

CITY OF BOSTON DEPARTMENT OF HEALTH AND HOSPITALS, EMPLOYER AND LOCAL 254, SEIU, AFL-CIO, PETITIONER AND MASSACHUSETTS NURSES ASSOCIATION, INTERVENOR, MCR-2220 (1/7/76).

- (40 Selection of Employee Representative)
43.3 challenges and objections
43.321 electioneering
43.323 misconduct in voting area
43.326 observers at election

Commissioners participating: James S. Cooper, Chairman; Madeline H. Miceli;
Henry C. Alarie

Appearances:

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| Michael J. Muse, Esq. | - Counsel for Local 254, Service Employees International Union, AFL-CIO |
| James T. Grady, Esq. | - Counsel for Massachusetts Nurses Association |
| Paul T. Edgar, Esq. | - Counsel for Boston Dept. of Health & Hospitals |

DECISION

Statement of the Case

On July 3, 1975, Local 254, Service Employees International Union, AFL-CIO (SEIU), filed a petition with the Labor Relations Commission (Commission) seeking certification as the exclusive representative for the purpose of collective bargaining with certain employees of the Department of Health and Hospitals of the City of Boston (City). The Commission investigated the petition pursuant to its authority under General Laws Chapter 150E, Section 4, and found that a question existed concerning the representation of certain nurses employed by the City. The Massachusetts Nurses Association (MNA) made timely intervention on the basis of its incumbent status in the unit sought. Thereafter the Commission ordered an election to determine whether the majority of the employees in the appropriate bargaining unit had designated or selected Local 254, SEIU, MNA or no employee organization as their representative for the purpose of collective bargaining.¹

An election pursuant to the Decision of the Hearing Officer was held beginning at 10:30 a.m., September 30, 1975 and ending at 4:30 p.m. October 1, 1975. Four hundred forty-one employees voted, with 208 casting their ballots for MNA, 165 for Local 254, 4 for no organization and 24 challenged.

On October 6, 1975, Local 254, SEIU timely filed six specific objections to conduct affecting the results of the election. A seventh objection was filed on November 10, 1975.²

¹Hearing Officer's Decision, Case No. MCR-2220, September 9, 1975.

²The seventh objection was allowed as an amendment to the original petition at the hearing on November 13, 1975. NLRB v. Decoto Aircraft, Inc., 512 F.2d 758 (9th Cir. 1975), 88 LRRM 3231.



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These seven objections are as follows:

1. On September 29, 1975, Anne Hargreaves, Executive Director of Nursing in the Department of Health and Hospitals, and Treasurer of the Massachusetts Nurses Association, instructed nursing supervisors to tell the RN's not to vote during working hours. This instruction contradicted the agreement made at the Formal Hearing on September 4, 1975, at which time the employer indicated that the hospitals would be flexible as to the time the RN's could vote.
2. On September 29, 1974, Anne Hargreaves instructed nursing supervisors to remove all notices of election other than those official notices sent to the employer by the Massachusetts Labor Relations Commission. Both the petitioner and the Intervenor had printed notices to supplement the Commission's notices, and these had been properly authorized and posted by the Director of Public Information at Boston City Hospital. Removal of these supplemental notices left many areas of Boston City Hospital without any information whatsoever about the time and place of election.
3. At Long Island Chronic Disease Hospital, there were two notices posted in the Nursing Office: The Commission's, and the one printed by the Massachusetts Nurses Association. The notice printed by Local 254, although properly cleared and available for posting, had not been posted next to the MNA notice. The instructions from the Public Information Office indicated that both MNA and Local 254 notices be posted together or that none be posted.
4. At the election site at Boston City Hospital the Massachusetts Nurses Association had two observers, although the Direction of Election specified that each party would be entitled to one observer. The observers wore MNA buttons.
5. For much of the time between 6:00 A.M. and 8:30 A.M. the Director of the MNA Economics and General Welfare Program stood immediately outside the door to the room where balloting took place, and addressed the RN's as they came in to vote. This MNA representative wore an MNA button.
6. During the 2:00-4:30 election, an unidentified person stood outside the door to the voting room, holding a large sign urging RN's to vote for MNA.
7. The conduct of the Executive Director of Nursing Services and of certain nursing supervisors during the 1975 RN organizing campaign in the Boston Department of Health and Hospitals was coercive and intimidating and prevented the nurses in the bargaining unit from freely exercising their franchise in selecting a bargaining agent. The above incidents are examples of such conduct,



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illustrating that the Executive Director of Nursing Services used her authority both directly and indirectly to restrict the employees' freedom of choice.

