STATE OF CONNECTICUT
DEPARTMENT OF LABOR

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

THE NORWALK HOSPITAL

- and -

THE REGISTERED PROFESSIONAL NURSES LOCAL UNIT #23, CONNECTICUT NURSES ASSOCIATION

Case Nos. U-2109
U-2113

Decision No. 1028

November 30, 1971

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

Cummings & Lockwood, Esqs.,
by Clifford R. Oviatt, Jr., Esq., and
George N. Nichols, Esq.
For The Norwalk Hospital

Poulos, Barry & Kuzmak, Esqs.,
by M. Peter Barry Esq.

DECISION
and
ORDER

Statement of the Case

On April 12, 1971 and April 16, 1971, The Registered Professional Nurses Local Unit #23, Connecticut Nurses Association, hereinafter called the Complainant, filed with the Connecticut State Board of Labor Relations, hereinafter called the Board, charges alleging that The Norwalk Hospital, hereinafter called the Respondent, located at 24 Stevens Street, Norwalk, Connecticut, had engaged in unfair labor practices within the meaning of Section 31-105 of the Connecticut State Labor Relations Act, hereinafter called the Act.

On June 9, 1971, the Board issued a notice consolidating both proceedings for the purpose of a hearing.

Upon the basis of the charges, the Agent of the Board on June 15, 1971, issued a complaint alleging, in substance, that the Respondent had engaged in unfair labor practices in violation of Section 31-105 (1) (6) and (10) of the Act, by its refusal to recognize the Complainant as the majority representative of the employees in an appropriate unit and its failure and refusal to bargain with the Complainant, although requested to do so.

On June 17, 1971, Respondent filed an Answer to the complaint which specifically put in issue the allegations concerning the commission of the unfair labor practices alleged and it contained special defenses, first, that the Complainant did not and does not represent a majority of the employees in an
appropriate unit and, secondly, that the Respondent had and has a good faith doubt that the Complainant represents a majority of the employees in an appropriate unit.

A hearing was held before the Board on June 23, 1971 and July 20, 1971 in Norwalk, Connecticut. Full opportunity was given to the parties to adduce evidence, examine and cross-examine witnesses, to present argument and briefs.

During the hearing held on June 23, 1971, Complainant entered continual objections to the Respondent’s questioning of witnesses concerning internal unit matters. The Board ruled on some of the objections, exceptions entered by the Respondent were noted and rulings by the Board were withheld on others. At the request of the Board the parties agreed to brief this particular area before the resumption of the hearing. Memoranda of law were filed by both parties and were considered by the Board.

At the commencement of the hearing on July 20, 1971, the Board announced its ruling sustaining all of the objections raised by the Complainant in relation to the interrogation by the Respondent into the internal matters of the unit. We hereby affirm that ruling.

**THE EVIDENCE**

The evidence adduced shows that a collective bargaining agreement was entered into on June 27, 1969, between the Respondent and the Complainant, covering exclusive representation for all registered professional non-supervisory nurses; who average 16 hours of work per week or more, excepting head nurses, faculty and in-service personnel. The agreement provided that it shall remain in full force and effect until June 26, 1971, and thereafter for successive periods of one year, unless either party shall on or before the 60th day prior to the expiration serve written notice on the other party of its desire to terminate, modify, alter, renegotiate, change or amend the agreement.

Sometime in June, 1970, Mrs. Patricia Blake, Staff Director of the Economic Security Program of the CNA, received a telephone call from Attorney Durant, representing the Respondent, offering the unit of registered nurses represented by Local Unit #23, a salary increase with the condition that the contract expiration date be extended 3 months to September 30, 1971, instead of June 26, 1971. Mrs. Blake requested that this proposal be put in writing.

On July 16, 1970, Mrs. Blake and Mrs. Melody Treadwell, presently Economic Security Staff member of CNA, met with Attorney Durant on a separate matter and again requested that the Hospital’s offer be put in writing. Attorney Durant stated, at that time, that the Hospital wanted to make the contract expiration date December 31, 1971. He asked that the matter be brought before the unit as soon as possible.

