Crittenton Hospital *and* Local 40, Office and Professional Employees International Union, AFL–CIO, Petitioner. Case 7–RC–20558

June 30, 1999

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On April 27, 1995, the Regional Director for Region 7 of the National Labor Relations Board issued a Decision and Direction of Election in the above-captioned proceeding,[1] in which he found that the Employer's Registered Nurses (RNs) are not statutory supervisors and that the appropriate unit should include all the Employer's RNs and not be limited to the narrower RN unit historically represented by the Intervenor[2] and sought by the Petitioner. The Employer filed a timely request for review of the Regional Director's decision. On May 25, 1995, the election was held in the unit found appropriate and the ballots impounded. On September 3, 1997, the Board granted the Employer's request for review of the Regional Director's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the record, including the parties' briefs on review,[3] we affirm the Regional Director's finding with respect to the statutory status of the RNs, but reverse with respect to the scope of the appropriate unit.[4]

A. Supervisory Issue

We find, as set forth more fully by the Regional Director, that the Employer has failed to meet its burden of demonstrating that the RNs possess any of the indicia of supervisory status.[5] The evidence does not support the Employer's
general, conclusory claims that the RNs independently assign, direct, discipline, or evaluate employees or satisfy any other supervisory indicia set forth in Section 2(11) of the Act.

As the Regional Director found, the record does not show that any assignment and direction of other employees by the RNs is other than routine. The Employer claims that its charge nurses, with floor RNs, decide if staffing is adequate, and may make mandatory overtime assignments. However, there is no evidence showing how mandatory overtime or additional staffing needs are determined, or the process by which employees are selected for overtime or call-in. Thus, the Employer has failed to demonstrate that RNs utilize independent judgment, essential to a finding of supervisory status under Section 2(11), in connection with these alleged tasks. Although the RNs' job descriptions state that they are responsible for the direction and supervision of personnel assigned to them, the issuance of "paper authority" which is not exercised does not establish supervisory status. *North Miami Convalescent Home*, 224 NLRB 1271, 1272 (1976); *East Village Nursing & Rehabilitation Center v. NLRB*, 165 F.3d 960 (D.C. Cir. 1999).

The Employer also claims that the Michigan Health Care statute, which controls the scope of practice of its RNs, requires the RNs to supervise employees with lesser skills, and thereby conclusively demonstrates its RNs' Section 2(11) supervisory status. However, nurse practice laws relate to RNs' professional obligations and have nothing to do with the purpose of the Section 2(11) supervisory exclusion, with its definitional language, or with the Board's application of the provision. Those laws do not purport to in any way track the NLRA's definition of a supervisor. We will not substitute the wording of the nurse practice acts for the Congressionally mandated requirements for supervisory status in the NLRA.

Further, the Employer has failed to demonstrate that any evaluations done by the RNs establish their supervisory status. In this regard, the Employer specifically refers only to evaluations done by the nurse preceptors.[6] The evidence fails to establish any link between the preceptors' input and job retention by orientees. Therefore, the Employer has failed to establish the crucial link between evaluations and an effect on employee job status. *Passavant Health Center*, 284 NLRB 887, 891 (1987). There is no evidence of any other evaluations. That the RNs' are required to point out and correct deficiencies in the aides' performance does not establish the authority to discipline.[7] *Passavant Health Center*, 284 NLRB 887,

[1] Pertinent portions of the Regional Director's Decision and Direction of Election are attached as an "Appendix."

[2] Michigan Nurses Association and Crittenton Hospital Registered Nurses Staff Council.

[3] The Employer requested oral argument. The request is denied as the record and briefs adequately present the issues and positions of the parties.

[4] In view of our finding that the historic unit, excluding contingent nurses, is appropriate for bargaining, we find it unnecessary to reach the issue of the eligibility formula for the contingent nurses.