Findings of Fact

During the two days of hearings on November 6 and 24, 1975, the parties agreed to the following stipulations:

1. An election in the above matter was held beginning 10:30 P.M., September 30, 1975 and concluded on October 1, 1975 at 4:30 P.M.
2. A letter of objections concerning the conduct of this election was received by the Massachusetts Labor Relations Commission (Commission) on October 6, 1975. Said letter was also received by all parties.
3. Anne Hargreaves is the Executive Director of Nursing in the Boston Department of Health and Hospitals.
4. The Petitioner and Intervenor submitted certain notices to supplement the Commission's Notice to the employees and certain of these notices had been properly authorized and posted by the Director of Public Information in the Boston Department of Health and Hospitals.
5. Winnie Levine is a Supervisor; Marie Pond is a Head Nurse.
6. For a period of time one observer from the Massachusetts Nurses Association wore a button with the initials MNA without objection by the Commission Field Examiner McLaughlin or the SEIU observer.
7. During the period from 6:20 A.M. to 8:20 A.M. on October 1, 1975, there were periods of time when there were more than one eligible voter in the polling area.
8. On Monday, September 29, 1975 Mrs. Rosalie Rychwalski observed Local 254 and MNA signs in the stairwells on the floors of the Outpatient Department building at 8:40 A.M. At noon time, Mrs. Rychwalski observed that the signs were missing.
9. On October 1, 1975 Mrs. Ruth Paven was the Assistant Director of the Economic and General Welfare Program of the Massachusetts Nurses Association.
10. Prior to September 28, 1975 the Boston Department of Health and Hospitals offered Local 254, Service Employees International Union, AFL-CIO and Massachusetts Nurses Association equal opportunity to display literature with respect to the election of September 30 to October 1, 1975.



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11. The Boston Department of Health and Hospitals permitted all eligible voters some working time to vote in accordance with the provisions of Joint Exhibit #1.
12. Anne Hargreaves is the management representative for City of Boston at Step 3 of the grievance procedure under Article 12 of the contract.
13. Anne Hargreaves is the Treasurer of the Massachusetts Nurses Association. Mrs. Anne Hargreaves was a President of the Massachusetts Nurses Association from 1969 to 1972. Mrs. Anne Hargreaves has no authority in the Economic and General Welfare Program of the Massachusetts Nurses Association.

In addition to the stipulations of the parties, the Commission finds that the following events transpired prior to and during the course of the September 30 - October 1, 1975 election.

On July 3, 1975, Anne Hargreaves had a conversation with Barbara Fitzgerald, a chief staff nurse and two other nurses, at which union activities were discussed. Mrs. Hargreaves expressed her displeasure at the other nurses' support of Local 254, SEIU and her intention to attempt to stop such activity.

Before the election, on September 29, 1975, unauthorized signs of both Local 254 and MNA were removed from certain areas of Boston City Hospital. At Long Island Chronic Disease Hospital, only an MNA sign was posted above a table with campaign literature. Literature of both Local 254 and MNA was available on the table.

During the election, Mrs. Ruth Paven was outside of the balloting place, a porch enclosed by swinging doors at Boston City Hospital, for a time when balloting began and again when balloting was ending.

A sign, approximately three feet by three feet, urging employees to vote for MNA was held for a time by an unidentified person in the corridor about 45 to 50 feet from the polling place.

Opinion and Conclusions of Law

Based upon the above findings of fact, the Commission concludes that the conduct of Department of Health and Hospitals Personnel and members of the MNA did not prejudicially affect the results of the representation election.

The stipulations by the parties and the findings by the Commission dispose of the first three objections filed by Local 254 and they are therefore dismissed.³ The final four objections warrant some discussion and an explanation for our conclusions.

³First, the parties stipulated that all eligible voters were permitted some working time to vote, thus disposing of the possibility that any contrary instruction by Anne Hargreaves affected the opportunity for employees to cast
(cont'd.)



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The first of these, the wearing of MNA insignia by an observer at the Boston City Hospital election site, has been addressed by the National Labor Relations Board (hereafter "Board" or "NLRB") decisions that such activity is not in itself prejudicial to the fair conduct of the election.⁴ See Western Electric Co., Inc., 87 NLRB 183 (1949), 25 LRRM 1099. This has been the case even where such insignia were worn over the objection of a Board agent conducting an election, Firestone Tire and Rubber Co., 120 NLRB 1644 (1958), 42 LRRM 1244, and even where a direct instruction to observers not to wear buttons was violated, Jerry Bielfield Co., 208 NLRB 843 (1974), 85 LRRM 1260. In Bielfield, the test enunciated by the Board was whether the violation of the rules or instructions was sufficiently material to warrant setting aside the election.

