

The Arlington Hospital Association, Inc., t/a Arlington Hospital and District of Columbia Nurses Association a/w American Nurses Association, Petitioner. Case 5-RC-10158

December 14, 1979

DECISION ON REVIEW AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On December 16, 1977, the Regional Director for Region 5 issued a Decision and Direction of Election in which he found, *inter alia*, that the Petitioner (herein also called DCNA) is qualified to represent the petitioned-for unit of the Employer's registered nurses, and could be properly certified as the representative of these employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, a request for review of the Regional Director's decision was timely filed by the Employer, alleging, *inter alia*, that the Petitioner is impermissibly controlled by supervisors, and has delegated its collective-bargaining authority to another entity to such a degree as to deprive it of the legal capacity to act as a collective-bargaining representative. The Employer thus contends the Regional Director erred in failing to dismiss the petition. The Petitioner filed a statement in opposition to the request for review.

By telegraphic order dated January 11, 1978, the Board granted the request for review, insofar as it raised substantial issues regarding the status of the Petitioner.

Thereafter, on March 30, 1979, the Board issued its Supplemental Decision and Order in *Sierra Vista Hospital, Inc.*, 241 NLRB 631, in which it set forth its policy regarding conflict-of-interest issues raised by the active participation of supervisors of the employer with whom a labor organization seeks to bargain, or of third parties, in the internal affairs of state nurses associations. Inasmuch as issues of this nature are raised in the instant proceeding, the Board, by order dated June 25, 1979, afforded the parties the opportunity to submit statements of position on these issues in light of *Sierra Vista*. The Board also advised the parties that, upon a proper showing, it would entertain a request for further hearing. The Employer and the Petitioner submitted timely statements of position.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case, including the parties' briefs on review and statements of position, and makes the following findings:

DCNA, a state affiliate of the American Nurses Association, is a professional association of registered nurses, including registered nurses in supervisory positions.¹ The organization includes a board of directors, which is comprised of nine directors elected by vote of the total membership, the immediate past president of the Association, and the five current officers. The board of directors transacts all the business of the Association. The president, *inter alia*, serves as chairman of the board, appoints various committees and councils, and is an *ex officio* member of those committees and councils. Although nurses holding supervisory positions with employers are members of the Petitioner and are eligible to hold office and serve on the board of directors, no officers or board members are supervisors employed by the Employer. Moreover, the record fails to reveal that any members of the board of directors occupy supervisory positions with any employer in the health field.²

According to its bylaws, DCNA exists, in part, to promote the economic and general welfare of nurses. The bylaws establish a Council on Economic and General Welfare (hereafter EGWC), which is intended to "define, develop, budget, implement, and evaluate DCNA activities and policies relating to the economic and general welfare of nurses . . ." The EGWC is responsible, *inter alia*, for DCNA's collective-bargaining activities, and is empowered to recognize and charter local units and to prepare rules and guidelines for these units to assure conformity with DCNA policies. It is comprised of five at-large members elected by the nonsupervisory members of DCNA and the chairperson of each established local unit, who is elected by local unit members. Membership in, and election to, the EGWC is limited to nonsupervisory nurses.

Under the bylaws, the EGWC is the only council or committee which is not accountable to DCNA's board of directors. It is responsible for developing its own budget, which is then submitted to DCNA's finance committee. The finance committee, which admits supervisors to membership, reviews the budget request and, if acceptable, it is incorporated into the total DCNA budget. Unresolved budget conflicts are presented to the *nonsupervisory* membership at a specially called meeting for their review and determina-

¹ Approximately one-fourth of the Petitioner's approximately 1,600 members hold supervisory positions with employers.

² Cnichlow, Petitioner's associate executive director for economic and general welfare, testified that he "believed" there were no nurse supervisors on the board of directors "in terms of working for a hospital," and that he did not know if any board members were supervisors of any employer in the "health field." The Employer has offered no specific proof to the contrary.

tion.³ Thus, should the finance committee refuse to allocate requested funding, the EGWC is required to submit the conflict to DCNA's nonsupervisory membership, which is empowered to allocate the funds. Moreover, the EGWC receives funds from sources other than DCNA membership dues, such as independent fund-raising activities and a grant from the American Nurses Association, and is authorized to levy an assessment fee on local units.⁴

Local units, which are designated by the name of the institution where bargaining is sought, must be composed of at least 20 percent DCNA members in order to receive organizing and staff assistance from the EGWC. The record establishes that a local unit develops its own bylaws and committees and selects its own officers. Membership in each local unit is restricted to nonsupervisory employees. With respect to the collective-bargaining process, each local unit proposes its own contractual goals, appoints or elects a negotiating committee consisting of at least five unit members, and processes grievances. The assistant executive director for the EGWC⁵ serves as the chief negotiator for each local unit, and thus directly assists local units in the development of bargaining objectives and during negotiations. Final contract ratification is the responsibility of the local unit, which is free to accept or reject the assistant executive director's suggestions. However, local units are required, pursuant to DCNA's bylaws and the EGWC's policy statement, to conform to DCNA policies and EGWC rules. Failure to conform to such policies and rules can result in revocation of a unit's charter by the EGWC. The board of directors of DCNA plays no role whatsoever in the collective-bargaining process.

