

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**HEALTHSHARE, INC., d/b/a  
NORTHERN MICHIGAN REGIONAL HEALTH SYSTEM**

**Employer**

**and**

**LAURA D. HART, An Individual**

**Cases GR-7-RD-3395 and  
GR-7-RD-3415**

**Petitioner**

**and**

**DENNIS E. JOHNSON, An Individual**

**Petitioner**

**and**

**GENERAL TEAMSTERS UNION, LOCAL NO. 406,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO**

**Union**

**APPEARANCES:**

Donald H. Scharg, Attorney, of Bloomfield Hills, Michigan, for the Employer  
Philip W. Nantz, Attorney, of Grand Rapids, Michigan, for Petitioner Hart  
Dennis E. Johnson, of Petoskey, Michigan, pro se  
Ted Iorio, Attorney, of Grand Rapids, Michigan, for the Union

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations 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 in this proceeding,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>
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 organizations involved claim to represent certain employees of the Employer.
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.

The Employer operates an acute care hospital at a combined facility in Petoskey, Michigan. On February 14, 2002, in Case 7-RC-22078, the Union was certified as the collective bargaining representative of the Employer's full-time and regular part-time registered nurses. There are approximately 500 employees in the unit.

On June 4, 2003, Laura Hart, a unit employee, filed a decertification petition in Case GR-7-RD-3395. That petition was held in abeyance until August 20, 2003 because of pending unfair labor practice charges. On September 12, 2003, Dennis E. Johnson, a unit employee, filed a decertification petition in Case GR-7-RD-3415.

Two issues were raised at the hearing. First, the Employer and Petitioner Hart contend that Case GR-7-RD-3415 does not raise a question concerning representation because Petitioner Johnson is "fronting" for the Union. They argue that the petition is an improper attempt to recertify the Union. Second, the Employer contends that certain temporary employees have become permanent employees and are eligible to vote. The Union contends that these issues fall outside the scope of this hearing.

The record contains insufficient evidence of "fronting" for the Union in regard to the filing of Case GR-7-RD-3415. Thus, I find, as more fully explained below, that the petition raises a question concerning representation and will not be dismissed. I also find the issue concerning the permanent employment status of certain employees is more properly addressed in post-election proceedings, if necessary.

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<sup>1</sup> The Employer, Petitioner Hart, and the Union filed briefs, which were carefully considered.

<sup>2</sup> At the conclusion of the hearing, Petitioner Hart moved to dismiss the petition in Case GR-7-RD-3415 on the ground that the Union assertedly no longer represents a majority of unit employees. The hearing officer denied the motion. The motion should have been referred to the undersigned. I deny the motion.

Question Concerning Representation of Case GR 7-RD-3415

On November 14, 2002, unit employees went on strike. Prior to the strike, Petitioner Johnson worked as an orthopedic team leader in surgery. He went on strike and remains on strike. He is one of 16 members of the Union's bargaining committee.

Johnson and other nurses discussed filing a petition after issuance of a September 9 letter by the Employer. The letter discussed methods of ending representation by the Union. The nurses were concerned about it. They had heard that if the election was held after November 14, 2003, and they were still on strike, they may be ineligible to vote. They also were concerned that they might be permanently replaced. Several employees circulated the petition. Johnson delivered it to the Region's resident office.

The evidence adduced at hearing does not establish that Johnson acted as a "front" for the Union in filing his decertification petition. To the extent that the Union engaged in discussions with Johnson and other nurses prior to the filing of the petition, such discussion was prompted by the Employer's letter to employees explaining the decertification process and its ramifications. Moreover, the extent of the Union's involvement appears to have been limited to responses to questions posed to it by unit employees about the Employer's letter during a regularly scheduled union meeting. The Union advised the employees that it could not help or be involved with the petition. The Union did nothing more than the Employer did in its September 9 letter. Such limited involvement does establish the Union as the *de jure* petitioner.