[5] Member Brame notes that the Regional Director's finding that the disputed RNs are not supervisors is based on a record made before the Board's interpretation of supervisory status under Sec. 2(11) of the Act in the charge nurse area came under court criticism. See, e.g., *NLRB v. Attleboro Associates,* 161 LRRM 2139, (3d Cir. 1999); *Beverly Enterprise, W. Va. v. NLRB,* 165 F.3d 307 (4th Cir. 1999); *Beverly Enterprise, Va. v. NLRB,* 165 F.3d 290 (4th Cir. 1999); and *Caremore, Inc. v. NLRB*, 129 F.3d 365 (6th Cir. 1997). In these circumstances, Member Brame would remand the instant proceeding to permit the parties to develop a fuller record in light of this precedent, especially as the Employer is located within the jurisdiction of the Sixth Circuit.

[6] The Employer's reference to evaluations by the manager, central processing is not relevant because the Employer contends, and we find, that this position is not in the unit. Thus, the evidence concerning these evaluations does not bear on the status of the contested RNs.

[7] The Employer contends that, even apart from the other RNs, the Regional Director erroneously failed to exclude the nurse preceptors, cardiopulmonary rehabilitation educator, and manager, central processing since these positions are historically excluded. It is not clear that the Regional Director included the manager, central processing in the

889 (1987). We therefore agree with the Regional Director that the Employer's RNs are not statutory supervisors. *Providence Alaska Medical Center v. NLRB*, 121 F.3d 548 (9th Cir. 1997), enfg. sub. nom. *Providence Hospital,* 320 NLRB 717, 730–733 (1996).

B. Unit Scope

We further find that the petitioned-for existing, nonconforming unit of RNs is appropriate, and we reverse the Regional Director's finding that the unit must be broadened into a conforming unit of all RNs employed by the Employer. The Petitioner seeks to represent a unit of 330 RNs at the Employer's acute care hospital, coextensive with the current unit represented by the Intervenor. Since 1969, the Intervenor has represented a unit of staff RNs and other specialty nurses who perform "traditional" nursing duties in providing direct patient care. Although the collective-bargaining agreement, by its terms, purports to cover all full-time and regular part-time RNs employed by the Employer, 13 nurse classifications as well as the contingent nurse category have been historically excluded from the unit. The excluded specialty nurse classifications cover those who provide direct patient care as well as others who do not. In the face of the Petitioner's claim to represent the historic unit, the Intervenor now posits that the only appropriate unit must include all RNs employed by the Hospital—i.e., the formerly excluded 13 nurse classifications plus RNs who work regular schedules. As discussed above, the Employer contends that all its RNs, with very limited exceptions,[8] are supervisors, but that in any event, the expanded unit found by the Regional Director is not appropriate.

Section 103.30(a) of the Board's Rule and Regulations, setting forth appropriate bargaining units in the health care industry, provides that, "[e]xcept in extraordinary circumstances *and in circumstances in which there are existing non-conforming units*," the eight units—one of which is an all-RN unit—described in the Rule, and only those units, will be found appropriate for acute care hospitals (emphasis added). Section 103.30(c) provides that where there are existing nonconforming units in acute care hospitals, and a petition for *additional* units is filed pursuant to Section 9(c)(1)(A)(i) or 9(c)(1)(B), the Board "shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in [103.30(a)]." In the instant case, the Petitioner seeks to represent the existing, nonconforming unit of RNs that has been represented by the Intervenor for the past 25 years, while the Intervenor now maintains that the appropriate unit must be a broader, conforming one, including all RNs employed by the Employer. The Employer contends that the Board's Healthcare Rule is inapplicable, because the existing unit is nonconforming and the petition was filed under Section 9(c)(1)(A)(ii). Further, it argues that under a community of interest analysis a hospitalwide RN unit is inappropriate. The Regional Director directed the election in the larger unit, finding that the Board's Health Care Rule requires that where there is an existing nonconforming unit, Section 103.30(c) applies and therefore any resulting unit should be in conformance with the Rule to the extent possible.

