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STATE OF MONTANA

BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT DETERMINATION #24-1978:)	)
CHAFFEURS, TEAMSTERS, WAREHOUSEMEN	) FINDING OF FACT
AND HELPERS, LOCAL #45,	) CONCLUSIONS OF LAW
	) AND RECOMMENDED
Petitioner	) ORDER
vs.	)
LIBERTY COUNTY NURSING HOME,	)
	)
Employer.	)

\* \* \* \* \*

Petitioner, Chauffeurs, Teamsters, Warehousemen and Helpers, Local 45, in above captioned matter filed Petition for New Unit Determination and Election on September 6, 1978, for certain employees of the Liberty County Nursing Home. The Petitioner proposed the appropriate bargaining unit to include all Licensed Practical Nurses and Nurse Aides employed by the Employer and excluding all other employees.

Employer, Liberty County Nursing Home, filed a Counter-Petition with the Board on September 22, 1978, alleging that the Petitioner may not have adequately supported proof of interest of the affected employees (this allegation was subsequently abandoned by the Employer) and disagreed with the appropriateness of the proposed unit.

On October 16, 1978, Employer filed Amended Counter-Petition with the Board and proposed that the appropriate bargaining unit should include all non-supervisory or non-management personnel in both the Liberty County Nursing Home and Liberty County Hospital.

A formal hearing in this matter was conducted on December 12, 1978, in the Conference Room, Liberty County Hospital, Chester, Montana, before Stan Gerke, Hearing Examiner. The hearing was held under authority of Section 39-31-207 MCA and Title 2, Chapters 15 and 18 MCA, and in accordance with the Montana Administrative Procedure Act (Title 2, Chapter 4 MCA). The purpose of the hearing was to determine an appropriate collective bargaining

1 unit. Petitioner was represented by Ms. Emilie Loring of the law  
2 firm of Hilley and Loring, P.C., Great Falls, Montana. Employer  
3 was represented by Hugh B. Brown, Liberty County Attorney, Chester,  
4 Montana.

5  
6 STIPULATIONS  
7

8 The parties stipulated that the appropriate bargaining unit  
9 should consist of certain employees of both the nursing home and  
10 the hospital.

11 The administrative structure of the Liberty County Nursing  
12 Home and Hospital was stipulated to by the Parties as follows:

13 County Commissioners

14 Board of Trustees (7 member board)

15 Administrator (Richard Brown)

16 Department Heads -

17 Nursing - Hospital (Shirley Kulpos)

18 Nursing Home (Ellis Stewart)

19 Dietary - (Arleen Hagen)

20 Laboratory & X-Ray - (Roger Cotton)

21 Maintenance & Housekeeping - (Dave Will)

22 Laundry - (Sophie Lalum)

23 Physical Therapy - (Mary Lou Dees)

24 Occupation Therapy - (Karen Tuss)

25 Office - (Richard Brown)

26

27 The parties stipulated that the licensed practical nurses  
28 (LPNs) are not supervisory employees.

29 The parties stipulated that the Hearing Examiner take admin-  
30 istrative note of U.D. # 5-1974.

31 The parties stipulated that the record in this matter shall  
32 include the job descriptions and wage schedules of all positions  
the Employer contends should be included in the appropriate

1 bargaining unit.

2

3

#### ISSUES

4

5 At the pre-hearing conference held in the matter, the  
6 Petitioner elaborated its position and stated that the appropriate  
7 bargaining unit should consist of all LPNs and Nurse Aides employed  
8 in the nursing home and hospital, excluding Mrs. Beth Foster  
9 (LPN) for reason of supervisory status.

10 The Employer reiterated its position of favoring an appro-  
11 priate bargaining unit consisting of all employees employed in  
12 the nursing home and hospital and excluding managerial and  
13 supervisory personnel.

14 One other question developed during the formal hearing which  
15 concerned "part-time" employees and "casual" employees and their  
16 status relative to inclusion in an appropriate bargaining unit.