Moreover, the Board typically does not look at a petitioner's motive in filing a decertification petition. See, e.g., *Mission Appliance Corp.*, 129 NLRB 1417 (1961) (Assuming the truth of the fronting allegation, it is well established that such a fact is not an impediment to the filing of a decertification petition); *Minneapolis Star and Tribune Co.*, 115 NLRB 1300 (1956) (It is irrelevant whether a decertification petition filed by an individual is sponsored or inspired by a rival union). The Employer's reliance on *Seven Up Bottling Co.*, 222 NLRB 278 (1976), and *National Electric Coil*, 199 NLRB 1017 (1972), for dismissing the petition is misplaced. Those cases involved incumbent unions filing certification petitions, not individuals filing decertification petitions. The Employer and Petitioner Hart contend that the petition, in effect, is an attempt by the Union to seek recertification. The Employer relies on its assertion that, as a bargaining committee member, Johnson is an agent of the Union. Petitioner Hart contends Johnson is a "friend" of the Union. I need not decide whether Johnson is an agent of the Union when he acts in his capacity as a member of the bargaining committee or whether he is a "friend" of the Union. He is a unit employee and the record adduced insufficient evidence that he was acting as a Union agent during his involvement with the decertification petition.

Thus, I conclude the petition in Case GR-7-RD-3415 raises a question concerning representation and will not be dismissed.<sup>3</sup>

### Temporary Employees

Upon certification of the Union, the Employer and Union began negotiations for a collective bargaining agreement. Since the commencement of the November 14, 2002 strike, the Employer's complement of employees performing unit work has been comprised of working nurses, returning nurses, new hires, and temporary employees.

The Employer asserts that 18 temporary employees are now permanent replacement workers.<sup>4</sup> However, the record is unclear as to their current status. Insufficient evidence was adduced that these employees were offered permanent replacement positions, or, if so, whether any of them accepted offered positions. The Employer's house manager testified that she assumed the temporary employees at issue were offered permanent replacement positions based upon a boilerplate letter she observed just prior to the hearing notifying the addressee of his or her conversion to permanent replacement status. She admitted she did not know which, if any, of the temporary employees accepted the assumed offer.

Moreover, the eligibility of these individuals can be more properly addressed, if necessary, during post-election proceedings. Accordingly, the ballots of these 18 employees are subject to challenge by any party.

5. In view of the foregoing, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act<sup>5</sup>:

All full-time and regular part-time registered nurses, including team leaders, hospice RNs and The Living Room RNs, employed by the Employer at or out of its combined facility located at 416 Connable, 1 McDonald Drive and 1080 Hager Drive, Petoskey, Michigan; but excluding all casual employees, guards and supervisors as defined in the Act, and all other employees.

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<sup>3</sup> The issue of whether Case GR-7-RD-3415 raises a question concerning representation also is likely moot because no party has contended Case GR-7-RD-3395 does not raise a question concerning representation. As a result, a directed election will result from the processing of that petition.

<sup>4</sup> The 18 temporary employees in question are: Judy Banda, Christi Broderick, Catherine Colpean, Sharon Dunsmore, Wendy Frush, Karen Garrison, Benjamin Hamel, Kathy Hausler, Carol Hill, Kathleen Lewis, Gail Lowe, Kenise Maunders, Donna Mittlestat, Jerry Porter, Erin Schoech, Carol Smith, Douglas Stoos, and Mary Toupin.

<sup>5</sup> It is well established that in decertification proceedings only the existing certified or recognized unit is appropriate. See, e.g. *Mission Appliance Corp.*, 129 NLRB 1417, (1961); *Mo's West*, 283 NLRB 130 (1989). Moreover, the parties stipulated the unit to be an appropriate unit within the meaning of Section 9(b) of the Act.

Dated at Detroit, Michigan, this 10<sup>th</sup> day of October 2003.

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Classifications

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