STATE OF CONNECTICUT
DEPARTMENT OF LABOR

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

THE WATERBURY HOSPITAL

- and -

LOCAL 531, SERVICE EMPLOYEES' INTERNATIONAL UNION, AFL-CIO

A P P E A R A N C E S:

G. Bradford Palmer, Esq.,
for the Hospital

Murray Trachten, Esq.,
for the Union

Case No. E-1973
Decision No. 966
December 23, 1970

DECISION
and
DISMISSAL OF PETITION
Statement of the Case

On June 23, 1970, a petition was filed with the Connecticut State Board of Labor Relations by Local 531, Service Employees' International Union, AFL-CIO, seeking to represent employees in the Waterbury Hospital in the following unit:

All non-professional employees in the Maintenance, Housekeeping, Dietary and Laundry Departments, and the Nursing Service, including floor food supervisors, and ward clericals, and all aides, orderlies, maids, porters, utility workers and storeroom clerks, excluding those employees in the aforementioned categories and departments who average less than 20 hours per week, and trainees, registered nurses, licensed practical nurses, technicians, supervisory personnel, security guards, watchmen, chief orderly and office clerical employees.

An informal conference to initiate the Board's investigation of the issues raised on the petition was held on July 23, 1970. At the conference, the Hospital agreed that the proposed unit was appropriate and submitted a list of employees it believed met the Board's test for eligibility.

The Union raised the question of whether or not employees on the list met the requirement of the 20 hour week as followed by the Board. Mrs. Betty L. Tianti, Assistant Agent of the Board, was requested to make this determination. She did this on July 24. Thirteen eligible employees were inadvertently omitted from the list and these names were added to the Hospital's list of eligible employees. Mrs. Tianti deleted
10 names for the reasons that 1 employee had left employment at the Hospital and 9 employees were found to be working less than 20 hours per week. In making her determination on the 20 hours, Mrs. Tianti averaged the 13 weeks prior to the filing of the petition through the work week ending June 26. Upon issuance of her findings, the conference was reconvened on August 19, 1970 and the agreement for consent election was executed by the parties.

The election was held on September 17, 1970. The Supplemental Report Upon Secret Ballot was as follows:

<table>
<thead>
<tr>
<th>Number of ballots cast</th>
<th>252</th>
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<tbody>
<tr>
<td>Number of votes in favor of the Union</td>
<td>121</td>
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<tr>
<td>Number of votes not in favor of the Union</td>
<td>121</td>
</tr>
<tr>
<td>Number of void ballots</td>
<td>1</td>
</tr>
<tr>
<td>Number of challenged votes</td>
<td>9</td>
</tr>
</tbody>
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Objections to the election were duly filed by both Waterbury Hospital and Local 531, Service Employees' International Union, AFL-CIO.

The Hearing

Hearings before the Board were held on October 7 and October 19, 1970. As to the complaints of improper behavior, the Hospital withdrew the third ground of its objection to the election and the Union did not press its complaint. The hearings were concerned with the Union's challenges to the ballots of Erwin Anderson and Fanny Barry, on grounds of supervision; Mrs. Tianti's 7 challenges of employees whose names did not appear on the list of eligible employees; and, her voiding of a ballot for reason of improper markings.

After hearing the sworn testimony of witnesses and studying the exhibits entered in the record, the Board has reached the following conclusions: The Board will adhere to its 20 hour rule and uphold the determination of its Assistant Agent that the following employees did not work an average of 20 hours per week in the 13 week period immediately preceding the filing of the petition (June 23) which computation ended with the work week of June 26:

Patricia Nistico  
Chris Orencole  
Anna Williams  
Dawn Yarrington  
Carol Ostroski  

These five employees are excluded from the unit and their ballots will not be counted.

