

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of :  
LOCAL NO. 150, SERVICE AND HOSPITAL :  
EMPLOYEES INTERNATIONAL UNION, :  
AFL-CIO : Case VI  
Involving Certain Employees of : No. 14561 E-2695  
ST. VINCENT'S HOSPITAL : Decision No. 10550  
Green Bay, Wisconsin :  
-----

ORDER OVERRULING CHALLENGED BALLOTS  
AND DISMISSING OBJECTIONS TO CONDUCT OF ELECTION

Pursuant to a Direction of Elections issued by it, the Wisconsin Employment Relations Commission conducted elections at Green Bay, Wisconsin on June 25, 1971, in accordance with the provisions of the Wisconsin Employment Peace Act, among all regular full time and regular part time employees employed in the Housekeeping Department of St. Vincent's Hospital, Green Bay, Wisconsin, excluding supervisors, confidential employees, seasonal and casual employees and members of a religious order, to determine (1) 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, and, (2) whether a majority of the employees voting desired to be represented by Local No. 150, Service and Hospital Employees International Union, AFL-CIO, for the purpose of collective bargaining with the above named Employer on questions of wages, hours and conditions of employment; and during the conduct of said elections the ballots of nine employees, Julie Adams, Yvonne Faltynski, Lana Gilsoul, Lucille Kolanchick, Dolores Maroszek, Catherine Streckenbach, Cathy Van Lanen, Mary Wachal, and Lucille Wilke, when said employees presented themselves to vote, were challenged by the Petitioner on the claim that said employees were not regular full time nor regular part time employees in the Housekeeping Department; and that on June 30, 1971, the Petitioner timely filed objections to the conduct of said elections, reiterating its claim that the above named individuals had been improperly included among the eligibles and that, in addition, nine other named individuals were improperly included among the eligibles; 1/ and that the initial tally of ballots having indicated that said challenges, as well as the objections, might affect the results of said elections, the Commission conducted a hearing on said challenges and objections at Green Bay, Wisconsin on July 28, 1971, George R. Fleischli, Hearing Officer, being present, and the Commission having considered the evidence and arguments of counsel and being satisfied that the challenges should not be sustained and that the objections should be dismissed;

---

1/ Said individuals did not present themselves to vote.

NOW, THEREFORE, it is

ORDERED

(1) That the challenges to the ballots attempted to be cast in the elections conducted in the above entitled matter by Julie Adams, Yvonne Faltynski, Lana Gilsoul, Lucille Kolanchick, Dolores Maroszek, Catherine Streckenbach, Cathy Van Lanen, Mary Wachal, and Lucille Wilke be, and the same hereby are, overruled. That said ballots be opened at 1:30 p.m., on Thursday, October 14, 1971, at the offices of the Wisconsin Employment Relations Commission, Room 906, 30 West Mifflin Street, Madison, Wisconsin; and that such ballots shall thereupon be included in the final tally of the ballots.

(2) That the objections filed by Local 150, Service and Hospital Employees International Union, AFL-CIO to the conduct of the elections conducted herein on the basis that nine additional individuals whose names appeared on the eligibility list, but who did not present themselves to vote, be, and the same hereby are dismissed on the basis that said nine individuals are properly included in the voting group.

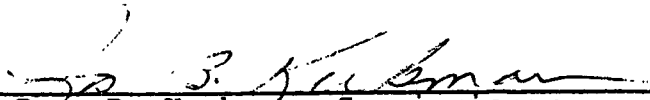
IT IS FUTHER ORDERED that representatives of the parties may be present at the time such ballots are opened and counted, and that if the representatives of either one or both parties fail to present themselves at said time and place, the Commission shall deem that they have waived their right to be present.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 7th  
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

-----  
In the Matter of the Petition of :  
LOCAL NO. 150, SERVICE AND HOSPITAL :  
EMPLOYEES INTERNATIONAL UNION, :  
AFL-CIO : Case VI  
Involving Certain Employees of : No. 14561 E-2695  
ST. VINCENT'S HOSPITAL : Decision No. 10550  
Green Bay, Wisconsin :  
-----

MEMORANDUM ACCOMPANYING ORDER  
OVERRULING CHALLENGED BALLOTS AND  
DISMISSING OBJECTIONS TO CONDUCT OF ELECTION

Pursuant to a Direction of Election issued by this Commission on June 4, 1971, two elections were held among all regular full time and regular part time employees employed in the Employer's Housekeeping Department on June 25, 1971. At the hearing which preceded those elections the Employer specifically refused to provide the Petitioner with a copy of the list of employees then employed in the Housekeeping Department which it had brought to the hearing pursuant to the Commission's request. The Hearing Officer allowed the Petitioner to examine the list which included the names of all 18 employees now challenged and objected to and the Petitioner raised no objection at that time. The Petitioner requested that the Commission direct the Employer to provide a list of eligible employees prior to the balloting and, pursuant to that request, the Employer was directed to provide a list of eligible employees 10 days prior to the balloting which request was complied with. That list also included the names of all 18 individuals challenged during the balloting or objected to subsequently by the Petitioner.