Contrary to the Regional Director, we do not interpret the Rule and its application in the instant case to require that an historical nonconforming unit must be enlarged to conform to the units prescribed by the Rule. By its own terms, the Rule applies only to initial organizing attempts or, where there are existing nonconforming units, to a petition for a new unit of previously unrepresented employees, which would be an addition to the existing units at the Employer's facility. Cf. *Kaiser Foundation Hospitals*, 312 NLRB 933 (1993). Neither of those situations is present here. The Petitioner seeks to represent the existing RN unit that has been represented by the Intervenor for 25 years. In promulgating the Health Care Rule, the Board took into consideration not only the Congressional admonition against undue proliferation of bargaining units, but also the Board's longstanding policy of promoting industrial stability by according great deference to collective-bargaining history. Thus, the Rule did not require that existing nonconforming units automatically be restructured to fit within the eight listed units. Were the incumbent merely seeking certification in its historical unit, such a unit would be appropriate. Indeed, had the incumbent sought to add the historically excluded employees by means of a unit clarification (UC) petition, the petition would have been denied. Thus, to allow an incumbent (the Intervenor in this case) to force the inclusion of residual, unrepresented but similarly situated employees whom it did not seek to represent for the previous 25 years would be a misapplication of the Rule and inequitable.

Similarly, Section 103.30(d) of the Board's Rules provides that stipulated units that do not conform to those established by the Rule are acceptable, although stipulations in conformity with the Rule "surely would be preferable." *Kaiser,* supra at 934 fn. 12. Therefore, we find that the perpetuation of a well-established, stable histori-

unit, as his decision does not specifically mention this manager and the unit description excludes department managers. Even assuming that the Regional Director included this classification in the unit, the Employer states, and it is undisputed, that this manager historically was excluded from the unit. Therefore, pursuant to our analysis below, this classification is not included in the unit for the election and will not be added to the unit. With respect to the Employer's claim that the preceptors have the authority to effectively recommend for or against retention of an orientee, the record does not detail who makes such decisions or how they are made, and the Employer therefore has failed to meet its burden of establishing supervisory authority on the part of nurse preceptors.

[8] The Employer contends that nurses working in two critical care units (ACCU and AICU) and the inpatient P.A.R. are not statutory supervisors.

cal nonconforming unit in an RC election is not inimical to the concerns underlying the Rule.[9]

In sum, we find that the Employer's RNs in the unit found appropriate are not statutory supervisors because they do not possess any indicia of statutory supervisory status. Further, we find that the petitioned-for existing, nonconforming unit of RNs is appropriate.

ORDER

The Regional Director's decision is affirmed with respect to his finding that the Employer's registered nurses are not statutory supervisors. The Regional Director's decision is reversed with respect to his finding that the petitioned-for unit is not appropriate. The election conducted here is vacated, and this proceeding is remanded to the Regional Director for further appropriate action.

APPENDIX

DECISION AND DIRECTION OF ELECTION

. . . .

5. The Employer, a Michigan corporation, is engaged in the operation of an acute care hospital located in Rochester, Michigan. The Petitioner seeks to represent a unit of approximately 330 registered nurses, co-extensive with the current unit represented by the Intervenor. The current collective-bargaining agreement between the Employer and the Intervenor covers all "regular full-time permanent and regular part-time permanent registered staff professional nurses employed by the Hospitai."[5] The Intervenor contends that the only appropriate unit must include all registered nurses employed by the hospital, and that the petitioned-for extant unit impermissibly excludes certain categories of registered nurses not involved in direct patient care, and all contingent nurses regardless of the regularity of their work schedules. The Intervenor, contrary to the Employer and the Petitioner, also contends that approximately 40 registered nurses employed by Home Health Outreach (HHO), who are not part of the current unit, should be included in the petitioned-for unit.

The Employer contends that all of the above nurses are Section 2(11) supervisors, with the exception of nurses working within the following departments: ACCU, AICU, and in-patient P.A.R.[6] In addition, the Employer contends that registered nurses whose classifications are not within the existing unit, including contingent nurses, do not share a community of interest with the petitioned-for nurses, and that Home Health Outreach nurses should not be included in an appropriate unit because they are not employed by the Employer, do not share a community of interest with either the petitioned-for unit or the Intervenor's broader unit, and are Section 2(11) supervisors.