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18

#### FINDINGS OF FACT

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20 After a thorough review of the record, including the testimony  
21 of witnesses, the demeanor of witnesses and the exhibits, I make  
22 the following:

23

24 1. Beverly Thisselle, Nurse Aide, testified she performed  
25 direct patient care duties such as washing patients, feeding  
26 patients, brushing patient's teeth and moving patients in the  
nursing home.

27

28 2. Ms. Thisselle explained the work schedules for the  
29 hospital and nursing home which are the day shift consisting of  
30 seven aides and two LPNs and/or RNs; the evening shift generally  
31 consisting of seven aides and two LPNs, and; the night shift  
32 consisting of two aides and one LPN who "floats" between the  
hospital and the nursing home (the hospital and the nursing home  
occupy separate portions of the same building).

1           3. Ms. Thisselle testified she had never worked in the  
2 hospital; however, aides in the hospital have worked in the  
3 nursing home. According to Ms. Thisselle, LPNs are assigned  
4 either to the hospital or the nursing home with the exception of  
5 the night shift (see Findings of Fact No.2).

6           4. Aside from the aides and the LPNs, no other group of  
7 employees, except for housekeeping have direct contact with  
8 patients according to the testimony of Ms. Thisselle.

9           5. Ms. Thisselle testified that aides do not interchange  
10 work functions with employees of dietary, housekeeping, office,  
11 laundry, or laboratory. According to Ms. Thisselle, employees of  
12 the aforementioned categories have never "filled in" for aides,  
13 nor have aides "filled in" for these employees. In his testimony,  
14 Richard Brown, Administrator, Liberty County Nursing Home and  
15 Hospital, gave an example of interchange of work functions. The  
16 example was a possible situation where a patient urinated on the  
17 floor and no housekeeping personnel were readily available, and  
18 the aide on duty would clean up the urine. Washing the floor is  
19 a typical housekeeping function. Ms. Thisselle's testimony was  
20 fairly detailed in explaining the difference of job functions  
21 between the aides and the housekeeping employees. Ms. Thisselle  
22 testified that aides do not wash walls, floors or curtains, only  
23 night stands and beds. Aides and housekeeping employees do not  
24 work in the same room at the same time. I am not persuaded that  
25 an occasional patients "accident" requiring an aide to spot mop  
26 the floor would justify a great extent of work interchange between  
27 the aides and the housekeeping personnel. Therefore, I find there  
28 is only occasional, minor work interchange between these two  
29 groups of employees.

30           6. Ms. Thisselle testified she received her daily work  
31 instructions for a "team leader" (LPN or RN) each morning. In  
32 reference to an aforementioned Stipulation concerning

1 administrative structure and according to the testimony of Ms.  
2 Thisselle, Ellis Stewart is the supervisor of all aides and LPNs  
3 in the nursing home and Shirley Kulpos is the supervisor of all  
4 aides and LPNs in the hospital. The remaining groups of employees  
5 (dietary, laboratory and X-ray, housekeeping and maintenance,  
6 laundry, physical therapy, occupational therapy, and office) have  
7 different supervision. In accordance with the Parties' Stipula-  
8 tion that declares an appropriate bargaining unit should consist  
9 of certain employees of both the hospital and nursing home and in  
10 consideration of the above discussion, I find there is common  
11 supervision with the aides and LPNs which is separate and different  
12 from other employees.

13 7. Richard Ferderer, Business Representative, Chauffeurs,  
14 Teamsters, Warehousemen and Helpers, Local #45 (Petitioner),  
15 testified that he attempted to interest employees, in addition to  
16 aides and LPNs, in being represented in collective bargaining  
17 matters. Despite his professional organizing efforts, no employee,  
18 other than aides and LPNs, showed any interest, according to Mr.  
19 Ferderer.

