

**Easton Hospital and United Independent Union,  
NFIU/LIUNA, AFL-CIO. Case 4-CA-27704**

September 19, 2001

**DECISION AND ORDER**

**BY CHAIRMAN HURTGEN AND MEMBERS  
TRUESDALE AND WALSH**

On September 1, 1999, Administrative Law Judge Martin J. Linsky issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief to the General Counsel's exceptions.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.

<sup>1</sup> The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In *Levitz Furniture Co. of the Pacific*, 333 NLRB 717 (2001), which issued while this case was pending before the Board, the Board overruled *Celanese Corp.*, 95 NLRB 664 (1951), and its progeny insofar as they permitted an employer to withdraw recognition from an incumbent union on the basis of a good-faith doubt of the union's continued majority status. The *Levitz* Board held that "an employer may unilaterally withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of the bargaining unit employees." *Id.* However, the Board also held that its analysis and conclusions in that case would be applied only prospectively; "all pending cases involving withdrawals of recognition [will be decided] under existing law: the 'good-faith uncertainty' standard as explicated by the Supreme Court" in *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998). We find that the judge's analysis in the instant case comports with the standards of *Allentown Mack*.

We agree with the judge's finding that the November 24, 1998 letter signed by 7 of the 14 unit employees was sufficient to provide the Respondent with a good-faith uncertainty as to the continued majority support of the Union according to the standards set forth in *Allentown Mack*. As noted by the Charging Party, pre-*Allentown Mack* Board precedent holds that employee petitions that request merely a "revote" or an opportunity for employees to vote as to whether they desire continued representation by a union are alone insufficient to establish a good-faith doubt as to a union's majority status. See, e.g., *Pic Way Shoe Mart*, 308 NLRB 84 (1992); *Laidlaw Waste Systems*, 307 NLRB 1211 (1992); *Phoenix Pipe & Tube Co.*, 302 NLRB 122 (1991), enf'd. 955 F.2d 852 (3d Cir. 1991). In contrast to such precedent, however, the language of the petition signed by the employees in the instant case conveys more than a simple request for a new election:

We feel that we have been misrepresented and therefore would like an immediate opportunity to revote to determine whether we want the union to continue its representation of our needs with Easton Hospital. Thus, the employees' use of the phrase "we feel that we have been misrepresented" suggests dissatisfaction with union representation.

**ORDER**

The recommended Order of the administrative law judge is adopted, and the complaint is dismissed.

*Peter C. Verrochi, Esq.*, for the General Counsel.  
*Roger D. Susanin and Daniel J. Brennan, Esqs.*, of King of Prussia, Pennsylvania, for the Respondent.  
*Stephen Richman, Esq.*, of Philadelphia, Pennsylvania, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

MARTIN J. LINSKY, Administrative Law Judge. On December 1, 1998, the United Independent Union, NFIU/LIUNA, AFL-CIO (the Union), filed a charge against Easton Hospital, Respondent herein.

On April 19, 1999, the National Labor Relations Board, by the Regional Director for Region 4, issued a complaint which alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) when it withdrew recognition of the Union as the exclusive collective-bargaining representative of a unit of registered nurses.

Respondent filed an answer on April 29, 1999, in which it claimed that it lawfully withdrew recognition of the Union because it had a reasonable good-faith doubt of the continued majority status of the Union citing *Allentown Mack Sales & Service v. NLRB*, 522 U.S. 359 (1998).

A hearing was held before in Philadelphia, Pennsylvania, on July 20, 1999.

Based on the entire record in this case, to include posthearing briefs submitted by the General Counsel, Respondent, and the Charging Party, and on my observation of the demeanor of the witnesses, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, Respondent, a Pennsylvania nonprofit corporation, has operated a not-for-profit acute care hospital in Easton, Pennsylvania.

Respondent admits, and I find, that at all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

This expression of dissatisfaction, combined with the employees' request for a vote, constitutes evidence sufficient to establish a good-faith uncertainty as to the Union's majority status under *Allentown Mack*. Member Walsh stresses, however, that in the future, in all cases arising after the *Levitz* decision, this type of evidence may be sufficient to support an employer's request for an election, but will no longer be sufficient to justify a withdrawal of recognition.

Accordingly, we find it unnecessary to rely on the various prior statements made by employees, possibly within the initial certification year, and conveyed to the Respondent's vice president of human resources. See *Chelsea Industries*, 331 NLRB 1648 (2000).