On the date of the balloting the Petitioner challenged the ballots on nine employees on the basis that said employees were not employed by the Housekeeping Department but were employed in Surgery.

On June 30, 1971, the Petitioner timely filed objections to the conduct of the election contending that 18 employees were improperly included on the eligibility list. Included among the 18 named individuals were the nine employees whose ballots were challenged during the balloting. Of the remaining nine, four were alleged to be seasonal or casual employees, three were alleged to have quit their employment prior to the balloting, and two were alleged to be employed in Surgery and not in Housekeeping. None of these latter nine employees appeared at the polls to vote.

At the hearing on the challenges and objections the Union stipulated that Betty Carter, one of those employees alleged to have quit her job prior to the election, was in fact on a leave of absence on the date of the balloting and therefore eligible to vote. The Petitioner presented evidence regarding its allegation that eleven employees (nine of whom

voted under challenged) were not employed in the Housekeeping Department and were therefore ineligible to vote. The Petitioner failed to present any evidence which would substantiate its claim that the remaining six employees were either seasonal or casual or had quit their employment prior to the balloting.

At the close of the Union's presentation of evidence, the Employer moved to dismiss the objections regarding the inclusion of the names of the six employees alleged to be seasonal or casual or who had quit their employment, on the grounds that there was no evidence to support the Petitioner's claim in that regard. Although hearings on challenges and objections are technically speaking non-adversary proceedings, the burden falls upon the party making the challenge, or raising the objection, to present some evidence to substantiate its claim. 2/ Since the Petitioner produced no evidence regarding the validity of its objections to the eligibility of the six employees involved, the Commission upholds the Hearing Officer's interim ruling dismissing the objections pertaining to the eligibility of said six employees.

The Employer also moved that the objections and challenges pertaining to the remaining employees be dismissed for lack of sufficient evidence. We agree with the Hearing Officer's determination that there was sufficient evidence adduced to raise a question regarding the department in which these employees are employed and therefore a determination thereof is necessary.

The Employer made a third motion to dismiss the remaining challenges and objections on the claim, since the Petitioner had been provided an opportunity to object to inclusion of the names of the eleven employees involved when it was permitted to examine the list of employees at the time of the original hearing on the petition, and when it received a copy of the eligibility list 10 days prior to the balloting, that the Petitioner should be foreclosed from now raising an objection by way of challenges or objections. The Hearing Officer reserved ruling on this motion which raises a threshold question to be determined by the Commission.

While it is true that the Petitioner was provided a limited opportunity to raise objections to the list prepared by the Employer at the time of the hearing on the petition, the Commission is not satisfied that eligibility of employees to participate in an election should be determined by the ineptness of the union or the uncooperativeness of an employer at the time of the hearing on the petition. This case provides an example of why it is in the best interest of all parties concerned, especially the employees, that questions regarding eligibility be raised and answered at the earliest possible time. It serves no useful purpose at this point to attempt to assign blame for the failure of the Petitioner to raise this issue prior to the day of the balloting. Only by deciding the question of eligibility will the Commission be satisfied that a fair election was conducted among the eligible employees.

The Employer cites the case of Menomonie Sugar Company 3/ in support of its position that the Petitioner should not be allowed to challenge the eligibility of employees after the balloting has been conducted. The policy established by the Commission in the case cited by the Employer is to the effect that when an employer and a union enter into a stipulation for either an election or referendum, and

---

2/ Deconess Hospital (7008-D) 10/65.

3/ (5657-A) 1/61.

stipulate as to employees eligible to participate in such an election or referendum, the Commission will not disturb or amend such list of eligibles after the conduct of the balloting. In the case at hand there was no stipulation to the eligibles. While the Petitioner examined the eligibility list during the course of the hearing on the petition and while it did not raise any objection to the list, the Commission does not conclude that such action by the Petitioner constituted an agreement to the list. In the Menomonie Sugar Company case, which involved a referendum, the parties had stipulated to an eligibility list, and after the balloting, which indicated an insufficient number of votes to authorize an all-union agreement, a question arose as to the eligibility of twelve employees because of their alleged irregularity of employment. In addition, the names of four additional employees were inadvertently omitted from the list, and further that five individuals included on the list should not have been included since they were supervisory. None of the five supervisors presented themselves to vote. Two of the twelve employees whose eligibility was questionable voted in the referendum without challenges, and further none of the four employees whose names were inadvertently omitted from the list presented themselves to vote. In that case the Commission determined not to amend the eligibility list nor to amend the tally, but the Commission did set aside the results of the referendum for the reasons that the eligibility list utilized in the referendum contained individuals who should not have been included therein and also omitted four employees who should have been included therein. The Commission thereupon directed a new referendum. Therefore the case cited by the Employer is not applicable in this matter.

