

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**ST. JOSEPH'S MEDICAL CENTER  
Employer**

**- and -**

**Case No. 2-RD-1550**

**VINCENT EDWARDS, an Individual,  
Petitioner**

**-and-**

**ALLIED INTERNATIONAL UNION  
Intervenor**

**-and-**

**LOCAL 971/550, NATIONAL SECURITY  
OFFICERS BENEVOLENT ASSOCIATION  
Party-in-Interest**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter<sup>1</sup> and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed. Local 971/550, National Security Officers' Benevolent Association, the incumbent union herein, did not appear for, or participate in, the hearing. The record establishes that a

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<sup>1</sup> No briefs filed by the parties.

copy of the petition was served on Local 971/550. The Board agent placed several calls to Local 971/550 president Greg McCarthy, but did not receive a response. The agent further contacted Bryan McCarthy, Esq., an attorney who has previously represented Local 971/550, and was advised by Mr. McCarthy that he was not representing Local 971/550 in this matter. Allied International Union, herein the Intervenor, filed a motion to intervene in this matter based upon a showing of interest and that motion was granted.

2. The Employer's Chief Operating Officer Kenneth Pearson testified that the Employer operates an acute care hospital located at 127 South Broadway in Yonkers, New York. The hospital facility has 190 beds, 200 nursing home beds and operates a number of ambulatory care programs which are housed in sites surrounding the hospital. The Employer derives gross revenues in excess of \$100 million each year and purchases medical supplies from sources, including Med Line Industries located in Allentown, PA, in excess of \$10,000.

Accordingly, based upon the undisputed testimony, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Employer Chief Operating Officer Kenneth Pearson testified that the security employees have been represented by Local 971 for several years. However, Mr. Pearson further testified that he was unaware of a merger between Local 971 and Local 550. The record includes a copy of the Certification of Representative dated January 28, 2000, issued by the Region certifying that International Brotherhood of Security Guards Local 971 represented all full-time and regular part-time (including per diems) security officers employed by the Employer. The record also contains the Decision and Direction of Election in Case No. 2-RC-22157, which directed the election in this unit. On May 20, 2004, Richard Baker, the Employer's Director of Safety and Security, sent a memo to the security guards in the bargaining unit informing them

that in light of the merger between Local 971 and Local 550, all security guards would be required to complete and sign new enrollment forms. Thus it appears that the Employer recognized and applied the Local 971 collective-bargaining agreement to the newly formed labor organization. Security Officer Vincent Evans, an 18-year employee of the Employer testified that after the merger of Local 971 and 550, there were no changes in the union and it was the same entity. Moreover, a Certification of Representative dated July 22, 2004, issued in Case No. 2-RC-22860 involving St. Barnabas Hospital, certifying that Local 971/550 National Security Officers Benevolent Association was the Section 9(a) bargaining representative of the security guards employed at that hospital.

Section 2(5) of the Act provides that a labor organization “means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

In order to meet the requirements of Section 2(5) of the Act, there are no requirements of any specific structural formality. *Butler Manufacturing Co.*, 167 NLRB 308 (1967) and *Alto Plastics Manufacturing Corp.*, 136 NLRB 850, 851-852 (1962). The record establishes that by virtue of the collective-bargaining agreement between the Employer and Local 971/550, this labor organization has represented employees for the purpose of collective-bargaining and is therefore a labor organization within the meaning of the Act.

Joseph Glennan, the Secretary-Treasurer of the Intervenor, testified that the Intervenor represents guards and security officers for the past 35 to 40 years. Mr. Glennan testified that the Intervenor has held general membership meetings at which employees participate. Moreover, the Intervenor has filed grievances with employers regarding employees and has negotiated

collective-bargaining agreements on their behalf. Based on the record evidence, I find that Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

5. At the commencement of the hearing, Petitioner amended his petition to reflect the language contained in the collective-bargaining agreement between Local 971/550 and the Employer. The petition as amended seeks an election among all full-time and regular part-time (including per diems) security officers employed by the Employer, but excluding all other employees, professional employees, non-security personnel, and supervisors, as defined in the Act. This amendment was made to ensure that the wording of the petition mirrored the language of the Certification of Representative issued in Case No 2-RC-22157 which is specifically referenced in Article 1, the Recognition provision of the collective-bargaining agreement. Employer Chief Operating Officer Kenneth Pearson testified that the agreement by its terms was in effect from October 1, 2003 through September 30, 2006. Notwithstanding the expiration of the agreement the terms of the agreement have been continued in effect thereafter.

The Board has long held that the bargaining unit in a decertification election must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955). The petitioner seeks a decertification election and has amended the petition to track the unit in the expired contract. The unit sought here is an appropriate unit for collective bargaining:

Included: All full-time and regular part-time (including per diems) security officers employed by the Employer at its hospital facilities located in Yonkers, New York.

Excluded: All other employees, professional employees, non-security personnel, and supervisors, as defined in the Act.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time<sup>2</sup> and place set forth in the notice of election<sup>3</sup> to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed at the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>4</sup> Those eligible shall vote whether or not they desire to be represented for collective-

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<sup>2</sup> Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25<sup>th</sup> and 30<sup>th</sup> day after the date of this decision.

<sup>3</sup> The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

<sup>4</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who

bargaining purposes by Local 971/550, National Security Officers' Benevolent Association,  
Allied International Union or neither.<sup>5</sup>

Dated at New York, New York,  
April 24, 2007

/s/ \_\_\_\_\_

Celeste J. Mattina, Regional Director,  
National Labor Relations Board, Region 2  
26 Federal Plaza, Room 3614  
New York, New York 10278

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shall make a list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **May 1, 2007**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

<sup>5</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by no later than **May 8, 2007**.