**Villa Sancta Anna Home for the Aged of the First Catholic Slovak Ladies Association *and* Service, Hospital, Nursing Home and Public Employees Union, Local #47, affiliated with Service Employees International Union, AFL–CIO, Petitioner.** Case 8–RC–10307

March 3, 1977

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS JENKINS, PENELLO, AND WALTHER

Pursuant to a Stipulation for Certification Upon Consent Election, approved by the Regional Director for Region 8 on March 8, 1976, an election by secret ballot was held on April 14, 1976, among the employees in the unit described below, to determine whether such employees desired to be represented by the above-named Petitioner for purposes of collective bargaining. At the conclusion of the election, the parties were furnished a tally of ballots which showed that, of approximately 30 eligible voters, 27 cast ballots, of which 13 were for, and 14 against, the Petitioner. There were no challenged ballots.

On April 20, 1976, the Petitioner filed timely objections to the conduct of the election. The Regional Director conducted an investigation of the objections and, on August 4, 1976, issued and served on the parties his report on objections. In his report the Regional Director recommended that a hearing be held as to that portion of Objection 1 regarding the wage increase granted Alma Hood on or about March 31, 1976, and that the remaining portion of Objection 1 and Objections 2, 3, 4, and 5 be overruled. Thereafter, the Board, by order dated September 3, 1976, adopted the Regional Director's recommendations and ordered that the aforementioned portion of Petitioner's Objection 1 be resolved after a hearing.

Pursuant to the Board's order, a hearing was held on October 14, 1976, before Hearing Officer Terry J. Koozer. The Hearing Officer filed his report on October 29, 1976, recommending that the portion of Objection 1 regarding the wage increase granted employee Alma Hood be sustained and that the April 14, 1976, election be set aside and a new election held. Thereafter, the Employer filed timely exceptions to the Hearing Officer's report.

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.

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

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

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

3. The parties stipulated, and 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:

> All nurses aides, dietary employees, laundry employees, housekeeping employees, and maintenance employees, but excluding all office clerical employees, registered nurses, technical employees, professional employees, guards and supervisors as defined in the Act.

5. The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Hearing Officer's report, the Employer's exceptions thereto, and the Employer's brief, and for the reasons set forth below has decided to certify the results of the election.

Dining room aide Alma Hood was granted a 5-cent wage raise in March 1976, during the critical period preceding the election. Hood, who had been employed off and on since April 1972 as a maid or in the physical therapy department, broke her leg in March 1975 and was thereafter unable to work until she was rehired by the Employer around September 1, 1975, as a dining room aide.

Prior to her accident Hood had been regularly receiving her 6-month pay increases in April and October in accord with the Employer's former practice of granting a raise, normally 10 cents, to employees 6 months after they begin employment and again 6 months later on the anniversary date of their employment and so on at 6-month intervals. In October 1975, Hood inquired of Administrator Bossin if she were due a raise at that time and Bossin informed her that she had instituted a new policy whereby everyone was to receive a raise on every January 1 and July 1.

Administrator Bossin testified that the policy was changed beginning in July 1975 to avoid the burdensome task of checking personnel records each

month. She further testified that new or rehired employees[1] would receive a 5-cent raise in January or July if they have 3 months' service on that date, then would receive another 5-cent raise 6 months after they began and, after that, would receive a full raise on the January 1/July 1 schedule. Bossin gave examples of several new employees whose raises were handled in this fashion in order to get them on the new schedule. In accord with this new policy, Hood was given a 5-cent raise on January 1, 1976, 4 months after her rehire in September 1975 and then the 5-cent raise in question herein in March 1976, the 6-month anniversary of her rehire.

Hood testified that during the last week in March she spoke with Bossin who told her that she had a feeling that she was "head of the union." Hood further testified that when Bossin gave her the paycheck containing the 5-cent raise on April 2, 1976, Bossin commented, "I gave you an increase. You see, we don't need the Union for you to get your six dollars." Hood stated that she discussed the pay raise with most of the other employees and that Bossin discussed her raise at an employee meeting in April before the election.

We agree with the Hearing Officer that the 5-cent wage raise given Hood on April 2, 1976, does not represent a variation from the Employer's established wage policy.[2] However, we do not agree with his conclusion that, because of Bossin's remarks to Hood in the last week of March and on April 2, the otherwise lawful wage increase was directly associated with the pending election and interfered with the employees' free choice in that election.

It is well established that:

> As a general rule, an employer, in deciding whether to grant benefits while a representation election in pending, should decide that question as he would if a union were not in the picture.[3]

Likewise, an employer is not obligated to maintain silence or refrain from influencing employees in the face of an organizing campaign. He must only refrain from a "threat of reprisal or force or promise of benefit."[4]

Applying these principles to the facts herein, we view Administrator Bossin's comments to Hood at the time of her pay increase as simple campaign rhetoric. We do not believe that this comment or those made earlier in March can transform an otherwise lawful wage increase which was granted pursuant to established policy into objectionable conduct which would warrant setting aside the election. Accordingly, we shall certify the results of the election.

## CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of valid votes have not been cast for Service, Hospital, Nursing Home and Public Employees Union, Local #47, affiliated with Service Employees International Union, AFL–CIO, and that said labor organization is not the exclusive representative of the employees in the appropriate unit, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

MEMBER JENKINS, dissenting:

Unlike my colleagues, I find that Administrator Bossin's remarks concerning employee Hood's wage increase constitute objectionable conduct which requires that the election be set aside. It is undisputed that Bossin accused Hood of being "head of the Union," and told Hood: "I gave you an increase. You see, we don't need the Union for you to get your six dollars." Bossin also discussed Hood's raise at an employee meeting shortly before the election even though it was not the Employer's practice to notify employees of a raise but rather to include it in their paychecks. The clear import of Bossin's remarks was to impress upon the employees that the Employer is the source from which all benefits must flow and thus inculcate a sense of the futility of union organization. Accordingly, I find that the Employer interfered with Hood's and the other employees' free and uncoerced choice in the election.

[1] Bossin also related that the Employer has no formal leave-of-absence policy and employees who are absent for a period of time are usually considered to be rehired when they report back to work, as in the case of Hood

[2] We note that the Union has not excepted to this finding.

[3] *The Great Atlantic & Pacific Tea Company, Inc.*, 166 NLRB 27, fn 1 (1967).

[4] Sec. 8(c) of the Act.