20 8. Mr. Richard Brown testified that all employees in  
21 question in this matter receive hourly wages (except for Belle  
22 Foster, LPN), all employees receive the same benefits (except for  
23 casual or part-time employees who work less than eighty hours per  
24 month) and all employees work under the same personnel policies.  
25 Mr. Brown explained that Ms. Belle Foster receives a monthly  
26 salary, by her own request, to enable her to benefit from social  
27 security.

28 9. Petitioner expressed its agreement with the distinction  
29 made by the Employer between employees working more than eighty  
30 hours per month and those employees working less than eighty  
31 hours per month. Petitioner acknowledged Employer's reason for  
32 such a distinction which is compliance with state statutes dealing  
with such benefits as annual leave and sick leave. Whereas



1 tion. The NLRB devised a "basic six unit structure" guideline to  
2 formulate bargaining units in health care institutions to guard  
3 against fragmentation. The divisions within the "basic six unit  
4 structure" excluding guards, are: (1) physicians; (2) registered  
5 nurses; (3) other professionals; (4) technical employees; (5)  
6 business office clericals; and, (6) service and maintenance  
7 employees. In using this established basic structure method in  
8 addressing the instant matter with no other consideration, I  
9 could place all present employees in question within five separate  
10 units (excluding physicians). However, the total number of  
11 employees of Liberty County Nursing Home and Hospital is relatively  
12 small and imposing the basic six structure in total would tend to  
13 fragment the group of employees into units so small that possibly  
14 collective bargaining rights of the employees may be jeopardized.  
15 In Appalachian Regional Hospitals, Inc. 233 NLRB No. 85, 96 LRRM  
16 1528 (1977), the smallness of the workforce was taken under  
17 consideration and the NLRB included business office clericals,  
18 service and maintenance, and technical employees in the same  
19 unit. In the instant case, the LPNs and aides share a community  
20 of interest on hours (see Finding of Fact #2), interchange of  
21 work functions (see Finding of Fact #3), common supervision (see  
22 Stipulations relating to administrative structure and Finding of  
23 Fact #6), and desires of employees (see Finding of Fact #7), In  
24 reference to Finding of Fact Nos. 4 and 5, the aides do not share  
25 a community of interest (other than LPNs) with other groups of  
26 employees except in benefits and personnel policies which are  
27 common throughout the hospital and nursing home. In Memorial  
28 Medical, 230 NLRB No. 140, 95 LRRM, 478 (1977), aides (service  
29 employees) were included with Licensed Vocational Nurses (technical  
30 employees) because the two shared a substantial community of  
31 interest. The situation in this case is similar, if not identical,  
32 to the instant case. Employer contends all non-supervisory and  
non-managerial employees should be included in the same unit. One

1 all-inclusive unit would be contrary to the guidelines established,  
2 however, six separate units would threaten the collective bar-  
3 gaining rights of the employees. I reference to Finding of Fact  
4 #11, a unit consisting of Licensed Practical Nurses and aides  
5 employed in both the hospital and nursing home was found to be  
6 appropriate in UD#5-1974. Evidence presented at the hearing  
7 indicated that duties and responsibilities of positions have not  
8 changed since the unit determination in 1974. In view of the  
9 foregoing, the community of interest shown between the Licensed  
10 Practical Nurses and aides, and the two NLRB cases cited earlier,  
11 a collective bargaining unit consisting of Licenses Practical  
12 Nurses and aides would be proper.

13         Petitioner's arguments that Ms. Belle Foster should be  
14 considered as a supervisory employee are merely documentation of  
15 Ms. Foster's years of working experience at the hospital and  
16 nursing home. Mr. Richard Brown's testimony is convincing that  
17 Ms. Foster possesses no duties or responsibilities beyond any  
18 other LPN and I agree she is not supervisory. Ms. Foster's  
19 special circumstances with her salary could continue should she  
20 be represented by the Petitioner in collective bargaining matters.