On December 2, 1969, the State of Michigan Labor Mediation Board issued a Certification of Representative to the Intervenor for the following unit: "All regular full time permanent and regular part time permanent registered staff professional nurses employed by Crittenton Hospital (Rochester Branch), excluding head nurses, instructors, supervisors, assistant director of nursing, director of nursing and all other employees." Subsequently, the Intervenor and Employer negotiated a series of contracts, the latest being the current contract which expires June 30, 1995, and which sets forth the following unit:

> [A]ll regular full-time permanent and regular part-time permanent registered staff professional nurses employed by the hospital, excluding head nurses, instructors, supervisors, vice president, nursing and all other employees." Notwithstanding the unit description, various categories of registered nurses employed by the Employer at the hospital have remained outside the unit and are not covered by the collective-bargaining agreement. These categories include contingent nurses and various other classifications.[7]

Sandra Dery, the Employer's vice-president-nursing and patient services, heads the administrative structure of the hospital's nursing operations. Four administrative directors oversee nursing operations in various areas of the hospital, with each administrator overseeing the operations of between 6 and 11 departments. Thirteen[8] department managers oversee the nursing operations of particular departments, and report to the ad-

[9] In *Levine Hospital of Hayward*, 219 NLRB 327 (1975), the Board concluded that a residual unit of seven medical records clerks and transcribers sought by the petitioner was not warranted. The Board concluded that the only means by which these residual employees could be represented would be either through a petition for all service and maintenance employees, or a petition by the incumbent representative of that unit to add the residual employees to the unit. In the Second Notice of Proposed Rulemaking for Collective-Bargaining Units in the Health Care Industry, the Board noted that the "continued vitality" of Levine was a question whose answer would be deferred pending adjudication. 284 NLRB 1527, 1570–1571 (1988). The issue presented in Levine—whether a nonconforming residual unit is appropriate—is not before the Board in the instant case. Rather, the issue here is whether the recognized nonconforming unit, excluding employees who have been historically excluded from the unit, is appropriate. As set forth above, we concluded that it is appropriate. To the extent that Levine may be read to require otherwise, it is overruled. We leave to another day the question whether a non-incumbent union may represent a residual unit of employees in the healthcare industry.

[5] The record indicates that approximately 39 charge nurses are part of the existing unit. The Petitioner "reserved" its position whether charge nurses should be included in the petitioned-for unit. The Intervenor maintains charge nurses should be included in the unit. The Employer contends that charge nurses are supervisors, as are all other registered nurses.

[6] The Employer takes this position in its brief "upon reflection," but does not explain why the nurses in these particular departments are not supervisors, while contending that all other registered nurses are supervisors.

[7] Some of these registered nurse classifications are:

> Quality improvement coordinator, education specialist, clinical nurse specialist, clinical nurse specialist-partial day psychiatry, cardiac rehab educator, lactation consultant, maternal child community services coordinator, women's health educator, clinical data specialist, pre-admission nurse coordinator, HAP Network U.E./QA. coordinator, health record analyst, discharge planning coordinator, and instructors (ROC).

Additionally, the parties stipulated, and I conclude, that the following classifications, not part of the existing unit, are Sec. 2(11) supervisors: nurse manager for psychiatric services, emergency department manager, and director of community health education. Finally, the Petitioner and Employer contend that six patient care coordinators should be excluded as supervisors. The Intervenor took no position. Notwithstanding their inclusion in the current unit, record evidence demonstrates that patient care coordinators have the authority to hire and discharge employees. Accordingly, they are excluded as Sec. 2(11) supervisors.

[8] An exhibit in evidence at the hearing indicates that there are currently eight incumbents occupying these positions.

ministrative director for that area. Head nurses, in turn, oversee particular areas within an operation, and report to department managers. Six nursing shift supervisors are in charge of all nursing on a particular shift. As noted, the parties agree that all of these classifications possess the indicia of supervisory status, and are Section 2(11) supervisors. None of these classifications are within the current unit.

