In the matter of
CITY OF DANBURY — and — LOCAL 1303, COUNCIL #4, AFSCME, AFL-CIO

APPEARANCES:
By: Edward J. Mitchell, President for City of Danbury
Zeman, Gagne & Ellis
By: William S. Zeman, Esq. for the Union

On June 25, 1979, Local 1303, Council #4, AFSCME, AFL-CIO (Union) filed with the Connecticut State Board of Labor Relations (Board) a petition seeking representation of a unit of employees of the City of Danbury (City) consisting in all life guards employed by the City. On July 20, 1979, the Union filed a motion to "immediately proceed with election with ballots impounded until decision issued by the Board." On August 6, 1979, a hearing was held before the Board upon this motion at which the parties appeared, were represented, and were fully heard upon the motion. At the close of the hearing the Board-directed that an election be held; that the ballots cast be impounded; that the election "not count as an election unless and until all the issues are determined in a way that makes the election valid."

Thereafter, on August 30, 1979, an election was held among the members of the claimed unit at which five ballots were cast, two of them being challenged. The ballots were, and they remain impounded in the custody of the Board's Agent.

On October 23, 1979, a hearing was held before the Board on the merits of the petition, at which the parties appeared, were represented, and were fully heard. Both parties filed written briefs which were received by the Board on December 3, 1979.

The Hearings

At the hearing on the motion the City at first objected to its being held but after the Union clarified its petition by stating that it included all the life guards and after the showing of interest on that basis was established, the City withdrew its objection provided that the ballots be impounded until all controverted issues should be determined.

At the hearing on the merits it appeared that the claimed unit consisted of 16 employees. All these employees are students, either at one of the Danbury high schools (public or private) or...
a college. They are hired to perform their services at one of two
city parks each having a lake and swimming facilities. They are
hired for the season beginning on Memorial Day and ending on Labor
Day. They are hired for a single season but the director of parks
and recreation has a practice of sending letters in March to those
lifeguards who he believes have performed capably asking them
whether they would like to return. Many do so, formerly as many
as 50%, but the proportion has declined in the last year or so.
The department also has permanent employees; these are not recruited
from the students who have served as lifeguards and who usually go
on to other careers. During the season the lifeguards work regularly from 30 to 40 hours a week: 40 is the normal work-week but inclement weather sometimes reduces it. The lifeguards are paid
by the hour.

There are also other students employed by the department to
monitor tennis courts and to coach or referee basketball teams and
other games. These are temporary, seasonal employees. Throughout
the City there are some 65 to 75 such employees including the life-
guards.

Discussion

The City objects to the petition on three grounds: (1) temporary,
seasonal employees "are not permanent employees under the purview of
Section 7-468 of [The Act];" (2) alternatively if there is to be a
unit it should include all the recreational employees under the direc-
tion of the department; (3) alternatively, the three ballots cast
should be destroyed "since this minimal participation in the election...
cannot be representative of the desires of employees in either a unit
of sixteen Lifeguards or in a unit of seventy Parks and Recreation
Department temporary employees."

The Union, on the other hand, urges that the lifeguards are
employees within the meaning of the Act and constitute an appropriate
unit under the Act and the Board's decisions.

We treat these issues in the order of the City's objections.

I.

The lifeguards are employees within the meaning of the Act and
entitled to its benefits.

The City cites a number of decisions by the National Labor Rela-
tions Board which it claims support the proposition that temporary,
seasonal employees are not covered by the Labor Management Relations
Act. These decisions fall into two groups. Most of them are con-
cerned with an issue not presented in this case, namely whether tem-
porary, seasonal employees should be included in the same unit as
regular permanent employees. Typical of this line of cases is Georgia-
Pacific Corp., 195 NLRB 258, 79 LRA 1263 (1972). When that problem
has been presented to this Board we have followed substantially the
same rule for the same reason that there is a lack of substantial
community of interest between temporary seasonal employees (students)
and regular permanent employees.

Only two of the decisions cited by the City have dealt with the
question before us here—whether temporary seasonal employees (students)
are entitled to the protection of collective bargaining statutes in a
separate unit. In one of them the art school which the students
attended employed them as part time janitors. The petition asked
(in the alternative) that the students be constituted a separate unit.
NLRB denied the petition, stating:

Upon close consideration of the matter, we are of the opinion that it will not effectuate the policies of the Act
to direct an election in a unit consisting of student jan-
tors only. We are influenced in our decision chiefly by the
brief nature of the students' employment tenure, by the
nature of compensation for some of the students (Scholarship Aid), and by the fact that students are concerned primarily with their studies rather than with their part-time employment. In our view, the student janitors are best likened to temporary or casual employees, whose certification would predictably present unusually vexsome problems. For instance, owing to the rapid turnover that regularly and naturally occurs among student janitors, it is quite possible that by the time an election were conducted and the results certified the composition of the unit would have changed substantially. San Francisco Art Institute, 226 NLRB 1251, 1252, 95 LRRM 1505 (1970).