Local Unit #23 scheduled two meetings for August 17, 1970 in the Nash Auditorium of the Hospital at 2:30 p.m. and 3:30 p.m. to accommodate shift schedules. Although the proposal had not been received in writing from the Hospital, it was put to a vote and voted down. The Hospital was so informed on August 20, 1970. (Exhibit 6)

On January 11, 1971, Clarence C. Traum, Director of the Norwalk Hospital, sent a letter to Mrs. Kathleen Shanahan, Chairman, Local Unit #23, CNA, stating that the Hospital had announced a new wage schedule for all hospital employees, other than RN’s, on December 7, 1970; said wage increase would destroy the proper balance between RN’s and other employees. The Hospital again suggested a wage raise schedule for the RN’s with the same provision that there be a 6 month extension of the present contract to December 31, 1971. He further stated that, because of the limited time the Local Unit has to contact the members, he was sending a copy of this letter in the next week to all RN’s and that the Hospital would agree to make the raise retroactive to January 3, 1971. (Exhibit 7)
On January 15, 1971, in a letter to Mr. Traum, Mrs. Treadwell objected to the Hospital sending a copy of Exhibit 7 to all RN’s (Exhibit 8), and notified him that Mrs. Shanahan "has a meeting arranged." The Hospital did circulate Exhibit 7. (Stated in Exhibit 18)

Two meetings of Local Unit #23 were held on January 28, 1971 at 2:30 p.m. and 3:30 p.m. The dues paying members of the Local Unit rejected the offer of the Hospital. The Hospital was so notified by Mrs. Shanahan. (Exhibit 10)

On March 26, 1971, Local Unit #23 notified the Hospital that it wished to start negotiations for a new contract in the week of April 12, 1971.

In a letter dated April 12, 1971, addressed to both Mrs. Treadwell and the Chairman of the Connecticut State Board of Labor Relations, the Hospital claimed that a majority of the professional registered nurses at Norwalk Hospital (Exhibit 12) are not being represented by Local Unit #23, that a majority of the nurses do not wish to be represented by Local Unit #23; therefore, the Hospital was refusing to begin negotiations on a contract. The Hospital further stated that it would abide by the results of a secret ballot election.

On February 8, 1971, the Hospital sent a letter to all RN’s, stating that because of all the questions asked by nurses about (1) the salary increases offered by the Hospital, (2) can the Hospital do anything to protect the rights of the nurses who were not allowed to vote in the Local Unit #23 meeting on January 28, 1971, it wanted to give as forthright an answer as possible.

The letter reviewed the steps in the offer of the wage increase and the rejection of same. The Hospital also stated its view of its legal position in the matter. (Exhibit 18)

On April 12, 1971 and April 16, 1971, Local Unit #23 of the CAN filed Unfair Labor Practice Charges against the Norwalk Hospital. These charges were consolidated.

On May 6, 1971, the Hospital sent a letter to all RN's answering claims made by the Local Unit and stating, "We know many of our nurses have stated to us that they no longer wish to have the Union represent them. Be assured that we will do all in our power to legally provide you the opportunity to vote as to whether you want Local 23 or not." (Exhibit 19)

The Hospital produced a list of 60 RN's in the unit who, as of March 29, 1971, had authorized the Hospital to deduct CNA dues, (Exhibit 22) out of a unit of 179 names submitted by the Hospital. (Exhibits 14 and 23)

On June 15, 1971, the Agent of the Board, John A. Gaspic, issued an Unfair Labor Practice Complaint against the Norwalk Hospital. (Exhibit 1) The Respondent filed a written answer admitting 1 and 3 of Complaint and denying each and every other allegation in the Complaint. (Exhibit 2) Full hearings on the Complaint were held on June 23, 1971 and July 20, 1971.

On July 1, 1971, a letter was sent to Norwalk Hospital Registered Nurses by Clarence C. Traum, Director, (Exhibit 36), stating that a serious question exists as to whether Local Unit #23 represents a majority of the nurses in the unit and that the Contract between Local Unit #23 and the Hospital expired on June 26, 1971. In view of an extended delay before a final decision is reached by the Connecticut State Board of Labor Relations, the Hospital was proceeding with salary and benefit improvements as of July 4, 1971.
At the hearing on July 20, 1971, the Complainant moved to amend the original complaint as follows: On July 1, 1971, the Respondent made unilateral changes in the salary, sick leaves, and vacation policy of registered nurses in the bargaining unit and notified each registered nurse by letter dated July 1, 1971 of its action. (Exhibit 34) Motion to amend was granted by the Board.

