

Abington Memorial Hospital and Pennsylvania Nurses Association, Petitioner. Case 4-RC-12954

July 17, 1980

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on December 21, 1977, before Hearing Officer J. Victor Waye. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 4 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner, Pennsylvania Nurses Association (PNA), filed briefs.

On March 30, 1979, the National Labor Relations Board issued its Supplemental Decision and Order in *Sierra Vista Hospital, Inc.*,¹ in which the Board set forth its policy regarding conflict-of-interest issues raised by the active participation of supervisors of the employer with which a labor organization seeks to bargain, or by supervisors of third parties, in the internal affairs of state nurses associations. By notice dated June 1, 1979, the Board afforded the parties the opportunity to submit statements of position in light of the Board's decision in *Sierra Vista*.² Both parties submitted such statements. Petitioner filed a reply to the Employer's statement of position, and the Employer filed a brief in opposition to Petitioner's reply.

On July 25, 1979, the Board issued its Order remanding the proceeding to the Regional Director "for the sole purpose of adducing evidence as to whether or not the Petitioner is disqualified because the presence of the Employer's supervisors or the supervisors of third parties may give rise to a conflict of interest in the representation of the Employees." Pursuant to said order, a hearing was held on February 11, 1980, before Hearing Officer Wendella P. Fox. Thereafter, PNA filed a post hearing brief.³

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The parties stipulated that the Employer is a nonprofit Pennsylvania corporation engaged in the operation of a health care facility at Abington, Pennsylvania. The parties further stipulated that during the 1976-77 fiscal year, the Employer's gross volume of business exceeded \$500,000, and the Employer's purchases of goods directly from outside the Commonwealth of Pennsylvania exceeded \$50,000. Accordingly, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The record shows that PNA is an organization in which employees participate and which exists, at least in part, for the purpose of representing its members in collective bargaining. We find, therefore, that PNA is a labor organization within the meaning of Section 2(5) of the Act.⁴

The Employer asserts, however, that PNA should be disqualified from representing the Employer's nurses because supervisors and management level employees serve as officers in, and on the board of, directors of PNA. In *Sierra Vista, supra*, we recognized that under some circumstances the participation of supervisors in the internal operations of a state nurses' association such as PNA may serve to disqualify that association from representing certain employees. Such disqualification will result when an employer meets its burden of showing that participation of its own supervisors, or supervisors of third parties, presents a "clear and present danger" of a conflict of interest interfering with the collective-bargaining process. The Employer herein has not met that burden.

The record reveals that two of the Employer's supervisors now hold leadership positions within PNA.⁵ One is a member of PNA's board of directors and the other is a member of PNA's Commission on Nursing Education. The record does not indicate the nature of their duties or responsibilities within PNA. The Employer merely claims that

¹ 241 NLRB 631 (1979).

² In its June 1, 1979, notice, the Board also advised the parties that, upon a proper showing, it would entertain a request for further hearing.

³ In its brief dated January 23, 1978, and in its statement of position, the Employer requested oral argument. That request was not renewed after the hearing held on remand and it is unclear whether the Employer still desires oral argument. In any event, the request is hereby denied, as the record and the briefs adequately present the issues and the positions of the parties.

⁴ *Lancaster Osteopathic Hospital Association, Inc.*, 246 NLRB No. 96 (1979).

⁵ At the hearing, the Employer presented evidence that a third supervisor was chairperson of the District 7 Commission on Economic and General Welfare in 1978 and 1979. However, this commission was abolished in 1979 and, in any event, the district or county association plays no role in collective bargaining. *Lancaster Osteopathic Hospital Association, Inc.*, *supra*, fn. 5.

they "are in a position to influence and dominate and control collective bargaining activities."

Contrary to the Employer's contention, the mere assertion that the Employer's supervisors hold leadership positions within PNA is insufficient to demonstrate a "clear and present danger of interference with the bargaining process."⁶ As we stated in *Sierra Vista*, such participation will result in disqualification of a labor organization only where the activities of its supervisors will affect an employer's interest in the loyalty of its own supervisors or the employees' interest in a bargaining representative uncompromised by loyalty to their employer. The Employer here has failed to demonstrate a conflict of interest, as it has not adduced any evidence that the activities of its supervisors within PNA have any connection with PNA's collective-bargaining activities.