Registered nurses work throughout the hospital, in various departments, many classified as staff registered nurses, and some classified within a subspecialty such as nurse anesthetist or psychiatry RNs. The current unit consists of the staff registered nurses and other specialty nurses who are involved in what the parties call the "traditional" nursing duties of providing direct patient care. Certain other specialty nurse classifications are not involved in providing direct patient care, and have never been included in the longstanding registered nurse bargaining unit. These classifications include: clinical nurse specialist, quality improvement coordinator, maternal child community services coordinator, women's health educator, clinical data specialist, Crittenton Network HAP UR/QA coordinator, pre-admission nurse coordinator, health record analyst, lactation consultant, and contingent instructor. Certain other classifications, to some extent, are involved in direct patient care, but have never been included in the bargaining unit. These classifications include: clinical nurse specialist-psychiatric, contingent nurse, and nurse anesthetist.

The record contains no evidence that any of the disputed registered nurses maintain or exercise the authority to hire, transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees, or to adjust their grievances, or to effectively recommend such action. The Employer's job description for the RN position sets forth 14 duties and responsibilities, almost all of which deal with patient care or professional responsibilities such as attending education programs, documenting and maintaining records and charts, and responding to emergency situations such as a "code blue" page. The job description position summary indicates as follows: "The staff nurse is a registered professional nurse who is responsible for the direct and indirect total nursing care of the patients on the assigned unit during a given period of time. The staff nurse is also responsible for the direction and supervision of personnel assigned to her."

Most of the hospital's nursing units maintain a staff that includes a head nurse, charge nurse,[9] staff nurses, licensed practical nurses, nurse aides and techs. The staff nurses and charge nurse are principally occupied in performing functions directly related to patient care. At the beginning of each shift, the charge nurse[10] "distributes"[11] patients to the staff nurses and other personnel by completing a form, and forwarding this form to the head nurse, who reviews and sometimes changes the patient distribution. In addition to patient care, staff nurses oversee the work of aides and LPNs to the extent that if a staff nurse observes a procedure being performed incorrectly the staff nurse has the authority to demonstrate or inform the aide or LPN as to the proper procedure. There is no evidence that the staff nurse maintains the authority to discipline or reprimand, or to effectively recommend such.[12]

SUPERVISORY ISSUE

As noted, other than the nurse classifications which the parties stipulated to be Section 2(11) supervisors, and the classifications which all parties agree are nonsupervisory, i.e., registered nurses working in the ACCU, AICU, and in-patient P.A.R. departments, the parties disagree as to the supervisory status of registered nurses, with the Employer, contrary to the Petitioner and the Intervener, contending that all registered nurses are supervisors. Section 2(11) of the Act defines a "supervisor" as:

> [A]ny 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 of a merely routine or clerical nature, but requires the use of independent judgment.

As the Board has stated, the statute requires the resolution of two questions and each must be answered in the affirmative if an employee is to be deemed a supervisor. First, does the employee have authority to engage in 1 of the 12 listed activities. Second, does the exercise of that authority require "the use of independent judgment." *NLRB v. Health Care & Retirement Corp.,* 511 U.S. 571 (1994). Finally, the burden of proof is on the party that asserts supervisory status. *Ohio Masonic Home,* 295 NLRB 390, 393 (1989).

Here, the record contains no evidence that registered nurses possess or exercise any of the listed indicia of supervisory status, with the possible exception of the responsible direction of employees. As noted, the record indicates that charge nurses, some on a rotating basis, at the beginning of each shift recommend to head nurses which registered nurses, LPNs and aides are to be assigned to which patients. The head nurse a stipulated supervisor, makes the final decision. Registered nurses also oversee the patient-related duties of LPNs and aides in the sense of correcting practices and procedures that they deem incorrect based on their professional expertise. But the authority of RNs as to such corrections is limited to pointing out mistakes to the employee and demonstrating the correct

[9] A "desk nurse" is also mentioned, but not detailed, in the record. Although not set forth explicitly, there are indications that the terms "desk nurse" and "charge nurse" are used interchangeably.

[10] Depending on the unit, the charge nurse designation may be rotated among staff nurses on the unit. Some units do not utilize the charge nurse designation.

[11] "Distribute," rather than "assign," is the term used by witnesses.