## II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICE

As an administrative law judge with the National Labor Relations Act it is my function to find the facts and then apply current Board law, as modified by the U.S. Supreme Court, to those facts. In light of that standard and relying on Board precedent and the recent Supreme Court decision relied on by Respondent, i.e., *Allentown Mack Sales & Service*, supra, it is my conclusion that Respondent had a reasonable good-faith *doubt*, based on objective considerations, to withdraw recognition of the Union when it did so on November 30, 1998, and did not violate the Act.

I note that the evidence in this case consisted of a number of documents and the testimony of the Hospital's vice president of human resources, Robert J. Bandola, and Union Executive Vice President Paul Diana. Bandola and Diana impressed me as honest men and I credit their testimony in its entirety.

The unit involved in the instant case is a unit of registered nurses working in certain specialized assignments. The Union was certified by the National Labor Relations Board (the Board) on September 7, 1997, following an election to be the exclusive collective-bargaining representative of the registered nurses in that unit. In the certification the unit is described as follows:

INCLUDED: All full-time and regular part-time registered nurses employed as Cardiac Catheterization Nurses, Electro Physiology Nurse, Cardiac Rehabilitation Nurse, Renal Dialysis Nurses and Radiology Nurses employed by Easton Hospital at its 250 South 21<sup>st</sup> Street, Easton, Pennsylvania facility.

EXCLUDED: All other employees, guards and supervisors as defined in the Act

This unit of employees was referred to by the parties as the "patient care areas" bargaining unit.<sup>1</sup>

The Union enjoys an irrefutable presumption of majority status for 1 year following certification. In addition, if a collective-bargaining agreement is reached between the employer and a union, the union will enjoy an irrefutable presumption of continued majority status during the length of the contract provided the contract is for no longer than 3 years.

In the instant case, the Hospital and the Union began negotiations for an initial contract. The parties met a number of times and reached tentative agreements on a number of issues. On November 16, 1998, the Hospital made its "final" offer to the Union.

The Union did not accept the Hospital's "final" offer. On and after September 8, 1998, since the 1-year period of "irrebu-

<sup>1</sup> The Union is also the certified collective-bargaining representative of two other much larger units at Easton Hospital, i.e., a unit of registered nurses and a unit of licensed practical nurses. The Union and Hospital agreed to collective-bargaining agreements with respect to these units and they are not involved in this litigation.

table" presumption had expired, the Union, in the absence of a contract, enjoyed only a rebuttable presumption of continued majority status.

After September 8, 1998, the Hospital could lawfully withdraw recognition of the Union if it had a reasonable good-faith *doubt*, not certainty, but *doubt*, of the continued majority support of the Union based on objective evidence.

As of November 30, 1998, there were 14 employees in the "patient care areas" unit. On November 30, 1998, an envelope was delivered to the Hospital's vice president of human resources, Ronald J. Bandola. Inside the envelope was a letter, which stated as follows:

November 24, 1998

To Whom It May Concern:

We the undersigned are of the understanding that since a year has gone by since the initial vote, we are eligible to vote again regarding union membership. We feel that we have been misrepresented and therefore would like an immediate opportunity to revote to determine whether we want the union to continue its representation of our needs with Easton Hospital.

As we would like to vote on this matter immediately we ask that you contact us with a date and time for a vote.

Respectfully Submitted, [R. Exh. 1].

The letter was signed by 7 of the 14 employees in the "patient care areas" unit. The language of the letter signed by half of the unit would cause a reasonable doubt to be entertained about the continued majority support of the Union among the unit members. A majority of the unit would be eight or more. Common sense instructs one that people want a new election because they desire a result different from the earlier election and common sense also instruct that people who feel "misrepresented" probably do not support the entity doing the representing. The letter furnishes a reasonable good-faith doubt as to the continued majority support of the Union. There is no allegation or evidence that Respondent did anything improper or unlawful, which resulted in this letter being presented to management.

After reading the letter, Bandola contacted counsel and made the decision, after reading the letter and consulting counsel, to withdraw recognition of the Union and to withdraw its "final offer" to the Union. Bandola faxed the following letter on November 30, 1998, to the Union:

Mr. Paul Diana  
Executive Vice President  
United Independent Union  
1166 South 11<sup>th</sup> Street  
Philadelphia, PA 19147

Dear Mr. Diana:

The Hospital is in possession of evidence that provides it with a good faith belief that the Union no longer represents a majority of the employees in the 'patient care areas' bargaining unit. In light of the Hospital's belief and the controlling federal law, the Hospital is compelled to cease bargaining and to

withdraw its November 16, 1998 offer for a three year collective bargaining agreement.

