

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HURON MEMORIAL HOSPITAL

Employer

and

CASE 7-RC-22038

INDEPENDENT HOSPITAL WORKERS ASSOCIATION

Petitioner

and

HOSPITAL EMPLOYEES DIVISION OF LOCAL 79,
SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record^{1/} in this proceeding,^{2/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{3/}

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.^{4/}

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{5/}

All full-time and regular part-time LPNs, LPN Surgical Technicians, LPN Orthopedic Technicians, Certified O.R. Techs, Central Supply/Surgical Techs, Central Supply Techs, O.R./Central Supply Aides, O.R./Central Supply/H.U.C. employees, Hospice/Volunteer Coordinator/H.H. employees, Certified Home Health Aides, Clinical LPN/Clerical Assistant employees, Nurse Extern I employees, Nurse Extern II employees, Patient Unit Assistants, Graduate P.N. employees, Health Unit Coordinators, X-Ray Aides, Laboratory Assistants, General Utility employees, Machine Operators, Laundry Persons, Purchasing Clerks, Purchasing Stock Room Clerks, Maintenance Mechanics, Cooks, Diet Checkers, General Utility employees, Janitors, Physical Therapy Clerk/Aides, Physical Therapy Aides, Respiratory Therapy Technicians, Certified Respiratory Technicians, and Pharmacy Technicians employed by the Employer at its facility located at 1100 South Van Dyke Road, Bad Axe, Michigan; but excluding registered nurses, graduate nurses, student nurses, seasonal employees, casual employees, temporary employees registered technicians, professional employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

INDEPENDENT HOSPITAL WORKERS ASSOCIATION
OR
HOSPITAL EMPLOYEES DIVISION OF LOCAL 79, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO
OR
NEITHER

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **SEPTEMBER 11, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **SEPTEMBER 18, 2001**.



Dated: September 4, 2001

at Detroit, Michigan

/s/ William C. Schaub, Jr.
Regional Director, Region Seven

Section 103.20 of the Board's Rules concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

1/ The transcript on page 9, line 7 which currently reads that Mr. Mack responded “yes” is corrected to reflect that Mr. Mack responded “no”.

2/ The Intervenor filed a brief which was carefully considered.

3/ The Intervenor contends that it was prejudicially denied an adjournment of the hearing which resulted in an inability to have witnesses present at the hearing and requests that the hearing be reopened. The Intervenor further contends that it was not allowed to question the witness presented by the Petitioner regarding the labor organization status of the Petitioner or the existence of conflicts of interest affecting the ability of the Petitioner to represent the employees. The questions that the Intervenor was precluded by the Hearing Officer from asking addressed unfair labor practice issues, including unlawful recognition, domination and assistance, matters not subject to litigation in a representation case hearing. *Bi-States Co.*, 117 NLRB 86 (1957). Moreover, subsequent to the hearing, the Intervenor filed an unfair labor practice charge against the Employer in Case 7-CA-44224 alleging unlawful recognition, domination and assistance. That charge was withdrawn. Thus, the Intervenor had the opportunity to present evidence on these issues. The Intervenor cites no other evidence or arguments to support any alleged “conflict of interest.” See *Bausch & Lomb Optical Co.*, 108 NLRB 1555 (1954). The Intervenor’s request to reopen the record is, therefore, denied.

4/ Section 2(5) of the Act provides that a labor organization is an organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The record establishes that the Petitioner is an organization in which employees participate. Its five member board is composed of employees and employee meetings have been held to discuss bargaining issues. The purpose of the Petitioner is to engage in collective bargaining with the Employer. The Petitioner therefore meets the requirements of a labor organization. See, *Litton Business Systems*, 199 NLRB 354 (1972).

The Intervenor contends that the record establishes that the Employer recognized the Petitioner as the representative of its employees prior to the hearing, despite the existence of a contract between the Intervenor and Employer, now in its fourth year. While there was some testimony by the sole witness, a steward for both the Intervenor and Petitioner, regarding the filing of grievances, the record does not establish recognition of the Petitioner by the Employer. The Intervenor also contends that the Petitioner was permitted to post meeting notices on the Employer’s premises, which it mischaracterizes as a “conflict of interest.” See, *Bausch & Lomb*, supra. Instead, this is a potential issue of unlawful domination or assistance which is not addressed in a representation case. *Bi-States Co.*, supra; *Lampcraft Industries*, 127 NLRB 92 (1960).

5/ Petitioner seeks to represent the approximately 110 employees in the currently recognized bargaining unit represented by the Intervenor. The parties agree that the

unit set forth in the collective bargaining agreement between the Employer and the Intervenor is an appropriate unit. The only dispute is regarding the classification of clerical/outpatient technician in the inhalation therapy department which position is filled by a single employee. The Employer and Petitioner contend that by agreement of the Employer and Intervenor that classification has been included in the bargaining unit. The Intervenor declined to stipulate to the inclusion of that classification due to lack of knowledge. Consequently, the employee in the clerical/outpatient technician classification may vote subject to challenge by any party.

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