

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY MEDICAL CENTER

Public Employer

and

Docket No. R-9D

LOCAL 428, STATE, COUNTY, MUNICIPAL
NURSING HOME AND HOSPITAL EMPLOYEES UNION,
L.D.I.U., AFL-CIO

Petitioner

and

LOCAL 1959, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election, P.E.R.C. No. 31, a secret-ballot election was conducted by the American Arbitration Association, hereinafter A.A.A., on March 12, 1970 for employees in the appropriate unit. 1/ The Commission's election agent served upon the parties a tally of ballots, dated March 12, 1970, which revealed that of approximately 370 eligible voters, 139 voted for Local 1959, 123 for Local 428, 11 ballots were challenged and three ballots were void. The challenged ballots do not affect the results of the election. Local 428 filed timely objections to the conduct of the election or conduct affecting the results of the election.

1/ The appropriate unit is: "All blue-collar employees at the Jersey City Medical Center, excluding craft employees, professional employees, supervisors within the meaning of the Act and other employees."

Pursuant to a Notice of Hearing on Objections, a hearing was held on July 20, 1970 before Hearing Officer Ronald L. Tobia. At this hearing all parties were afforded the opportunity to present evidence, to call, examine, and cross-examine witnesses, to argue orally and to submit briefs. Thereafter, on September 15, 1970, the Hearing Officer issued a Report and Recommendations in which he recommended that all objections be overruled and that Local 1959 be certified.

Rule 19:14-15 2/ states that exceptions "may be filed by any party with the Executive Director within seven (7) days after service of the report and recommendations..." The date on which exceptions in this case were due to be filed with the Executive Director was September 25, 1970 as noted in the letter enclosed to the parties when the Hearing Officer's Report and Recommendations was served. A letter was received in the Commission's office on September 30, 1970 from the attorney for Local 1959 in answer to exceptions, indicating that he had received service of such exceptions. However, the letter containing the exceptions from the attorney for Local 428 was not received in the Commission's office until October 5, 1970. The postmark in the Trenton Post Office is clearly October 3, 1970 and while the date of the Jersey City postmark is uncertain it clearly reads sometime in October. 3/ Subsequently, an affidavit was filed by the attorney for Local 428 in which his secretary attests to the mailing of these exceptions on September 24.

2/ New Jersey Public Employment Relations Commission: Rules and Regulations and Statement of Procedures, P. 31.

3/ Attached hereto is photo copy of said envelope.

After careful consideration the Commission feels bound to the empiric evidence of the postmarked envelope and accordingly finds the exceptions untimely.

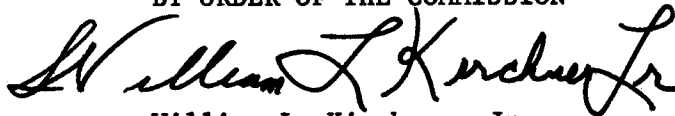
Therefore, in the absence of timely exceptions the Commission, having considered the record and the Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, adopts the findings and recommendations of the Hearing Officer pro forma.

Since Local 1959 has received a majority of the valid votes cast, plus challenged ballots, it will be certified as the exclusive representative.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Local 1959, American Federation of State, County, and Municipal Employees, AFL-CIO has been designated and selected by a majority of the employees of the above-named Public Employer in the unit described above, as their representative for the purpose of collective negotiations, and that pursuant to the New Jersey Employer-Employees Relations Act of 1968, the said organization is the exclusive representative of all employees in such unit for the purpose of collective negotiations with respect to terms and conditions of employment.

BY ORDER OF THE COMMISSION



William L. Kirchner, Jr.
Acting Chairman

DATED: November 6, 1970
Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY MEDICAL CENTER

Public Employer

and

LOCAL 428, STATE, COUNTY, MUNICIPAL,
NURSING HOME AND HOSPITAL EMPLOYEES UNION,
L.D.I.U., AFL-CIO 1/

Docket No. R-9D 2/

Petitioner

and

LOCAL 1959, AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner 3/

Appearances:

David Solomon, Esq. for Local 428
(Messrs. Friedland and Friedland, attorneys)

Abraham L. Friedman, Esq. for Local 1959
(Messrs. Rothbard, Harris & Oxfeld, attorneys)

REPORT AND RECOMMENDATIONS OF HEARING OFFICER ON OBJECTIONS

Pursuant to a Notice of Hearing on Objections, dated May 1, 1970
and an Order Rescheduling Hearing, dated June 8, 1970, a hearing was held
before the undersigned Hearing Officer on July 20 and July 21, 1970.

- 1/ The formal papers were amended at the hearing to reflect the correct name of this employee organization, hereinafter Local 428, with the stipulation that if an election is directed the ballots will contain the names of the employee organizations on the prior ballot.
- 2/ The Docket Number R-9 was changed to R-9D administratively to facilitate correct reference to this matter.
- 3/ The formal papers were amended at the hearing by stipulation to depict more correctly Local 1959, AFSCME, AFL-CIO, hereinafter Local 1959, as a petitioner rather than an intervenor.

At this hearing all parties were afforded the opportunity to present evidence, to call, examine and cross-examine witnesses, to argue orally and to submit briefs. 4/

BACKGROUND

Pursuant to a Decision and Direction of Election, P.E.R.C. No. 31, a secret-ballot election was conducted by the American Arbitration Association, hereinafter AAA, on March 12, 1970 for employees in the appropriate unit. 5/ The Commission's election agent served upon the parties a tally of ballots, dated March 12, 1970, which revealed that of approximately 370 eligible voters, 139 voted for Local 1959, 123 for Local 428, 11 ballots were challenged and three ballots were void. The challenged ballots do not affect the results of the election. Local 428 filed timely objections to the conduct affecting the results of the election. The undersigned Hearing Officer has carefully considered the record and exhibits in this matter and will address himself to the objections raised by Local 428 in the order of their submission.

