

**Mercy-Memorial Hospital and Nolan Smallwood,  
Petitioner and Hospital Employees' Division of  
Local 79, Service Employees International  
Union, AFL-CIO. Case 7-RD-1977**

21 April 1986

**DECISION AND CERTIFICATION OF  
REPRESENTATIVE**

**BY CHAIRMAN DOTSON AND MEMBERS  
DENNIS AND JOHANSEN**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held 9 March 1983 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 119 for and 95 against the Petitioner, with 7 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs and the Employer's Motion for Summary Judgment and the Petitioner's answer in opposition to the motion, has adopted the Regional Director'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 Hospital Employees' Division of Local 79, Service Employees International Union, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

<sup>1</sup> In the absence of exceptions thereto, we adopt, pro forma, the hearing officer's recommendation to overrule the Employer's Objection 1.

In adopting the hearing officer's recommendation that the Employer's Objection 3 be overruled, we emphasize that the bargaining unit in which the Union faced a decertification election had recently been expanded and that most of the employees in the expanded unit were not union members. The Union's 16 February 1983 letter to its membership, in our view, was clearly a campaign document aimed at bolstering the Union's support. We also find that the Union's asking its members to advise of coworkers' promanagement activities is analogous to an employer's asking its supervisors during an election campaign to let management know what they hear (without, of course, engaging in surveillance or interrogation) concerning employees' union sentiments. The Union's request here does not contain any threat or hint of unlawful means. Accordingly, we conclude that the Union was entitled to utilize its membership lawfully to obtain information helpful to its campaign. The Employer's Motion for Summary Judgment is therefore denied.

We disagree with the dissent's reliance on cases involving employer requests that employees report on the union activities of fellow employees. We also disagree with the dissent's claim that we are following a "double standard." The dissent overlooks the fact an "employer occupies a far different position with regard to the coercive impact of its action upon employees than does a Union. The Board, recognizing this difference, has frequently applied different standards to the actions of the employer than it has to similar actions of unions." *Louis-Allis Co. v. NLRB*, 463 F.2d 512, 517 (7th Cir. 1972).

All full and regular part-time dietary aides, dietary clerks, cook/bakers, housekeeping aides, porters, machine operators, nurses aides, orderlies, ward clerks, pharmacy aides, x-ray aides, laboratory aides, central supply aides, physical therapy aides, general maintenance and maintenance mechanics, employed by Employer at its Mercy Unit located at 718 N. Macomb Street, Monroe, Michigan; but excluding all Registered Nurses, LPNs, GPNs, office clerical employees, professional employees, technical employees, supervisors and guards as defined in the Act.

CHAIRMAN DOTSON, dissenting.

Contrary to my colleagues, I would find merit in the Employer's Objection 3 and would order that the election be set aside and a new election conducted. In my view, a letter exhorting employees to engage in surveillance of their coworkers cannot be dismissed as a "campaign document," nor can it be successfully analogized to an employer's lawful request—uncommunicated to its employees—of its supervisors to apprise management of any information they receive concerning employees' union sentiments.

The Union's 16 February 1983 letter to its membership states, in pertinent part:

As the election [sic] date grows nearer, it is our opinion that the Hospital management's effort to confuse and deceive your co-workers will increase. We urge that any questions you have be directed to one of the contract negotiating committee members or your Union Business Representative . . . . *If any of your co-workers are assisting the Hospital management, we urge you to notify our office immediately.* [Emphasis added.]

Although the Union allegedly made this request because it sought assistance in determining whether the decertification petition was tainted by supervisory participation, the letter which the employees received did not convey this limited message, as the hearing officer herself found. Rather, in the context of the decertification election conducted here, the union letter constituted a veiled threat to discipline those members disloyal to its interests. Furthermore, the urgency of this matter, as set out in the letter, could not fail to underscore in the minds of union members that they risked adverse consequences by failing to support the Union. Although the letter does not indicate what discipline would be imposed on dissident members, article XVI of its constitution and bylaws, as revised and amended in 1980, grants the Union the authority to

expel or fine its members for "gross disloyalty or conduct unbecoming a member." The threat of such retaliation against dissident union members is just as serious as a threat from an employer to prounion employees. In either instance, such conduct tends to interfere with employees' free exercise of their Section 7 rights. My colleagues, by their contrary holding, create a double standard:

one that finds such conduct unlawful for employees,<sup>1</sup> but not for unions.

In the present case, it is clear that this conduct could have affected the outcome of the election since at least 40 percent of the eligible voters were union members. For these reasons, I conclude that the interest of employee free choice will best be served by the direction of a second election.

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<sup>1</sup> See, e.g., *Headquarters Plaza Hotel*, 276 NLRB 925 (1985), *J H Block & Co*, 247 NLRB 262 (1980).