**DISCUSSION**

The Respondent argues that the Board should follow the National Labor Relations Board decisions on employer’s right to question majority status of the employee representative. However, although we have looked for guidance to the National Labor Relations Board in the past, the argument is not pertinent in this case. The Connecticut Board is an administrative board and as such is bound by the Connecticut statutes. The original Connecticut State Labor Relations Act was modeled after the Wagner Act. Although this Act has been amended several times, the Connecticut Legislature did not amend the Act to conform to the Taft Hartley Act which now binds the National Labor Relations Board. In addition, when the Connecticut Legislature passed the Municipal Employee Relations Act, it still did not base it on the Taft Hartley Law. It is, therefore, doubly clear that our Legislature did not accept the provisions of the Taft Hartley Law for the Connecticut State Labor Relations Act nor for the Municipal Employee Relations Act. Respondent is correct when it argues that the Connecticut Board has based decisions on National Labor Relations Board cases. Prior to the Taft Hartley Law, the Board followed the rulings of the National Labor Relations Board consistently. The Board will follow National Labor Relations Board rulings when there is no conflict with the Connecticut Statute. Under the Connecticut Statute, in a controversy concerning the representative of employees, the employer can petition for an election only when two or more labor organizations are claiming representation of his employees. (Section 31-106(b)) In this case, there is only one organization claiming representation.

The employer refused to bargain on the grounds that the Local Unit did not represent a majority of the nurses in the bargaining unit. Under the Board's interpretation of the Statute, only the nurses themselves can raise this question by petitioning for an election. In the instant case, the employer is trying to achieve by rule of decision, a right which has not been granted it by legislation.

Even though the law does not provide for a procedure for the decertification of a recognized or certified bargaining representative the Board has for some years recognized the right of employees to petition for an election to determine whether or not the bargaining agent continues to be the majority representative. “This type of a petition is known as a ‘negative petition’ in that it does not seek to have a representative certified." (Loehmann Chevrolet Company, Inc., Decn. No. 306, 1954) "We have held pr ior hereto that employees at proper times may file such petitions for the sole purpose of having the Board determine as a fact whether or not a representative previously selected still remains the choice of at least a majority of the employees within the appropriate unit and we see no good reason to change our rule." (Dichello Distributors, Decn. No. 191, 1950)

Moreover, we are applying this very rule to a current case where an election is directed to determine whether or not the certified bargaining representative continues to be the designated majority representative. (Manchester Memorial Hospital, Decn. No. 1029, 1971)

The employer cites and incorrectly interprets the Bridgeport Visiting Nurses case. The Board ordered the by-laws changed to exclude the provision that 51% of the eligible nurses must be dues paying members of the CNA. The Board found that this provision was arbitrary and that the Local Unit of the CNA must represent all nurses in the unit, for the purposes of collective bargaining.

1/ The Visiting Nurse Association of Bridgeport, Inc. – and – Professional Nurses’ Unit #13, Connecticut Nurses Association, Decision No. 779, 1967
In the instant case, the employer did not prove that Local Unit #23 of the CNA did not represent all the nurses in collective bargaining, but claimed that because non-dues paying nurses were not allowed to vote at a meeting of the Local Unit that therefore the Local Unit was not representing them. The Board does not find this to be true. Furthermore, the Board holds that the internal affairs of the Local Unit are no concern of the employer and so ruled at the hearing. 2/ When the Local Unit of the CNA turned down the wage increase offered by the employer with the condition required that the contract expiration date be extended, the matter should have ended there. The employer was in error in further pursuing the matter with the nurses.

Naturally, dissension would result among employees if they thought that all that had been rejected by the Local Unit was an increase in wages. The extension of the expiration date of the contract, which was tied to the acceptance of the raise, was at the heart of the matter.

The Board finds that the employer committed an unfair labor practice by refusing to bargain with Local Unit #23 of the CNA which was certified by the Board as the exclusive representative for the purposes of collective bargaining under the Act in a unit composed of all non-supervisory registered nurses who work an average of 16 hours or more a week.

The Board concludes that the evidence was insufficient to support a finding of a violation by the Respondent of Section 31-105(1) of the Act.

Upon consideration of the entire record in these proceedings, including the briefs filed by both parties after the close of the hearing, the Board makes the following:

**FINDINGS OF FACT**

1. Respondent, the Norwalk Hospital, owns, operates and controls a general hospital located at 24 Stevens Street, Norwalk, Connecticut.

2. Complainant, The Registered Professional Nurses Local Unit #23, Connecticut Nurses Association, is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection.