Housekeeping employees who work under the ultimate supervision of Larry Burkel, Executive Housekeeper, normally report to the Housekeeping Office located in the basement of the Hospital. After checking in, the Housekeeping employees report to their regularly assigned wing unless they are one of the Housekeeping employees, referred to as "floaters", who report to the area to which they are assigned for that day. Burkel is not in a position to provide immediate supervision for all of the Housekeeping employees and only sees them occasionally when he happens to be on the floor on which they are working during the day. The duties of Housekeeping employees primarily involve maintaining the cleanliness of the entire hospital. The Housekeeping Department has only one job description, that of a Housekeeping Aide, which reads as follows:

"Perform some variety of housekeeping and cleaning duties in an assigned hospital area. Basic duties are much the same throughout the hospital, with detailed duties varying by location. Under general supervision of Executive Housekeeper, as well as under some direction of Supervisor of the department to which assigned. Wet mop patients' rooms, bath rooms, lounges, work areas. Dust pictures and rooms, arrange furniture. Take care of patients' flowers and plants. Clean baths and showers - clean furniture, utensil rack, wall tile, clean and disinfect bowl, replenish supplies of soap, paper towels, toilet paper, etc. Check and report in writing any repairs needed. Empty and wash waste baskets. Remove patients' meal trays and used water glasses, supply clean glasses and fresh ice water. Remove used linens, distribute clean linens. Follow schedules and instructions. Perform other related duties as assigned."

The eleven employees in question, those whose ballots were challenged, all classified as Housekeeping Aides, perform their duties in Surgery, which is a part of the Nursing Department. Surgery is located on the fourth and fifth floor of the Hospital and is physically separated from other services performed in the Hospital. The eleven employees in question all wear white uniforms, which are fresh and sterile, whereas most Housekeeping Aides wear blue uniforms. All eleven sign in at the desk on the fourth or fifth floor, depending on which floor they work, and are supervised and evaluated by the respective supervisor of that floor. (Sister Sophie in the case of the fourth floor and Sister Eutychia in the case of the fifth floor.) Their duties include scrubbing down operating room floors and equipment after surgery, cleaning surgical instruments and preparing surgical instruments for the autoclave. When they are not busy with other duties they also fold gauze and engage in similar activities.

The color of the uniform worn by the Housekeeping Aides who work in Surgery is not considered to be a significant factor in determining in which department they are employed. Even so, the evidence indicates that the Housekeeping Aides in Obstetrics and Nursing, Chapel, and Central Supply all wear different colored uniforms.

The Commission is satisfied that the nature of the work performed by the Housekeeping Aides who work in Surgery and the fact that they are under the immediate supervision of supervisors in Surgery is not sufficient to establish that they are not Housekeeping employees. There is no substantial variation from the job description set out above from the job descriptions of the Housekeeping Aides who work in the Laboratory, Chapel, Convent, Nursery, Central Supply, and the residences of the Hospital Engineer and Priest. Nearly all of the Housekeeping Aides are subjected to the immediate supervision of supervisors in different departments who happen to be in a position to oversee their day to day work. The fact remains that ultimate supervision for all Housekeeping Aides, including those employed in the Surgery section, resides in the Executive Housekeeper, who along with the Personnel Director, exercises the authority to hire and fire said employees. All Housekeeping Aides have the same payroll number, receive the same wages and fringes and work the same hours. The nature of their duties is essentially the same and they share a substantial community of interest.

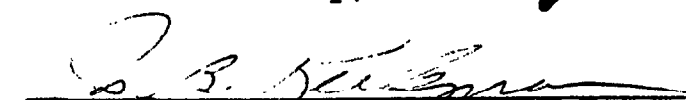
For the above and foregoing reasons the Commission has determined that the objections to the inclusion of the eighteen employees on the eligibility list are without merit and therefore are dismissed, and that the challenges of the votes cast by the nine Housekeeping Aides who work in Surgery are overruled and their ballots are to be included in the tally of ballots.

Dated at Madison, Wisconsin, this 7th day of October, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Jos. B. Kerkman, Commissioner