[12] An unspecified number of nurses occupy the classification registered "nurse preceptor," a classification included in the current bargaining unit. Preceptors participate in the orientation process undergone by newly hired registered nurses, and "provide formal and informal feedback to the preceptee and to the department manager to facilitate the learning and evaluation process." Preceptors work with orientees, correcting errors, and pointing out correct procedures. Preceptors also complete a skills checklist for orientees, and while preceptors make no decisions whether an orientee becomes a regular employee of the hospital, the skills checklist is taken into consideration when such a determination is made. The record does not detail who makes such a decision or how it is arrived at. While a witness testified that "the preceptor effectively recommends hiring," the record provides no detail as how the preceptor—completed checklist plays such a role. There was also testimony that the cardiopulmonary rehab educator is involved in decisions as to hiring applicants for positions within the department While the record indicates that this department has final authority for hiring decisions as to positions within the department, the role of the cardiopulmonary rehab educator is not detailed.

procedure. There is no evidence that this correction procedure involves reprimands or any other form of discipline.

Based on the record evidence, the Employer has failed to carry its burden to demonstrate that registered nurses, represented in a bargaining unit for over 25 years, possess any of the indicia of supervisory status. The rotating routine assignment of patients to employees, subject to the approval of statutory supervisors, is an action flowing from the professional acumen of nurses and is not indicative of the exercise of true supervisory or managerial prerogatives. *Neighborhood Legal Services,* 236 NLRB 1269, 1273 (1978). Further, the exercise of professional expertise in correcting, but not disciplining, other employees does not serve to demonstrate responsible direction. There is no evidence that the nurses' corrections have any effect on job status or tenure, and accordingly do not demonstrate supervisory status. *S. S. Joachim & Anne Residence,* 314 NLRB 1191, 1195 (1994). Under these circumstances, I conclude that the Employer's registered nurses, including their various specialty classifications, are not supervisors within the meaning of Section 2(11) of the Act.[13]

THE UNIT ISSUE

As noted, the Petitioner seeks a unit of the Employer's RNs coextensive with the existing bargaining unit. The Intervenor, the incumbent collective-bargaining representative, argues that the appropriate unit should include all the Employer's RNs, including the currently represented RNs, and the various other classifications of RNs, which have never been part of the bargaining unit. The Employer, contending that all RNs are supervisors, also maintains that a unit which includes all RNs would not be appropriate in that the nurses do not share a community of interest. The Employer does not indicate what bargaining unit of nurses it believes would be appropriate.

Section 103.30(a) of the Board's Health Care Rule provides that, "except in extraordinary circumstances and in circumstances in which there are existing nonconforming units," the eight units described in Section 103.30(a) and only those units will be found appropriate for petitions filed with respect to acute care hospitals under Sections 9(c)(1)(A)(i) and 9(c)(1)(B) of the Act." See *Kaiser Foundation Hospitals,* 312 NLRB 933, 934 (1993). A unit of all registered nurses is one of the eight appropriate units. There is no evidence that the instant case involves extraordinary circumstances. However, the existing unit is nonconforming in that it does not include all registered nurses. Section 103.30(c) of the Rule states: "Where there are existing nonconforming units in acute care hospitals, and a petition for additional units is filed pursuant to section 9(c)(1)(A)(i) or 9(c)(1)(B), the Board shall find appropriate only units which comport, insofar as practicable, with the appropriate unit set forth in paragraph (a) of this section."

In *Kaiser,* where the petitioned-for unit was a smaller conforming unit in circumstances where the existing unit was a larger nonconforming unit, the Board held that there was no indication that the Board intended Section 103.30(c) to apply where the existing nonconforming unit was broader than those which the Rule envisioned, and the petition sought to sever some of the represented employees from that unit. Supra at 934. The instant case presents the opposite circumstances in that the petitioned-for unit parallels the existing smaller nonconforming unit, while the incumbent intervener seeks a broader conforming unit. Thus, unlike the situation in *Kaiser,* here the existing nonconforming unit is smaller than the unit envisioned by the Rule.