In its brief on review, the Employer contends the petition herein must be dismissed because the DCNA has delegated its collective-bargaining function to such a degree as to deprive it of the legal capacity to act as the collective-bargaining representative of the employees sought by the petition. In support of this position, the Employer cites *N.L.R.B. v. Annapolis Emergency Hospital Association, Inc., d/b/a Anne Arundel General Hospital*, 561 F.2d 524 (4th Cir. 1977) (hereinafter *Anne Arundel*). Alternatively, the

Employer contends the presence of supervisors in the Petitioner creates the potential for employer domination, and incapacitates DCNA from acting as a collective-bargaining representative. In its statement of position, the Employer further contends that, "inasmuch as the underlying proceedings in this case did not deal with the issues of supervisory participation which are now designated by the Board in *Sierra Vista* as determinative," the Board should remand the case for a further hearing. Contrary to the Employer, the Petitioner contends there is no possibility of supervisory domination in the DCNA, and that, therefore, the conflict-of-interest issues do not exist herein. Additionally, the Petitioner contends that the Employer has failed, as required by *Sierra Vista*, to sustain its heavy burden of establishing a disqualifying conflict of interest, and that a further hearing is unnecessary since "the Board has before it now a full record from which it can determine" the conflict-of-interest issues raised. Finally, the Petitioner contends its present structure is designed to, and does avoid, the legal deficiencies found by the Fourth Circuit Court of Appeals in *Anne Arundel*.

In *Baptist Hospitals, Inc., d/b/a Western Baptist Hospital*, 246 NLRB 170 (1979), the Board held, in circumstances quite similar to those herein, that the Kentucky Nurses Association was not disqualified because of an alleged conflict of interest from representing the employer's employees in collective bargaining. The Board found the employer had failed to sustain the burden required by *Sierra Vista* of showing that "there is a clear and present danger of a conflict of interest which compromises [Petitioner's] bargaining integrity."⁶ Largely for the reasons set forth in *Western Baptist, supra*, we find that a further hearing is unwarranted,⁷ and that the DCNA is not disqualified because of an alleged conflict of interest from representing the Employer's employees. As in *Western Baptist*, the EGWC here is insulated from both supervisory influence and participation. Moreover, ultimately the supervisory members of DCNA cannot exercise fiscal control over the Petitioner's collective-bargaining activities, and have no authority to control the EGWC assistant executive director's role in negotiations.⁸

With respect to the Employer's "delegation" argument, we note that in *Sierra Vista, supra*, the Board decided to abandon the "conditional certification" approach which the court in *Anne Arundel* found was "illogical and illegal." The Board's focus is on

³ The previous bylaw provision, in effect at the time of the hearing in this case, provided for submission of budgetary disputes to the *total membership*, including supervisors. According to the Petitioner, the current provision was adopted by the total membership at an annual meeting subsequent to this hearing.

⁴ In addition to its collective-bargaining functions, the EGWC acts for the total membership of DCNA in defining and developing other economic and general welfare matters. Thus, the EGWC has established a credit union, has made recommendations for malpractice insurance, and has adopted various other resolutions. Bylaw amendments proposed by the EGWC are submitted directly to the total DCNA membership. The Board of directors has no authority to review or reject such proposals.

⁵ This individual is appointed by the EGWC, which defines his duties and fixes his compensation.

⁶ *Western Baptist, supra*, quoting from *Sierra Vista Hospital, supra* at 635.

⁷ The Employer has failed to adduce probative evidence to substantiate its claim that a further hearing is warranted.

⁸ The Employer contends that supervisory involvement exists in that the *total membership* of DCNA retains the power to revise the bylaws and thus could vote to disestablish the EGWC. We find this contention to be without merit, as such occurrence is speculative.

whether or not supervisory participation in a labor organization's internal affairs "presents a clear and present danger of interference with the bargaining process."⁹ We have concluded that DCNA is not disqualified because of a conflict of interest from representing the Employer's employees. This conclusion is based on the record evidence, which indicates that there is nothing in DCNA's organizational structure which allows interferences by supervisors in the collective-bargaining process. The fact that DCNA has chosen to allocate its collective-bargaining responsibilities to the EGWC and the local unit does not, in our view, disqualify it from receiving Board certification as the representative of the Employer's employees. Rather, we view the present structure of DCNA as a reasonable response to the problems of supervisory influence addressed by the Board in the *Anne Arundel* case, *supra*, but without the pitfalls created by the "conditional certification" approach previously endorsed by the Board. Thus, while the EGWC is, as the Employer contends, in many respects an

"autonomous" entity, and while the local unit "independently" determines its bargaining goals and processes its own grievances, both of these entities operate within the framework of DCNA and pursuant to its guidelines and rules. At the same time, the collective-bargaining function is insulated from supervisory influence. We find, therefore, no merit to the Employer's "delegation" argument.

Based on the foregoing, and the record as a whole, we find that the Petitioner is qualified to represent the Employer's employees, and can be legally certified as their collective-bargaining representative, if selected by the unit employees.

Accordingly, the Regional Director's Decision and Direction of Election is hereby affirmed, as modified herein.

ORDER

It is hereby ordered that this case be remanded to the Regional Director for the purpose of opening and counting the impounded ballots and for further appropriate action.

⁹ *Sierra Vista*, *supra* at 634.