

**Saints Mary and Elizabeth Hospital and Mary C. Lashley, R.N., Petitioner and Kentucky Nurses' Association. Case 9-RD-1103**

28 February 1985

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

**BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS**

The National Labor Relations Board has considered determinative challenges in an election held 9 September 1982 and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 126 for and 124 against the Union, with 4 challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations,<sup>1</sup> and finds that a certification of representative should be issued.

**CERTIFICATION OF REPRESENTATIVE**

IT IS CERTIFIED that a majority of the valid ballots have been cast for the Kentucky Nurses' Association and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time registered nurses, including charge nurses, nursing instructors, admitting and discharge planning nurses, health nurse, health care coordinator, triage nurse and graduate nurses, but excluding all head nurses, all other employees, and all professional employees, guards and supervisors as defined in the Act.

**MEMBER HUNTER, dissenting.**

Contrary to my colleagues, I would overrule the challenges to the three ballots in issue. I would do so because I find that the unit in which the decertification election was conducted is not an appropri-

<sup>1</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendation that the challenge to the ballot of Mary U Moore be sustained

Contrary to Member Hunter, the hearing officer properly applied Board law holding that the only appropriate unit in a decertification election is the recognized or certified unit (*Riveredge Hospital*, 251 NLRB 196 (1980), *Brom Machine & Foundry Co.*, 227 NLRB 690 (1977), *affd* in the summary judgment proceeding 229 NLRB 1272 (1977), *enfd* 569 F 2d 1042 (8th Cir 1978), *Booth Broadcasting Co.*, 134 NLRB 817 (1961)), and thus sustained the challenges to the ballots of Miller, Howard, and Spaulding. As the court stated in enforcing our *Brom* decision,

The statute refers to current representation. See 29 USC 159(C)(1)(A)(ii). To include persons not currently represented by the Union would be in derogation of the statute, and violative of the purpose sought to be achieved [569 F 2d at 1044.]

ate unit unless the three employees contested here are included in it.

The parties stipulated that the appropriate unit here was one which included all registered nurses at the Employer's hospital.<sup>1</sup> The recognized unit, based on a Board certification, included the same registered nurses. The instant case involves positions which were newly created after the Union's certification, but prior to the effective date of the contract. The hearing officers concluded that these positions were never contemplated by the parties to be included in the bargaining unit, i.e., that they were excluded from coverage of the contract. Thus, despite the fact that she further concluded that the nurse clinicians and the specialist who were challenged give nursing care to patients, share a substantial community of interest with bargaining unit nurses, and would "no doubt be included in an appropriate unit, were this an initial RC proceeding or a proceeding for clarification of the unit," the hearing officer nonetheless recommended sustaining the challenges to their ballots. She did so based on the Board's policy that the unit in a decertification election must be coextensive with the existing or recognized bargaining unit.<sup>2</sup> I cannot agree that this policy has any proper application in the circumstances of this case.

To begin with, it must be emphasized that this case involves a health care facility. Thus, the Board must examine the public interest in determining appropriate bargaining units.<sup>3</sup> It is clear that the health care industry is to be treated differently from other industries in unit determinations as well as in other areas.<sup>4</sup> As we most recently stated in our decision in *St. Francis II* adopting the disparity-of-interest test, that standard "properly emphasizes that more is required to justify a separate unit in a health care institution than in a traditional industrial or commercial facility." *Id.* at 953. Employees in the health care industry are entitled to separate representation where "sharper than usual differences (or "disparities") between the wages, hours, and working conditions, etc., of the requested employees" and other groupings of employees are established. *Id.* In the instant case, the hearing

<sup>1</sup> The appropriate bargaining unit, as set forth in the stipulation, is as follows

All full-time and regular part-time registered nurses, including charge nurses, nursing instructors, admitting and discharge planning nurses, health nurse, health care coordinator, triage nurse and graduate nurses, but excluding all head nurses, all other employees, and all professional employees, guards and supervisors as defined in the Act

<sup>2</sup> The hearing officer relied on *Riveredge Hospital*, 251 NLRB 196 (1980), and *Booth Broadcasting Co.*, 134 NLRB 817 (1961)

<sup>3</sup> *St. Francis Hospital (St. Francis II)*, 271 NLRB 948, 949 (1984), *St. Francis I*, 265 NLRB 1025, 1042-43, 1046-47 (1982) (Member Hunter, dissenting)

<sup>4</sup> *St. Francis II*, 271 NLRB 945, 955, *St. Francis I*, 265 NLRB at 1046

officer specifically found that the nurses challenged here shared a "substantial community of interest" with those nurses who voted in the election. To exclude these nurses in the unit found appropriate here would be to run afoul of the mandates of the Act. In other circumstances, the Board had not wedded itself irrevocably to policy which conflicts with and undermines other, overriding, policy considerations.<sup>5</sup>

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<sup>5</sup> See, e.g., *Utah Power & Light Co.*, 258 NLRB 1059 (1981). Although in most instances I would honor stipulations as to the appropriateness of a unit at a health care facility, I would not do so where the stipulated

Accordingly, as I cannot find that the unit in which the election was conducted was appropriate, I cannot agree with my colleagues' certification of representative. I would remand the case for opening of the challenged ballots and issuance of the appropriate certification.

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unit so substantially contravened the congressional admonition against undue proliferation of units as to increase significantly the likelihood of disruption to health care. In addition, there may be instances where the stipulation deprives employees of important rights and interest, or where it otherwise is contrary to the policies of the Act. In such circumstances, I would not honor the parties' stipulation. To the extent that the stipulation involved here is important in resolving the issues in this case, I would not honor it if it were read to exclude the three positions here