A similar decision is Sara Food Service of Cal., 212 NLRB 766, 86 LRRM 1673, footnote 9 (1974), where student cafeteria workers for a company that operated the cafeteria for University of California at Davis were also denied a separate unit.

On the other hand, in a third decision (not cited by the City) where students worked on a temporary seasonal basis for a private employer (amusement park) having no connection with the educational institutions attended by the students, NLRB granted a petition for a separate unit, noting that the board's exclusion of students "from some units composed of regular full-time employees is not applicable here because neither party is urging the grouping of students with non-student employees." Six Flags Over Georgia, 215 NLRB 809, 810, n. 3, 88 LRRM 1057 (1974).

The last case seems closer to the one before us than either the Art Institute or the Sara case where the employment was by or closely connected with the educational institution. Be that as it may the cases denying the petitions are scarcely binding or persuasive here. NLRB's jurisdiction is based on the Interstate Commerce clause of the Federal Constitution and that board has consistently exercised its discretion to decline to take jurisdiction where it has deemed that the employment relationship in the case before it did not have a substantial impact on interstate commerce, so that taking jurisdiction would not effectuate the policies of the federal statute. Creative Country Day School, 192 NLRB 586, 76 LRRM 1061 (1971); Alameda Medical Group, 195 NLRB 372, 79 LRRM 1314 (1972); Wilson Auto Repair, 179 NLRB 29, 72 LRRM 1368 (1969).

The basis of our jurisdiction is quite different and, we believe, we have no discretion to decline to take jurisdiction over a case that comes within the literal terms of the Act. It seems to us that the present case falls within the Act. The lifeguards are concededly employees of the City. The Act then covers them unless they fall within an express exception. The only such exceptions are:

elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week, and persons in such supervisory and other positions as may be excluded from coverage under sections 7-467 to 7-477, inclusive, in accordance with subdivision (2) of section 7-471.

It is not contended, nor can it be, that the lifeguards fall within any of these expressed exceptions, and we have no power to amend the Act by adding another exception for temporary, seasonal employees. Nor do we have any discretion to deny the benefits of the Act to employees put under it by the Legislature. See ARA Services, Inc., Dec. No. 1220-A (1974). Cf. University of Connecticut, Dec. No. 1817 (1979).

The unit sought is an appropriate unit under the Act.

The City urges that the unit should be broader, including all student temporary employees of the parks and recreation department.
Such a unit would probably be an appropriate one but this fact does not mean that such a broad unit is the only appropriate one. The similarity of work and of term of employment of the lifeguards; the fact that they work at sites (beach areas) which are separate from the locations of other jobs; the fact that lifeguards are often recruited from the students' swimming teams, all combine to lend a community of interest to the lifeguards that warrants them treatment as an appropriate unit on an objective basis. And where that is the case we have consistently held that the employees' desire to be in a separate unit will be given effect and that the extent of a union's petition warrants an inference that it measures the extent of the desire to be associated together as a unit. Stamford Board of Education, Dec. No. 915; Wethersfield Board of Education, Dec. No. 1090; City of Bridgeport, Dec. No. 1440. We find then that the unit sought by the Union here is an appropriate bargaining unit.

III.

We uphold the City's last ground of objection to accepting the arbitrament of the election held on August 30, 1979.

The unit, last summer, consisted of 16 employees. Of these only three (or possibly five) voted in the election. If this had been an election directed by the Board after hearing on the merits we should feel obliged to abide by its result. Where an election is directed in advance of hearing to accommodate a special situation (as here) we believe that we have discretion to order a new election where the number of ballots cast is so small as not to be representative of the group of lifeguards employed in 1979 or to be employed next summer.

We here find that the policies of the Act will best be served by directing a new election and the destruction of the ballots cast in the election previously held.

Order and Direction of Election

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Municipal Employee Relations Act, it is

ORDERED, that the ballots cast in the August 30, 1979 election be destroyed by the Agent, and it is

DIRECTED, that an election by secret ballot shall be conducted under the auspices of the Agent of the Board on Friday, June 27, 1980, among all lifeguards who are on the payroll on the date of June 20, 1980 and who are on the payroll on the date of the election, to determine whether or not they desire to be represented for the purposes of collective bargaining by Local 1303, Council #4, AFSCME, AFL-CIO.

CONNECTICUT STATE BOARD OF LABOR RELATIONS

By s/Fleming, James, Jr.

Fleming, James, Jr., Chairman

s/Kenneth A. Stroble

Kenneth A. Stroble

s/Patricia V. Low

Patricia V. Low

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