Following this rule, we do not find that the conduct in this instance - that for a period of time one observer wore an MNA button without objection by either the Commission Examiner or Local 254 SEIU's observer - was sufficient to set the election aside.

Similarly, the display of a sign, 45 to 50 feet from the polling place, does not sufficiently impair the freedom of choice of employees who may have seen it. In Electro Cube, 199 NLRB 504 (1972), 81 LRRM 1312, the presence of a "Vote Teamsters" sign near the Board's directional sign pointing the way to polls on election day was not a sufficient reason to set aside an election. There the Board took into account that the sign was 40 feet from the polling area. We agree that a greater showing of interference with free choice need be made before the presence of a sign under these circumstances will warrant a new election.

The presence of the Director of the MNA Economics and General Welfare Program outside of the door to the polling place for a time at the beginning and end of balloting also seems to us not to rise to the level of interference with free choice in the election. While the Commission policy with respect to campaigning in the polling area is clear; such activity is forbidden, City of Quincy and Quincy City Employees Union, MCR-1311, October 9, 1974, 1 MLC 1161, the Commission does not find that the record in this matter is sufficient to sustain the objection. The NLRB has also adopted a strict rule

3 (cont'd.)

their ballots. Similarly, regarding the second objection there is no evidence that removal of any notices at Boston City Hospital on the day before the election interfered with the right of employees or affected their knowledge of the existence of the election. The third objection is disposed of by the Commission's finding that Local 254 and MNA literature were equally available to employees at Long Island Chronic Disease Hospital. The lack of an accompanying sign above the literature table for Local 254 does not give sufficient weight to an allegation that the nurses were prevented thereby from freely exercising their franchise. This is especially true in light of the stipulation by the parties that prior to September 28, 1975, both Local 254 and MNA were offered equal opportunity to display literature with respect to the election.

⁴There being no Commission precedent with respect to this issue and the objections relating to a sign near a polling place, and alleged threats of reprisals, the Commission will consider National Labor Board decisions in these areas.



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necessitating a second election when there has been sustained conversation with prospective voters waiting to cast their ballots, regardless of the content of the remarks exchanged, Milchem, Inc., 170 NLRB 362 (1968), 67 LRRM 1395. However, the Board's rule has been similarly tempered by the philosophy that the "law does not concern itself with trifles", Milchem, Inc., 170 NLRB 263 at 363 (1968), 67 LRRM 1396 at 1396.

Since no substantial evidence of sustained conversations or campaigning with prospective voters by the Director of MNA's Economics and General Welfare Program was presented to the Commission, this objection must be Dismissed.

The final complaint by Local 254, that the conduct of the Executive Director of Nursing Services and certain nursing supervisors was coercive and intimidating is only supported by evidence of a conversation almost three months prior to the date of the election. The 8th Circuit court of Appeals, in upholding a decision of the NLRB, said that threats two months prior to an election were not sufficient to overturn an election unless they had generated considerable controversy among employees. Wilkinson Mfg. Co. v. NLRB, 456 F.2d 298 (8th Cir. 1972), 79 LRRM 2682. The same Circuit, in 1974, said that the test to apply to threats was whether the election was conducted in an atmosphere of fear or reprisal which rendered a free election impossible. NLRB v. Southern Paper Box Co., 507 F. 2d 581 (8th Cir. 1974), 87 LRRM 2849. Of particular significance in the case was the absence of evidence that the incidents complained of were known by employees other than those directly involved. Evidence of such wider knowledge is similarly lacking here.

Our consideration of each of these objections and their individual dismissal does not dispose of this case. We will adopt the rule followed by the NLRB, that we determine whether the incidents described, considered together, furnish substantial evidence to find that there was a significant impact on the election. Independent, Inc. v. NLRB, 406 F. 2d 203 (5th Cir. 1969), 70 LRRM 2413. In so doing, the closeness of the vote in the election is relevant. Here, the votes differential is 43 out of 441 votes cast. We therefore conclude, viewing the incidents objected to for their cumulative effect, that they do not furnish a substantial basis upon which to set this election aside.

Accordingly, the Commission, denies the petition of Local 254, SEIU to invalidate the results of the Department of Health and Hospitals election of September 30 to October 1, 1975.

Order

Wherefore, on the basis of the foregoing, the Commission Orders:

1. That the results of the election held from September 30 to October 1, 1975 pursuant to the Direction of Election, MCR-2220, September 9, 1975 be affirmed.
2. That the Massachusetts Nurses Association be certified as the exclusive representative of the unit as described in the Hearing Officer's opinion of September 9, 1975.

