

FRANKLIN INSTITUTE OF BOSTON AND SEIU, LOCAL 254, AFL-CIO, MCR-3409 (1/27/86).
 RULING ON CHALLENGED BALLOT.

43.31 challenged ballot

Commissioners participating:

Paul T. Edgar, Chairman
 Maria C. Walsh, Commissioner

RULING ON CHALLENGED BALLOT

Pursuant to a decision of the Commission issued on July 18, 1985 and a Notice of Election dated August 21, 1985, a secret ballot election was conducted on August 30, 1985 for the purpose of determining whether custodians employed by the Franklin Institute of Boston (the Institute) desired to be represented by the Service Employee's International Union, Local 254, AFL-CIO, (Union), or by no employee organization. On August 30, 1985 the ballots were counted and the vote was as follows:

Total Ballots Cast	4
Ballots cast for Service Employees International Union, Local 254, AFL-CIO	2
Ballots cast for no employee organization	1
Challenged ballots	1
Protested ballots	0
Void ballots	0

The Challenged ballot was cast by DeWayne Thompson (Thompson). The Union challenged Thompson's ballot because they allege that he was not on the payroll on the July 1, 1985 election eligibility cutoff date.

Following the election, the Commission solicited payroll information from the Institute that would allow us to determine whether Thompson was on the payroll on July 1, 1985. On September 23, 1985, the Institute submitted payroll records for the weeks ending June 29, 1985, and July 6, 1985. These records indicated that Thompson was on a medical leave of absence on July 1, 1985 and that the Institute had maintained its contributions to his medical insurance plan through Bay State Health Care.

On October 15, 1985, a Commission agent wrote to the Union's designated representative requesting a written position statement from the Union regarding whether, based upon the payroll records submitted by the Institute, Thompson had an "expectation of continued employment" on July 1, 1985.

On October 25, 1985, the Union submitted a written position statement challenging Thompson's eligibility to vote in the August 30, 1985 election. It argued that on the July 1, 1985 election eligibility cutoff date Thompson was on a medical leave due to a knee injury and thus had no expectation of continued employment.

In order to determine whether there existed disputed material facts warranting a hearing, the Commission requested the parties to furnish evidence in support of their respective positions. Specifically, the Commission sought sworn



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affidavits from the parties regarding whether Thompson had a "reasonable expectation of continued employment" on July 1, 1985.

On November 25, 1985, the Union notified to the Commission that it desired a hearing. The Union submitted no direct evidence, in affidavit or similar form, in support of its contention that Thompson was ineligible to vote; nor did the Union submit evidence to dispute sworn affidavits submitted by the Employer

The Institute submitted three sworn affidavits in support of its position that Thompson had a reasonable expectation of continued employment on July 1, 1985. These affidavits were submitted by the challenged votee, DeWayne Thompson, Institute President Michael Mazzola, and Institute Vice-President Richard P. D'Onofrio. The three affidavits contained substantially the same information. They stated that in March, 1985, Thompson learned that he required knee surgery which would necessitate a three or four week leave of absence from work. Also in March, 1985, Thompson spoke with both D'Onofrio and Mazzola about his need for surgery and requested a medical leave of absence. Both Mazzola and D'Onofrio authorized Thompson's medical leave on the condition that he schedule surgery during the summer recess when students were not attending the Institute. Thompson complied with this request by scheduling his surgery for May 27, 1985. Thompson's recovery took longer than the expected three to four weeks, and he did not return to work until July 22, 1985. Institute President Mazzola reassured Thompson that his job would remain open to him despite the longer recovery time.

Opinion

The Union based its challenge of Thompson's right to vote in the August 30, 1985 election upon its assertion that he was not on the payroll on July 1, 1985, the election eligibility cutoff date. It has, however, provided no substantiation for this claim. To warrant a hearing on its claim that Thompson was not eligible to vote in the election, the Union must provide facts establishing probable cause to believe that on the eligibility cut off date, Thompson did not have a "reasonable expectation of continuing employment." Town of Tisbury, 6 MLC 1673, 1674, (1974). Although the Commission has solicited affidavits from both parties regarding Thompson's eligibility to vote in the election, only the Institute has provided such information.

The information contained in the affidavits supplied by the Institute establishes that Thompson was on an authorized medical leave of absence on July 1, 1985 and that both he and his employer expected him to return to work as soon as he recovered from his operation. The Union has supplied no contrary information warranting a hearing. Therefore, we find it unnecessary to conduct a hearing in this matter in view of the fact that there appear to be no disputed material facts. Hudson Bus Lines, 4 MLC 1736, 1739-40 (1978). Rather, the Institute has submitted sworn affidavits in support of its contention that Thompson was eligible to vote. The Union has submitted only unsubstantiated argument.

Accordingly, on the basis of the uncontested facts, we find that Thompson was absent from work on the election eligibility cutoff date due to an approved



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leave of absence for medical reasons. The undisputed evidence established that Thompson requested and received from his Employer permission to take a medical leave from work in order to have knee surgery. Although this recovery was delayed, he intended to and did return to work and his employment status was not changed.

Employees on approved medical leaves of absence on the election eligibility cutoff date are eligible to vote in Commission elections. City of Chelsea, 5 MLC 1094, 1095-1096 (1978). Therefore, we conclude that DeWayne Thompson was eligible to vote in the election conducted by the Commission on August 30, 1985.

We hereby direct that the ballot of DeWayne Thompson be opened and counted at the offices of the Commission at a date and time to be announced.

COMMONWEALTH OF MASSACHUSETTS
LABOR REALTIONS COMMISSION

PAUL T. EDGAR, CHAIRMAN
MARIA C. WALSH, COMMISSIONER

