

STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD

86-041

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In the Matter of  
Community Professional Nurses Association,  
Employee Organization,

and

Mercer County Joint Township Community Hospital,  
Employer.

CASE NUMBER: 86-REP-07-0210

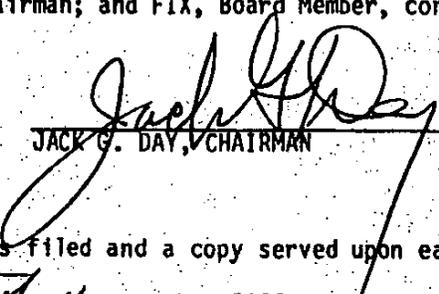
DISMISSAL OF A PETITION FOR VOLUNTARY RECOGNITION

Before Chairman Day, Vice Chairman Sheehan, and Board Member Fix;  
September 11, 1986.

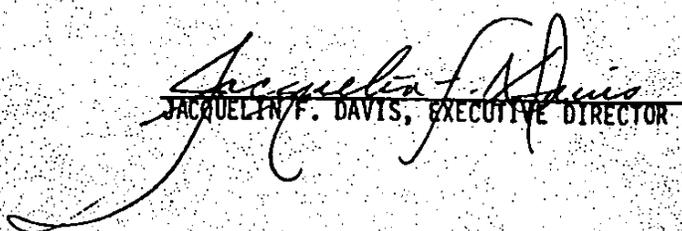
The Community Professional Nurses Association filed with the Board a Request for Voluntary Recognition asking to be certified as the exclusive representative in a single unit combining professional and non-professional employees based on a showing of substantial evidence pursuant to Ohio Revised Code Section 4117.05(A)(2) rather than on elections. For the reasons set forth in the attached opinion, incorporated by reference, the Board dismisses the Petition for Voluntary Recognition without prejudice.

It is so directed.

DAY, Chairman; SHEEHAN, Vice Chairman; and FIX, Board Member, concur.

  
\_\_\_\_\_  
JACK G. DAY, CHAIRMAN

I certify that this document was filed and a copy served upon each party  
on this 2<sup>nd</sup> day of October, 1986.

  
\_\_\_\_\_  
JACQUELIN F. DAVIS, EXECUTIVE DIRECTOR

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In the Matter of  
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OPINION

Day, Chairman:

The sole question in this case is whether a unit of professional and non-professional public employees may be certified by the Ohio State Employment Relations Board (Board) under the voluntary recognition procedure of Ohio Revised Code Section 4117.05(A)(2)<sup>1</sup> without a self-determination, secret ballot election conducted by SERB? The question is based on the assumption that the unit is appropriate, except for the joinder of

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<sup>1</sup>Section 4117.05:

"(A) An employee organization becomes the exclusive representative of all the public employees in an appropriate unit for the purposes of collective bargaining by either:"

\* \* \*

"(2) Filing a request with a public employer with a copy to the State Employment Relations Board for recognition as an exclusive representative. In the request for recognition, the employee organization shall describe the bargaining unit, shall allege that a majority of the employees in the bargaining unit wish to be represented by the employee organization, and shall support the request with substantial evidence based on, and in accordance with, rules prescribed by the board demonstrating that a majority of the employees in the bargaining unit wish to be represented by the employee organization..."

professional and non-professional employees in one unit, and that all other statute and rule requirements have been satisfied.

For reasons adduced below, the question is answered "No."

I

Ohio Revised Code Section 4117.06(D)(1) through (6) circumscribes Board discretion in making unit configurations. Sub-paragraph (D)(1) controls the issue here. It provides in relevant part that the "Board shall not:

"(1) Decide that any unit is appropriate if the unit includes both professional and nonprofessional employees, unless a majority of the professional employees and a majority of the nonprofessional employees first vote for inclusion in the unit;..." (Emphasis supplied.)

The Community Professional Nurses Association (C.P.N.A. or union) contends that a majority of the employees in the proposed unit wish to be represented by C.P.N.A., and that to evidence majority support, C.P.N.A. has filed "'substantial evidence' as defined in Rule 4117-3-03 of the Ohio Administrative Code." The "substantial evidence" is provided in Exhibit A filed with SERB.

Exhibit A is a collation of "voting sheets" purporting to include a majority of both professional and non-professional employees desiring representation in the proposed combined unit. For the purposes of this opinion, these majorities are assumed.

Central to C.P.N.A.'s claim for Board certification of its representative status in the combined unit are its contentions that (1) the signatures on the sheets are the equivalent of a vote, (2) Chapter 4117 does not require a SERB conducted canvass as the exclusive method of satisfying the voting requirement under R.C. 4117.06(D)(1), and thus (3) the voting sheets manifesting the representation desires of both the professional and

non-professionals are a proper basis for SERB certification under R.C. 4117.05(A)(2).<sup>2</sup>

II

Chapter 4117 provides a comprehensive schema for representation elections. These are to be conducted under the auspices of the Board by secret ballot<sup>3</sup> in units which the Board determines to be appropriate.<sup>4</sup> One part of the electoral provisions includes a set of six unit determination prescriptions.<sup>5</sup> The first of these, set out in full text under division I of this opinion, regulates, but does not prohibit, the inclusion of professionals and non-professionals in the same bargaining unit. However, the inclusion is permissible only after a "vote" which determines that a majority of each group desires unit joinder with the other.<sup>6</sup>

While it is true that R.C. 4117.06(D)(1) does not define "vote" nor specify that only SERB can conduct it, it would take some highly dubious reasoning for one to conclude that the General Assembly delineated the electoral and certification powers and duties of the Board as elaborately as it did<sup>7</sup> but meant to permit parties to conduct an inclusion vote

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<sup>2</sup>C.P.N.A. Amended Request for Voluntary Recognition, etc. which the Mercer County Joint Township Community Hospital (employer) joins and C.P.N.A. Motion for Certification and supporting memorandum.

<sup>3</sup>R.C. 4117.07(A)(1), and (2), and (C)(1)-(6).

<sup>4</sup>R.C. 4117.07(A), (B), and (C).

<sup>5</sup>R.C. 4117.07(C)(1)-(6).

<sup>6</sup>R.C. 4117.06(D)(1); see the full text of the section in 1, supra.

<sup>7</sup>Including the establishment of rules for conducting elections R.C. 4117.07(C)(2).

(self-determination) under R.C. 4117.06(D)(1) in any manner they saw fit. Such a conclusion would require the Board to certify the results of a canvass it did not supervise and could not control. Moreover, the parties' contention would reduce the "vote" requirement to a mere showing of interest and frustrate the secret ballot requirement in representation elections.<sup>8</sup>

The Board has conducted, and will conduct, all votes required under the Chapter 4117 according to Administrative Code Rule 4117-5-08(A).<sup>9</sup> And it will not adopt an atypical definition of "vote." Rather SERB will follow the more "technical" and "particular" meaning the word has acquired in labor relations electoral processes.<sup>10</sup> There will be no certification by the Board of professional and non-professional employees in the same unit absent a secret ballot election conducted by the Board which results in a majority approval in each category. —

### III

The request for voluntary recognition is dismissed without prejudice.  
Sheehan, Vice Chairman, and Fix, Board Member, concur.

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R.C. 4117.07(C).

<sup>9</sup>Adm. Code Rule 4117-5-08(A):

"All elections shall be by secret ballot and shall be conducted by a designated agent of the Board. No ballot may be cast by mail or proxy."

<sup>10</sup>R.C. 1:42.

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12