Very truly yours, [GC Exh. 8].

Bandola credibly testified that he had other evidence of employee dissatisfaction with the union. Two members of the “patient care areas” unit, Pam Valley and Lori Geklinsky, in August or September 1998 had told Bandola “that the nurses in Cardiology do not want to be member of the Union any more. They asked how they could get out of the union. What can I do to help them” (Tr. 24). Bandola told them to call the NLRB in Philadelphia.

Unit employee Jean Losagio said to Bandola, “I don’t know why we need this union here. They’re doing nothing for us. I never voted for the union. How can we get rid of them.” Losagio also told Bandola that “other people feel the same way I do” (Tr. 26).

Valley, Geklinsky, and Losagio all signed the November 24, 1998 letter.

Supervisors Dave Lugg and Lori Tonetti reported to Bandola in late summer of 1998 that the nurses in cardiology were saying they did not like and did not want the Union.

Supervisor Sue Groeler told Bandola that unit employee Teresa Langoussis from the dialysis unit in the August to September timeframe told her that some of the nurses “don’t want to be in the union” (Tr. 28). Langoussis did *not* sign the November 24, 1998 letter.

I find that the November 24, 1998 letter signed by half of the unit by itself furnished Respondent with a reasonable good-faith doubt of the continued majority support of the Union. Prior statements of employees to Bandola corroborate the reasonable good-faith doubt that emanates from the letter as does the employees’ statements about union support reported to Bandola by Supervisors Lugg, Tonetti, and Groeler.

Union Executive Vice President Paul Diana credibly testified that he had received no complaints about the Union from any members of the “patient care areas” unit. He also produced a letter from one of the seven unit employees who signed the November 24, 1998 letter. This letter was dated December 9, 1998, and was signed by unit employee Diane Brown. The letter was as follows:

I, the undersigned, have been frustrated with the situation our patient care area has been in for the past year plus. The frustration has come from waiting for the Hospital and the Union to initially negotiate after being promised it would happen right after the “other negotiations” were completed.<sup>2</sup> Then the continued wait during a very slow negotiation process for our area. The wage package and other items were tentatively agreed to in May 1998, but the wage package has been withheld until negotiations are completed while every other employee has received a bonus. I misunderstood what the petition meant, but wanted the Hospital to inform us of why this process has been so

<sup>2</sup> This is an apparent reference to negotiations regarding the larger registered nurse and large licensed practical nurse units, which resulted in a contract.

lengthy and discriminatory against us. I want to withdraw my name from the submitted “petition” [GC Exh. 10].

Diane Brown’s letter was not turned over to the Hospital. The Hospital was unaware of this letter from Brown and, in any event, the operative date is November 30, 1998, when Respondent withdrew recognition of the Union not some 9 days later when Brown sent her letter to Diana.

Since I find Respondent had a good-faith reason based on objective considerations as to the continued majority status of the Union I must conclude that Respondent did not violate the Act when it withdrew recognition. In reaching this conclusion I am relying on the Supreme Court decision in *Allentown Mack Sales & Service v. NLRB*, supra.

The General Counsel argues in this case and has argued in *Chelsea Industries*, Case 7–CA–36846, a case pending before the Board, that recognition may be withdrawn from a Board certified union when there is reasonable good-faith doubt of continued majority status only after a Board conducted election. That is not current law however and I am bound to follow current Board law as modified by the Supreme Court as noted above.

I believe, however, that what the General Counsel proposes would be an appropriate change to the law. In the instant case the employees who signed the November 24, 1998 letter stated in the letter that they wanted an election and that they wanted to vote on the matter of continued representation by the Union “immediately.”

A relatively quick election to resolve the “doubt” one way or the other raised by the November 24, 1998 letter would permit the Union and the Hospital to promptly return to the negotiating table or permit the Hospital to proceed with *certainty* and not *doubt* as to the desires of their employees regarding the matter of representation by the Union.

An election could result, absent objections, in the doubt regarding continued majority support raised by the employee letter being resolved in a matter of weeks whereas unfair labor practice litigation before a Labor Board judge, with exceptions to the Board, and review by the court of appeals could take years.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate the Act as alleged in the complaint.

On the foregoing findings of fact and conclusions of law I issue the following<sup>3</sup>

#### ORDER

The complaint is dismissed in its entirety.

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.