

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case III  
No. 14485 E-2690  
Decision No. 10282-A

- 6. Valid Ballots Counted..... 54
- 7. "Yes" Ballots..... 28
- 8. "No" Ballots..... 26

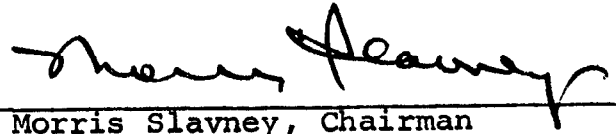
NOW, THEREFORE, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by Section 111.05(2) of the Wisconsin Statutes;

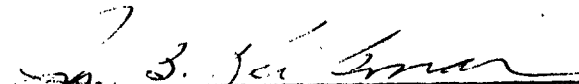
IT IS HEREBY CERTIFIED that a majority of the full-time and regular part-time employees in the Nursing Service Department of Clintonville Community Hospital, Clintonville, Wisconsin, excluding employees in all other departments, confidential employees, supervisors and casual employees, failed to vote in favor of constituting themselves a collective bargaining unit separate and apart from all other employees of the Employer.

Given under our hands and seal at the City of Madison, Wisconsin, this *39th* day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

LOCAL 150, SERVICE AND HOSPITAL  
EMPLOYEES' INTERNATIONAL UNION AFL-CIO

Involving Certain Employees of

CLINTONVILLE COMMUNITY HOSPITAL  
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Case III  
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MEMORANDUM ACCOMPANYING ORDER DENYING  
OBJECTIONS TO CONDUCT OF ELECTION AND CERTIFICATION  
OF RESULTS OF BARGAINING UNIT ELECTION

Pursuant to a Direction issued by it, the Wisconsin Employment Relations Commission conducted an election on May 7, 1971, among all full time and regular part time employees in the Nursing Service Department of Clintonville Community Hospital, Clintonville, Wisconsin, excluding employees in all other departments, confidential employees, supervisors and casual employees, to determine whether a majority of the employees eligible in said voting group desired to constitute themselves a collective bargaining unit separate and apart from all other employees of the Employer. Of the sixty-two employees on the original eligibility list, fifty-six cast ballots, two of which were challenged. One individual whose name did not appear on the original eligibility list presented herself to vote and her ballot was taken under challenge. Of the remaining fifty-four valid ballots, twenty-eight employees voted in favor of separation while twenty-six voted against severance as a separate bargaining unit.

The Union filed timely objections to the election contending that:

"1. On or about March 1, 1971, the employer discharged Elaine Wockenfus solely because of her union activity and since then has engaged in a pattern of threats and intimidations of other employees.

2. At a meeting held on Monday, May 3, 1971, at the Hospital, management officials made material misrepresentations of facts when they stated that a contract presently in effect at Pine Manor Nursing Home had brought the employees there only approximately 13 cents per hour and four paid holidays, when in fact, the contract at Pine Manor has brought an increase of 40 cents per hour and six paid holidays.

3. No eligibility list was ever supplied the union prior to the election therefore making it impossible for the union to ascertain if those claimed eligible were in fact eligible. Upon examination of the list, we find that it contains seven names of supervisors including the Assistant Director of Nursing and the Administrator's wife.

4. During the afternoon voting period, Administrator Platte entered the polling area while three voters were there, in spite of the fact that the hospital had an observer, thereby intimidating those employees waiting to vote."

#### OBJECTION NO. 1

The testimony of witnesses from both parties and documentary evidence submitted by the employer clearly indicates that Elaine Wockenfus was discharged on February 24, 1971 rather on the March 1, 1971 date asserted by the Union in its objections. In either case the discharge clearly occurred prior to the filing of the election petition on March 11, 1971. The parties adduced evidence with respect to the discharge, and at the conclusion of the presentation of evidence the Employer moved to strike all of the evidence on the basis that such discharge occurred outside of the period protected by the election proceedings. The Commission has reviewed the record and, consistent with prior rulings 1/, has determined that the discharge is not appropriately considered as part of proceedings on objections to the conduct of the election.

The only other evidence of a pattern of threats and intimidation alleged by the union consists of three statements attributed to the wife of the Hospital Administrator. The alleged statements are widely separated in time and the Commission regards them as isolated incidents. The statements are insufficient to indicate an influence on the vote. Objection No. 1 is denied.

#### OBJECTION NO. 2

Both parties adduced evidence concerning a meeting which was held by the Employer on May 3, 1971, four days before the election, and there is in substantial conflict among the testimony of witnesses as to whether one or two different collective bargaining agreements were referred to by Employer representatives during the May 3 discussion of collective bargaining between the petitioning Union and Pine Manor Nursing Home.