Nor is a conflict of interest shown by the participation in PNA of supervisors employed by other employees. The testimony of Katherine Grove, PNA's executive director, indicates that at least five of PNA's officers or directors were, as of the February 11, 1980, hearing, supervisors employed by other hospitals. However, this fact, standing alone, does not create a disqualifying conflict of interest. As stated in *Sierra Vista*, we do not assume an inherent conflict in the bargaining process between supervisors and employees. The active involvement in PNA of a third-party supervisor may result in a conflict of interest only when a demonstrated connection is shown between the employer of the employees who seek to be represented by PNA and the third-party employers.⁷ In this case, the Employer has merely asserted that some of PNA's leaders hold supervisory positions in hospitals which compete with the Employer for the services of nurses, without demonstrating that these supervisors exert any control or influence over collective-bargaining matters. Absent such showing, the Employer's assertion clearly is insufficient to demonstrate a clear and present danger of a conflict of interest which compromises PNA's bargaining integrity.

Moreover, we note again, as we did in *Lancaster*,⁸ that PNA has insulated its collective-bargaining activities at the local level from supervisory participation or influence. PNA conducts its bargaining through local units, chartered by PNA's Commission on Economic and General Welfare (CEGW), solely for the purpose of bargaining with an employer. These local units operate independently of PNA, with their own bylaws, officers,

and dues structure. The local units make all decisions with regard to collective bargaining, including determining the demands to present to management and deciding whether to call a strike. PNA assists local units in organizing and collective-bargaining activities through its CEGW. This commission, consisting of six nonsupervisory nurses selected by local units and three nonsupervisory nurses selected by the PNA's board of directors, provides guidance and staff support to local units. However, CEGW does not initiate, review, or control bargaining demands, tactics, or strategy taken by a local unit. Although PNA provides CEGW with operating funds, CEGW controls the expenditure of its own funds, and is not accountable to PNA for such expenditures. If PNA's allocation to CEGW is insufficient to support its activities, CEGW may raise additional funds by means of a special assessment from those nurses who are covered by PNA's collective-bargaining agreements.

Based on the foregoing, we find that PNA is not disqualified from representing the Employer's employees for the purpose of collective bargaining. The possibility of supervisory control, of bargaining, either directly or through PNA's allocation of funds to CEGW, is too remote and speculative to support a finding that "there is a clear and present danger of a conflict of interest which compromises [Petitioner's] bargaining integrity."⁹

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

4. Petitioner seeks to represent a unit consisting of certain nurses employed by the Employer at its Abington, Pennsylvania, location. As the parties have stipulated to this unit, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and we shall direct that an election be conducted therein:

All full-time and regular part-time graduate and registered nurses employed by the Employer, including faculty nurses (including recruitment director and receptionist), staff relief nurses who work an average of one shift per week during tenure of employment, team leaders, IV nurses, employee health nurse, nursing service instructors and relief coordinators; excluding all other employees including nurse epidemiologist, utilization reviewers, utilization analyst, nurse coordinators, nurse managers, nurse anesthetists, medical audit analyst, registered nurses employed in the business office

⁶ *Sierra Vista, supra*.

⁷ *Sierra Vista, supra*.

⁸ *Supra*, fn. 3.

⁹ *Sierra Vista, supra*.

and casual PRM relief nurses, guards and supervisors as defined in the Act.

[Direction of Election and *Excelsior* footnote omitted from publication.]

MEMBER TRUESDALE, concurring:

For the reasons set forth in my concurring opinion in *Baptist Hospitals, Inc., d/b/a Western Baptist Hospital*, 246 NLRB No. 25 (1979), and my dissent in *Sierra Vista Hospital, Inc.*, 241 NLRB 631 (1979), I agree with my colleagues' decision to direct an election in the unit found appropriate.