The Board finds that Edward Plotas is not a technician, who would be excluded from the unit as the Union claims, but a utility worker in the pharmacy. (He was challenged by the Board's Agent because his name was not on the list submitted by the Hospital. Waterbury Hospital stated it was merely an oversight.) Mr. Plotas will be included in the unit and his vote counted.

Maxine Pomeroy also challenged by the Board's Agent because her name was not on the list, holds the job description of "File Clerk in the X-Ray Department." The Hospital did not include her name on the list because it contends she is an office-clerical employee and therefore excluded from the unit. The Union maintains that while she does some clerical work, she is neither a stenographer nor typist and does a variety of jobs in the Department. The Board finds that she does not properly belong in the office-clerical
group and should be included in this unit. Mrs. Pomeroy's vote will, therefore be counted.

As to the two challenges by the Union, the Board finds that neither Erwin Anderson nor Fanny Barry are "supervisors." While there is some supervision exercised in both jobs, Erwin Anderson is a working crew leader and Fanny Barry is a working seamstress. They will be included in the unit and their votes will be counted.

The last question to be resolved is the question of the void ballot. In United Truck & Bus Service Co., Case No. E-1398, Decision No. 662 (1965), the Board endorsed the practice which the Agent had been following since 1945, to declare void any ballot which can be readily distinguished from any other ballot on a casual inspection if the distinguishing marking appears to have been deliberately made, even though the intention of the voter is clear and even though there is no specific showing that the distinguishing mark was made for an improper purpose.

The test thus adopted departed from the tests applied by the National Labor Relations Board and by other State boards. These bodies generally accept a ballot if the voter's intent is clear unless the voter's identity is revealed on the ballot itself or an affirmative showing of impropriety is made. The Board's rule did, however, reflect the rule adopted by the Connecticut Legislature to govern political elections during the time when voters marked their own ballots. See Beckley v. Alling, 91 Conn. 362 (1917). The Board felt that its rule was peculiarly appropriate to elections within small units, as virtually all Board elections were before the enactment of the Municipal Employee Relations Act and the extension of the State Labor Relations Act to hospitals.

In Conn. State Board of Labor Relations v. Beaverdale Memorial Park, Inc. (Superior Court, New Haven County, December 23, 1969, #120596), Judge Wright refused to enforce the Board's rule where the voter's intention was clear and where the marking did not itself constitute an identification of the voter (although it was a mark which could clearly have enabled this ballot to be distinguished from any other ballot). Judge Wright's ruling coincided with a growing doubt on the Board's part that its rule best served the purpose of the present legislation; and the Board therefore decided to accept the ruling and not to seek its reversal on appeal. On full reconsideration we now adopt for all cases the rule that a ballot should be voided only where: (1) the intent of the voter is unclear; (2) there is some marking on the ballot (such as a number or initials) which tends to identify the individual voter without recourse to extrinsic evidence; or (3) there is an affirmative showing of impropriety (e.g. that the voter made an identifying mark by prearrangement to indicate to one of the parties how he voted).

The Assistant Agent's action in voiding the ballot case clearly conformed to the Board's former practice. It did not, however, properly apply the test which we hereby adopt, and for this reason we rule that the ballot should be counted.

After giving effect to the above rulings, the results of the election now stand as:

| Number of ballots cast                         | 247 |
| Number of votes in favor of the Union          | 122 |
| Number of votes not in favor of the Union      | 125 |

The Union having failed to receive a majority of the votes cast, we shall, accordingly, dismiss the petition.
ORDER
and
DISMISSAL OF PETITION

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by Section 31-106 of the Connecticut State Labor Relations Act, it is hereby

ORDERED, that the petition for certification of representative filed by Local 531, Service Employees' International Union, AFL-CIO, on June 23, 1970, be, and the same hereby is, dismissed.

CONNECTICUT STATE BOARD OF LABOR RELATIONS BY:

s/ Fleming James, Jr.
Chairman

s/ Dorothy Kane McCaffery
Member

s/ Patrick F. Bosse
Member