Under the instant circumstances, where the incumbent union seeks a broader conforming unit, as opposed to Petitioner's narrower nonconforming unit, I conclude that Section 103.30(c) does apply, and that any resulting unit should be in conformance with the Board's Rule to the extent practicable. Concluding that Section 103.30(c) does apply to the instant case is consistent with the Congressional admonition against undue proliferation of bargaining units in the health care industry, because there will not be a remaining residual group of nurses. See *Kaiser,* supra at 935. Further, under the instant circumstances, holding that Section 103.30(c) does apply will not conflict with the Board's longstanding policy of promoting industrial and labor stability because the Intervenor, the incumbent representative of the existing unit, seeks to represent the nurses in a larger, conforming unit. See *Kaiser,* supra at 935. Thus, I conclude that the appropriate unit should include all registered nurses employed by the Employer.

CONTINGENT REGISTERED NURSES

The Employer employs approximately 125 registered nurses in a contingent or on-call classification. While the contingent nurses have never been included in the Intervenor's current bargaining unit, the Intervenor now seeks their inclusion as part of the overall registered nurse unit found appropriate here. The Petitioner and Employer maintain that the contingent nurses should not be included in the unit because of a lack of community of interest.[14] The issue here is whether the contingent nurses should be included in the unit as regular part-time employees or excluded as casuals. *Sisters of Mercy Health Corp.,* 298 NLRB 483 (1990). In determining whether on-call employees should be included in the bargaining unit, the Board considers whether the employees perform unit work, and those employees' regularity of employment. *Trump Taj Mahal Casino,* 306 NLRB 294, 295 (1992).

The record indicates that contingent registered nurses work alongside unit registered nurses, in the same departments, performing the same duties, and supervised by the same supervisors. Contingent nurses receive no fringe benefits, as opposed to other nurses, and are paid on a different, but unspecified basis. Contingent nurses are required to sign either a "contingent-1" or "contingent-2" agreement on becoming an employee of the hospital. Contingent-1 nurses are required to work a minimum of eight shifts per month, while contingent-2 nurses are required to work a minimum of three shifts per month. Shifts vary from 8 to 12 hours in length.

The record details hours worked by individual contingent nurses only during the quarter immediately preceding the hearing, ending March 30, 1995, and details only the gross number of hours worked by each contingent nurse, with no breakdown indicating they worked in a particular week. Of the listed 125 contingent nurses, 3 nurses worked no hours, 31 worked less

[13] Unlike the nurses in *Health Care & Retirement Corp.,* supra, here there is no evidence that the registered nurses discipline aides, resolve aides' grievances, or evaluate aides' performances.

[14] In accord with the discussion of the Employer's position that virtually all of its registered nurses are supervisors, the Employer's contention that contingent nurses are supervisors is rejected. Similarly, in accord with the discussion as to appropriate unit, the arguments of the Petitioner and the Employer that contingent nurses and registered nurse contingent instructors do not share a community of interest with other registered nurses is rejected.

than 52 hours (and hence averaged less than 4 hours a week), 91 nurses worked over 52 hours, with 53 of the 91 working hours in excess of 120. Six nurses worked between 300 and 400 hours and one nurse worked 488.5 hours.

In *Marquette General Hospital,* 218 NLRB 713, 714 (1975), the Board set forth a formula for contingent nurse eligibility in which contingent nurses who worked a minimum of 120 hours in either of the two, 3-month periods immediately preceding the direction of election were found eligible to vote. In *Sisters of Mercy Health Corp.,* supra at 483, the Board held the *Marquette* formula to apply only to circumstances where there is a significant disparity in the number of hours worked by on-call employees. In other circumstances, where there is no evidence of "the significant disparity in the hours worked of the on-call nurses that was present in *Marquette*," the Board concluded that the *Marquette* formula was too restrictive of eligibility, and instead imposed the on-call eligibility formula set forth in *Davison-Paxon Co.,* 185 NLRB 21, 24 (1970), which found on-call employees eligible if they regularly averaged 4 hours or more of work per week during the quarter prior to the eligibility date. *Sisters of Mercy,* supra at 484.

As set forth above, the contingent nurses here appear to have a significant disparity in hours worked based on hours worked in the first quarter of 1995, the only evidence of contingent hours contained in the record.[15] Accordingly, I conclude that the eligibility formula set forth in *Marquette* more closely reflects the instant circumstances, and should be applied here.[16] Thus, contingent nurses, either contingent-1 or contingent-2, who have worked a minimum of 120 hours in either of the 2, 3-month periods immediately preceding the date of issuance of this Decision and Direction of Election shall be eligible to vote. This formula determines voting eligibility, but does not affect unit inclusion. *Marquette,* supra at 713.