21         In reference to Finding of Fact #9, part-time or casual  
22 employees who work less than eighty (80) hours per month are not  
23 eligible to earn certain benefits. These employees earn the same  
24 rate of pay as do regular employees and work under the same  
25 personnel policies. However, they are excluded by state statute  
26 from vacation benefits (Section 2-18-611(3) MCA), and sick leave  
27 benefits (Section 2-18-618(3) MCA). Petitioner has suggested  
28 that these employees be excluded from the bargaining unit. In  
29 Hearst Corp., 221 NLRB No. 67, 90 LRRM 1468 (1975), part-time  
30 employees were included in an appropriate bargaining unit although  
31 the employer's policy was that employees working less than twenty  
32 (20) hours a week were not entitled to holidays, hospitalization,  
life insurance and pension benefits. The record in the Heart

1 case indicated that part-time employees are paid similar wages,  
2 receive the same working conditions and supervision, and receive  
3 limited fringe benefits. I am convinced that using eighty (80)  
4 hours per month, or as per state statute, twenty (20) hours per  
5 week as the determining sole factor for deciding which employees,  
6 who work less than full time, are included in a bargaining unit  
7 would be improper. The NLRB has made a distinction between  
8 "casual" employees who are not included in a bargaining group and  
9 "regular part-time" employees who are included. However, the  
10 distinction is reviewed on a case by case basis relative to the  
11 entire employment relationship of part-time employees in order to  
12 determine the extent of a shared community of interest with  
13 full-time employees. In the instant case, the record is not  
14 sufficient to determine which, if any, part-time employees who  
15 are employed as Licensed Practical Nurses or aides should be  
16 considered as "casual" and thus excluded or "regular part-time"  
17 and therefore included in the bargaining unit.

18  
19 CONCLUSIONS OF LAW  
20

21 A unit consisting of all Licensed Practical Nurses (LPNs)  
22 and nurse aides (aides) employed by Liberty County Nursing Home  
23 and Hospital with the exception of casual employees is an appro-  
24 priate unit for purposes of collective bargaining under Section  
25 39-31-103 (2) MCA and Section 39-31-202 MCA. Also, Ms. Belle  
26 Foster is not a supervisory employee for purposes of collective  
27 bargaining under Section 39-31-103(2) and (3) MCA.  
28

29 RECOMMENDED ORDER  
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31 It is ordered tha an election by secret ballot shall be  
32 conducted as early as possible, in accordance with the rules and  
regulations of the Board of Personnel Appeals, among the employees

1 in the above described bargaining unit, employed by Liberty  
2 County Nursing Home and Hospital on September 6, 1978, to deter-  
3 mine whether or not they desire to be presented for purposes of  
4 collective bargaining.

5  
6 SPECIAL NOTE

7  
8 In accordance with Board's Rule ARM 24.26.107(2), the above  
9 RECOMMENDED ORDER shall become the FINAL ORDER of this Board  
10 unless exceptions are filed within 20 days after service of these  
11 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER upon  
12 the parties.

13 DATED this 23<sup>rd</sup> day of May, 1979.

14  
15 BOARD OF PERSONNEL APPEALS

16  
17 BY Stan Gerke  
18 Stan Gerke  
19 Hearing Examiner

20 CERTIFICATE OF MAILING

21 I, Jennifer Jacobson, do hereby certify and state  
22 that on the 23 day of May, 1979, that I mailed a true and  
23 correct copy of the above FINDINGS OF FACT, CONCLUSIONS OF LAW,  
24 AND RECOMMENDED ORDER to the following:

25 Richard Ferderer, Business Agent  
26 Teamsters Local 45  
27 P.O. Box 2648  
28 Great Falls, MT 59403

29 Emilie Loring  
30 Attorney at Law  
31 1713 Tenth Avenue South  
32 Great Falls, MT 59405

Richard Brown, Administrator  
Liberty County Nursing Home and Hospital  
Chester, MT 59522

Hugh Brown, County Attorney  
County of Liberty  
Box C  
Chester, MT 59522

Jennifer Jacobson