3. All registered professional non-supervisory nurses who average 16 hours per week or more, excluding headnurses, faculty and inservice, in the employ of the Respondent, constitute an appropriate unit for the purposes of collective bargaining.

4. At all times since December 30, 1968, the Complainant has been and continues to be the exclusive representative of all of the employees in the unit described in paragraph 3, above.

5. Since on or about January 18, 1971, Respondent has restrained and interfered with its employees in the exercise of their rights set forth in Section 31-104, of the Act.

2/ Cooke Street Line, Inc. – and - Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division No. 1430, AFL, Decision No. 186, 1950
6. Since March 26, 1971, Respondent has failed and refused, and continues to fail and refuse, to negotiate with the Complainant as the exclusive bargaining representative of the employees in the unit described in paragraph 3, above.

7. Respondent did not, as the Complainant alleges, spy upon or keep under surveillance the activities of its employees.

Upon the basis of the foregoing Findings of Fact and upon the entire record, the Board reaches the following:

CONCLUSIONS OF LAW

1. Respondent, The Norwalk Hospital, is an Employer within the meaning of Section 31-101, subsection 7 of the Act.

2. The Complainant, The Registered Professional Nurses Local Unit #23, Connecticut Nurses Association, is a labor organization within the meaning of Section 31-101, subsection 9, of the Act.

3. All registered professional non-supervisory nurses who average 16 hours per week or more, excluding head nurses, faculty and in-service, employed by the Respondent, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 31-106, subsection (a), of the Act.

4. Respondent has refused to bargain collectively with the Complainant as the exclusive representative of the employees in the unit described in Conclusion 3, above, within the meaning of Section 31-105, subsection 6, of the Act.

5. Respondent has restrained and interfered with the employees in the exercise of the rights set forth in Section 31-104, within the meaning of Section 31-105, subsection 10, of the Act.

6. Respondent did not engage in activities in violation of Section 31-105, subsection 1, of the Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Connecticut State Labor Relations Act, it is hereby

ORDERED, that Respondent, its agents, successors and assigns, shall:

1. Cease and desist from:

   (a) Refusing to bargain collectively with The Registered Professional Nurses Local Unit #23, Connecticut Nurses Association, as the exclusive representative of all registered professional non-supervisory nurses who average 16 hours per week or more, excluding head nurses, faculty and in-service, employed by the Respondent, with respect to rates of pay, wages, hours of employment or other conditions of employment.

   (b) Restraining and interfering with the employees in the exercise of their right of self organization and to bargain collectively through representatives of their own choice.
2. Take the following affirmative action which the Connecticut State Board of Labor Relations finds will effectuate the policies of the Act concerning labor relations:

(a) Upon request, to bargain collectively with The Registered Professional Nurses Local Unit #23, Connecticut Nurses Association, as exclusive representative of all registered professional non-supervisory nurses who average 16 hours per week or more, excluding head nurses, faculty and in-service, employed by the Respondent, with respect to rates of pay, wages, hours of employment or other conditions of employment.

(b) Post immediately, in a conspicuous place where the employees in the bargaining unit customarily assemble, and leave posted for a period of thirty (30) consecutive days from the date of posting, a copy of this Decision and Order in its entirety.

(c) Within fifteen (15) days of the receipt of this Decision and Order execute and affix to the posted copy of the Decision and Order, and leave posted for the duration of the posting period, a Notice to Employees containing a statement, in the form attached hereto and marked Appendix A, that

1) Respondent will not engage in the conduct from which it is ordered to cease and desist in Paragraph 1 of this Order.

2) Respondent, upon request, will bargain collectively with The Registered Professional Nurses Local Unit #23, Connecticut Nurses Association, as the exclusive bargaining representative of all registered professional non-supervisory nurses who work an average of 16 hours or more a week, excluding head nurses, faculty and in-service, employed by the Respondent, with respect to rates of pay, wages, hours of employment or other conditions of employment.

(d) Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 200 Folly Brook Boulevard, Wethersfield, Connecticut, within 15 days of the receipt of this Decision and Order of the steps the Respondent has taken to comply herewith;

and it is further

ORDERED, that so much of the complaint as alleges that Respondent spied upon or kept under surveillance the activities of employees in violation of Section 31-105, subsection 1 of the Act be, and the same hereby is, dismissed.

CONNECTICUT STATE BOARD OF LABOR RELATIONS BY:

s/ Patrick F. Bosse
Deputy Chairman

s/ Dorothy Kane McCaffery
Member

s/ Raymond E. Martin
Member