted with regard to the hiring, transfer, discipline, evaluation and grievances of staff, which the Board noted placed them in a position of potential conflict of interest between their employer and classroom teachers. *Id.* at 15; *see also City of Manchester*, 06 PERB 6917 at 9 (supervisors were managerial because they were members of management team, made policy recommendations, involved in goal setting, established work schedules, met with outside contractors, and played a major role in the budget).

Here, the OB supervisor is either directly responsible for what is typically a management function or assists management in carrying out those functions. The OB supervisor sets the schedule, participates in interviews and hiring, and evaluates staff. The OB supervisor meets with outside vendors and makes

equipment recommendations. This supervisor assists with the department's budget and attends management meetings. The OB supervisor's duties are intertwined with management functions to such a degree that the position is distinguishable from staff and more akin to what one would perceive to be management. The OB supervisor's duties with respect to staffing, hiring, evaluations, discipline, and budgeting place her in a potential conflict of interest between the staff and the employer.

Additionally, the OB supervisor position has primary responsibility for the development and implementation of department policies. This supervisor conducts research and consults with outside parties and in-house medical staff to create and modify all of the department policies that are rubber stamped by the vice president of nursing.

There is sufficient evidence that the position is closely aligned with management, formulates department policies, and performs budget and employment matter duties that, in totality, warrant a finding of managerial status. Great Lakes has established that the OB supervisor is a managerial employee excluded from the coverage of chapter 20 and not eligible for inclusion in the bargaining unit.

Having examined the entire record, I conclude that the patient care supervisors and the OB supervisor are representatives of the public employer and thus, should be excluded from the unit previously described in PERB Case No. 4574. Consequently, I propose the following:

ORDER

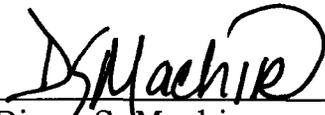
The petition for amendment of bargaining unit filed herein by Greater Lakes Regional Hospital is GRANTED.

The parties' stipulation of bargaining unit is approved, subject to the exclusions ordered in this Case No. 8430, and the bargaining unit previously described in Case No. 4574 is hereby amended to read as follows:

INCLUDED: The following position titles in the nursing division: Registered Nurses, Licensed Practical Nurses, Operating Room Technicians, Nursing Assistants; and the following position titles in the public health divisions: Registered Nurses and Licensed Practical Nurses.

EXCLUDED: All other Lakes Regional Healthcare Employees.

DATED at Des Moines, Iowa this 16th day of April, 2013.

  
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Diana S. Machir  
Administrative Law Judge

File original.

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