

**Riverside Community Memorial Hospital, Inc. and  
Waupaca Federation of Professional Nurses,  
American Federation of Teachers, AFL-CIO,  
Petitioner. Case 30-RC-3709**

August 4, 1980

**DECISION AND DIRECTION**

**BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO**

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered determinative challenges in an election held on March 17, 1980,<sup>1</sup> and the Hearing Officer's report recommending disposition of same, relevant portions of which are attached as an appendix. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings and recommendations.<sup>2</sup>

**DIRECTION**

It is hereby directed that the Regional Director for Region 30 shall, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, within 10 days from the date of this Decision and Direction, open and count the ballots of Dorothy Hansen and Linda Perry, and thereafter prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said ballots. Thereafter, the Regional Director shall issue the appropriate certification.

**MEMBER JENKINS, dissenting in part:**

The Petitioner has challenged the ballot of Linda Perry on the grounds, *inter alia*, that she is the wife of Charles Perry, the Employer's administrator. I agree with the Petitioner's contentions in this regard, and would find her ineligible to vote in the present election.

The Employer, a nonprofit corporation, has contracted with Hospital Affiliates International for the services of an administrator to oversee the Employer's operation. Charles Perry is the Employer's administrator under this arrangement. As the administrator, Perry is actively engaged in formulating and implementing the Employer's labor relations policies, including those covering the terms and conditions of employment of Linda Perry.

<sup>1</sup> The election was conducted pursuant to a Stipulation of Certification Upon Consent Election. The tally was 11 for, and 9 against, the Petitioner; there were 3 determinative challenged ballots.

<sup>2</sup> In the absence of exceptions thereto, we adopt, *pro forma*, the Hearing Officer's recommendation that the challenge to the ballot of Lola Hansen be sustained.

As stated in my dissent in *Pargas of Crescent City, Inc.*, 194 NLRB 616 (1971), the marital relationship shared by the two Perrys suffices to preclude Linda Perry from being an "employee" under Section 2(3) of the Act, where her husband, Charles Perry, is engaged as the Employer's manager. I would further exclude Linda Perry from the unit of employees on "community of interest" grounds. As the spouse of the administrator, she enjoys a unique access to management. While such access has not yet resulted in the enjoyment of "special status" regarding her terms of employment, it obviously has an impact on her perceived need for a statutory representative to deal with management. Further, there exists the potential that her inclusion in the unit would hinder unit employees from engaging in collective bargaining, because of perceptions that her interests are more aligned with those of management and that information made known to her during her participation in union matters would be passed on to the Employer. In these circumstances, I would sustain the challenge to the ballot cast by Linda Perry, and direct that it remain unopened and uncounted.<sup>3</sup>

<sup>3</sup> See also my dissenting opinions in *Weyerhaeuser Company, Soft Disposable Division*, 211 NLRB 1012 (1974); *Toyota Midtown, Inc.*, 233 NLRB 797 (1977); and *Tops Club, Inc.*, 238 NLRB 928 (1978).

**APPENDIX**

*Linda Perry:*

Linda Perry's ballot was challenged by the Petitioner on the dual grounds that she is an "on-call," casual employee and the wife of administrator Charles Perry. The Employer contends that Linda Perry is a regular part-time employee who does not enjoy special status because of her spouse.

Linda Perry began her employment with the Employer in June 1979. She worked as a registered nurse on a part-time basis until January 1980. Since January, she has worked on a strictly "on-call" basis as a registered nurse in maternity on the 11 p.m. to 7 a.m. shift. She assumed her present duties and work schedule at the behest of the Employer because there was a need for additional nursing coverage on that shift. She is the only registered nurse regularly scheduled on the monthly work schedule who is only on an "on-call" basis. Other registered nurses forming a "float pool" do, in addition to their regular work schedule, on occasion and short notice (8 to 16 hours), work on an "on-call" basis. Her compensation, privileges, and other benefits of employment, including insurance options and leave without pay, are the same as those available to other registered nurses. She is supervised in a customary way by the customary supervisors of other registered nurses.

Linda Perry worked 8 hours during the 2-week pay period ending January 12; 8 hours during the 2-week pay period ending January 26; and 19-1/2 hours during the 2-week pay period ending February 9, the eligibility date.

This factorizes to approximately 6 hours of actual work per week from the time she began to work on a strictly "on-call" basis to the eligibility date. During the same period, she was scheduled to be "on-call" a total of 60 additional hours for which she was compensated at the usual "on-call" rate. During the 14 weeks preceding the eligibility date, she worked a total of 85.25 hours, an average of approximately 6 hours per week.

Linda Perry's husband is the administrator. He is employed by Hospital Affiliates International which has a contract with the Employer to supply an administrator to oversee the Employer's operation. Neither Linda Perry nor her husband have any ownership interest in the Employer, a nonprofit corporation. Linda Perry's husband has never directly supervised her work. To the date of hearing in this case, there was one on-the-job contact between Linda Perry and her husband.

The Board holds that "on-call" employees who average 4 hours or more of work per week during the quarter prior to the eligibility date, enjoy a sufficient community of interest to be eligible to vote. *The May Department Stores Company*, 175 NLRB 514, 517 (1969); *Davison-Paxon Company*, 185 NLRB 21, 23 (1970). Linda

Perry meets this test. Linda Perry also more than meets the eligibility requirement of "on-call" registered nurses the Board included in a unit of registered nurses based on working 30 or more hours in an 11-week period. *Newton-Wellesley Hospital*, 219 NLRB 699, 703 (1975). The Board has held that the employee-wife of a nonowning manager is eligible to vote if she does not enjoy special status. *Pargas of Crescent City, Inc.*, 194 NLRB 616 (1971). In the Linda Perry matter, the only indication of special status is her strictly "on-call" work schedule, which appears not at all special in view of the number of hours she works on a prearranged and regular basis. I will, therefore, recommend that the challenge to the ballot of Linda Perry be overruled.

#### CONCLUSION AND RECOMMENDATION

Having found that Lola Hansen is not an eligible voter, I recommend that the challenge to her ballot be sustained. Having found that Dorothy Hansen and Linda Perry are eligible voters, I recommend that the challenges to their ballots be overruled and that their ballots be opened and counted and that a revised tally of ballots be issued.