The Commission will set aside an election if it appears that the eligible employees were precluded from exercising a free choice by methods which were coercive in character and which were so related to the election as to have a probable effect on the employees free choice at the polls. The question which the Commission must determine is whether or not the statements made by the employer were of such character so as to interfere with the free choice of the employees voting. The Commission cannot censure information, misinformation, gossip, opinion or argument, whether made by a Union representative or adherent or by an employer representative during or prior to the conduct of election 2/. To protect the free choice of employees, the Commission has established a rule that, upon timely objections, where either party addresses an assembly of employees on the employer's premises within 24 hours of time set for the vote, the Commission will set aside the results of election 3/. The 24 hour rule has been carried further where promises

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1/ Professional Food Service Management, (9020-C), 4/70.

2/ Professional Food Service Management, Supra; Whitefish Bay Clearners and Tailors, (5335-B), 2/60.

3/ Mt. Carmel Nursing Home, (6352-B), 5/63.

of benefits were made at such a meeting, even though held more than 24 hours prior to the balloting. 4/ The evidence in this case indicates that the Employer's statements, made more than 24 hours prior to the election, are not of the type prohibited by the cited cases. The petitioning Union clearly had and effectively used its opportunity to reply. The testimony of one witness called by the Union indicates that she attended a meeting held by the Union on the day following the meeting held by the Employer and during the course of the Union meeting the Pine Manor contract was discussed and the correct information was given to the employees attending. Another Union witness testified that she received the correct information regarding the Pine Manor contract by word of mouth among employees at the Hospital, even though she did not attend the Union meeting. The statements of the Employer on May 3, 1971 do not constitute a valid objection.

### OBJECTION NO. 3

This Commission has never adopted a hard and fast requirement that the failure of the Union to have a list of employees prior to the conduct of an election provides, as it does under the NLRB decision is Excelsior Underwear, Inc., 156 NLRB 1236, an automatic basis for overturning the results of an election. In several recent cases the Commission has confirmed the right of a Union to have a list of the employees a reasonable time prior to the election, when such a list is requested by the labor organization. 5/ During the pre-election hearing conducted by the Commission in this matter no issue was raised concerning access by the Union to a list of employees eligible to vote in the election. It does not appear that the Petitioner ever requested a list of the employees in these proceedings and the Commission does not find that the absence of a list, when raised for the first time subsequent to the conduct of the vote, constitutes a valid objection.

The Union's third objection also constitutes a post-election challenge to the ballots and eligibility of certain employees. The issue of whether Registered Nurses should be eligible to vote was previously determined in these proceedings in the Memorandum Accompanying Direction of Election. The employees mentioned by the Union during its presentation of evidence include employees whose ballots were taken under challenge, others who did not vote at all, and several employees who were permitted to vote without challenge. The Commission normally will not consider post-election challenges to ballots. 6/ Evidence adduced by the Union during the course of the hearing indicates that one of the persons permitted to vote without challenge was Jean Platte, the wife of the Hospital Administrator. It would appear that Mrs. Platte is employed by her husband 7/ and should not have been permitted to vote. Beverly Dahlman was formerly the Assistant Director of Nursing and she served as the Employer's observer at the election. It was the testimony of the Employer witnesses that Mrs. Dahlman has had a change of duties and has relinquished her former title. Her eligibility appears to be in doubt because of a lack of action by the Hospital to announce her change of status or otherwise distinguish her present activities from her activities while

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4/ St. Mary's Hospital, (6779-C), 1/65.

5/ Stoughton Hospital Association, (10436), 4/71; St. Vincent's Hospital, (10347), 6/71.

6/ Trila Corporation, (5812 F), 1/62.

7/ Trade Home Shoe Store, (3783), 8/54.


she held the title of Assistant Director of Nursing. It is apparant however that even if both Mrs. Platte and Mrs. Dahlman were deleted from the eligibility list it would not change the results of the election. In view of the previous determination of the status of Registered Nurses and the failure of the Union to challenge the ballots of Mrs. Platte and Mrs. Dahlman, Objection No. 3 is denied.

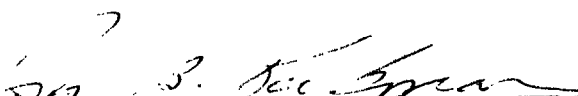
OBJECTION NO. 4

The Union complains because the chief representative of the Employer entered the room in which the election was being conducted while the polls were open. There is no Commission rule prohibiting officers or agents of either an employer or a labor organization from acting as observers. 8/ The presence of the Hospital Administrator in the polling room occured at a time when two representatives of the Union were present, was brief and was so insignificant as to satisfy the Commission that the incident does not establish cause to set aside the election.

Dated at Madison, Wisconsin, this 29<sup>th</sup> day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Jos. B. Kerkman, Commissioner

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8/ Burleigh Pharmacy Inc., (8167-A), 9/67.