HOME HEALTH OUTREACH NURSES

The Intervenor contends that the approximately 40 registered nurses employed by Home Health Outreach (HHO), and not part of the existing unit, should be included in the all-inclusive registered nurse unit.[17] The Petitioner, consistent with its position set forth above, maintains that only nurses included in the extant unit should be part of the appropriate unit. The Employer contends that HHO is a separate employer, that HMO's employees are not employees of the Employer, that there is no single or joint employer relationship between the Employer and HHO, that the HHO nurses share no community of interest with the Employer's included nurses, and that the HHO nurses are supervisors.

HHO is a Michigan corporation and a wholly owned subsidiary of Crittenton Development Corporation, which in turn is a wholly owned subsidiary of Crittenton Corporation. Crittenton Hospital, the Employer here, is a subsidiary of Crittenton Corporation. Unlike the Employer which is engaged in the operation of an acute care hospital, HHO is engaged in providing nursing care at patient homes and skilled nursing care on an outpatient basis at HMO's facility. HHO maintains separate offices, about a quarter of a mile from the Employer. Kenneth Belke is the president of HHO and Crittenton Development Corporation, and the chief financial officer of Crittenton Corporation.

HHO and the Employer maintain separate managers, offices, facilities, payrolls, and human resources departments. HHO provides services to patients who are not patients of the Employer, and less than half of HMO's patients were also patients of the hospital. HHO nurses are paid on a per visit basis, rather than the hourly basis used to remunerate the Employer's nurses, and HHO and the Employer provide different and separate benefit packages to their respective employees. HHO and the Employer maintain separate staffs of supervisors. There is no temporary interchange of employees between HHO and the Employer, and little evidence of any permanent interchange of employees.[18] HHO employees have never been represented for collective-bargaining purposes, while the Employer's nurses have been represented by the Intervenor for over 25 years.

The Board applies four criteria in determining whether separate entities constitute a single employer. These criteria are: (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control. *Hydrolines, Inc.,* 305 NLRB 417, 417 (1991). Something more than common ownership must be shown. *Sheet Metal Workers Local 80 (Limbach Co.),* 305 NLRB 312, 314 (1991). The most critical factor is centralized control of labor relations. *Western Union Corp.,* 224 NLRB 274, 277 (1976); *Electrical Workers IBEW Local 2208 (Simplex Wire),* 285 NLRB 834 (1987).

In the instant case, the record demonstrates that the labor relations of HHO and the Employer are separately administered. Further, while there is some evidence that HHO and the Employer to some extent share a common customer base, there is little evidence of an interrelationship of their operations. Thus, only common ownership, the least important of the four criteria, would support a finding of single-employer status. *Hydrolines, Inc.,* supra at 417. Under these circumstances, and principally relying on the complete separation of control over labor relations, I conclude that HHO and the Employer are not a single employer.[19] Accordingly, and in view of the Employer's opposition to the inclusion of the nurses, the HHO nurses will not be included in the overall unit of the Employer's registered nurses. *Staten Island University Hospital v. NLRB,* 24 F.3d 450 (2d Cir. 1994).

[15] Thus, in Marquette, the Board noted that on-call nurse hours ranged from 23 to 540.5. In the instant case, the hours varied from 0 to 488.5.

[16] This same formula shall apply to the approximately 18 registered nurse contingent instructors.

[17] The actual number of such registered nurses would include approximately 33 contingent registered nurses employed by HHO, and an additional number of full-time registered nurses whose exact number cannot be determined due to an apparent error in the hearing transcript.

[18] HHO recently hired two nurses on a contingent basis who apparently are also employed by the Employer as contingent nurses. The record also indicates that two 'home health coordinators. employed by HHO are stationed at the hospital, and are provided to the Employer on a contract basis. Inasmuch as the record does not detail their duties or supervision, I make no findings to their unit placement or eligibility. They may vote subject to challenge by any party.

[19] In view of this finding, I make no finding as to the supervisory status of HHO nurses.