Objection No. 1 and No. 2

On March 11, 1970 a nurse employed at the Jersey City Medical Center was assaulted in her apartment by a large negro man. During the assault he stated that the nurse should call Mr. Soures, an Organizer for Local 428, that "this is our hospital and we want it". I am enclosing an affidavit of Miss Mary Conlon, the nurse referred to above, which is self-explanatory.

4/ Neither the Jersey City Medical Center, nor the City of Jersey City appeared at the hearing. The record indicates that the hearing was recessed and the City was contacted but indicated that it would make no formal appearance.

5/ The appropriate unit was all blue-collar employees at the Jersey City Medical Center, excluding craft employees, professional employees, supervisors within the meaning of the Act and other employees.

Another nurse, Miss Stevens, was threatened by an unidentified man who told her that the nurses were to mind their own business and stop working for Local 428. This unidentified man threatened to physically harm all of the members of the Executive Board of the Nurses Association, which organization endorsed Local 428.

The undersigned Hearing Officer finds that the record is void of any testimony or proof whatsoever that would sustain the requisite burden placed on Local 428 by Section 19:11-19(i) of the Commission's Rules and Regulations. Mr. Solomon, attorney for Local 428, stated that the witnesses who were to testify at the hearing concerning objections 1 and 2 failed to appear. However, he indicated that he did not wish to invoke Section 19:16-7 of the Commission's Rules and Regulations in order to compel attendance by witnesses or to prosecute them for non-attendance. Therefore, it is respectfully recommended that Objections No. 1 and No. 2 of Local 428 be dismissed.

Objection No. 3

Mr. Jose Mendez, an Organizer for Local 1959 was on the Medical Center premises while the election was in progress. Mr. Mendez is not an employee of the Medical Center and was subject to the agreement between Local 1959, Local 428, the Jersey City Medical Center and the American Arbitration Association which provided that no Union Organizer shall be on the Medical Center premises while the election was in progress. I am enclosing an Affidavit of Mr. Aniceto Montalvo on this point.

The record reveals that Mr. Wolff, Assistant Election Director of the AAA, presided over a pre-election conference on Friday, March 6, 1970. Mrs. Convissar, a member of the AAA's Election Department, attended this conference since she would be responsible for the running of the election on March 12, 1970 at the Jersey City Medical Center.

She testified that appearances were made by representatives of Local 428, Local 1959 and the City of Jersey City at this meeting for the purpose of setting ground rules for the election. Using an AAA election checklist to refresh her recollection, Mrs. Convissar testified that concerning "campaigning it was decided that there would be no one on the hospital grounds at all, and... that there would be no campaigning on hospital property on election day, March 12, 1970." (Record, p. 125) She further explained that this meant that no one would be inadvertently campaigning that day. Nevertheless, Mrs. Convissar testified that she did not personally witness any campaigning on the hospital grounds. Also, the record indicates that the parties made their own decisions as to ground rules, for the AAA to abide by, and that these election procedures were not reduced to a written agreement.

Mr. Montalvo, Local 428 observer and supporter, testified that he saw Mr. Mendez, an organizer for Local 1959, talking to four or five people on the stairs leading into the Clockroom of the Medical Center at 9:00 a.m. on election day. He estimated that this was 50 feet from the polling place. Thereupon, Mr. Montalvo testified that the AAA representative would not leave the polls to investigate these activities. When Mr. Montalvo returned alone minutes later, Mr. Mendez was allegedly gone. The record, however, is barren of any corroboration of this incident being reported to Mrs. Convissar. In addition, Mrs. Dunham, an organizer of Local 1959, testified that Mr. Mendez was with her from 5:30 a.m. until 1:00 p.m. on election day and that at no time was Mr. Mendez on the stairs talking to anyone. Notwithstanding the foregoing, Mr. Montalvo testified that he could neither hear what Mr. Mendez was talking about nor how many voters were approached.

The undersigned finds that Mr. Montalvo's testimony concerning the activities of Mr. Mendez on the morning of the election is not corroborated by competent evidence or testimony. In fact his testimony is contradicted by that of Mrs. Dunham. However, both Mr. Montalvo and Mrs. Dunham are interested parties in this matter, a factor to be considered in assessing the credibility of each. The undersigned need not resort to credibility findings because even if Mr. Mendez was present on the stairs, that fact alone is an insufficient basis to set this election aside. There is no evidence in the record whatsoever of any campaigning. In fact Mr. Montalvo could not even testify as to what Mr. Mendez was talking to employees about. If this incident did occur, the brief period of Mr. Mendez's presence in an area far removed and invisible from the polling place mitigated any possible influence on the outcome of election. Therefore, it is recommended that Objection No. 3 be dismissed in that Local 428, as the objecting party, has failed to sustain its burden of proof. Furthermore, Local 428 did not relate these alleged activities to any interference with the exercise of a voter's free choice.

Objection 4

During the course of the election, Organizers for Local 1959 posted campaign stickers on the walls of the Medical Center leading to the polling booths, such conduct being in violation of the aforementioned agreement between the parties. The posting of the stickers was witnessed by Thea A. Convissar of the American Arbitration Association and by an official of the Jersey City Medical Center both of whom demanded that Local 1959 remove these stickers. I am enclosing an Affidavit partially supporting the above statement. Further Affidavits will be forthcoming.

Mrs. Convissar testified that in the late morning she removed two or three election-type posters reading "Vote 1959" from the Clockroom.

She testified that an employee of the Medical Center lodged a complaint but could not commit herself to identifying Mr. Montalvo as that employee. Rather she stated that she did not think it was he. (Record, p. 137) Mrs. Convissar thereupon personally removed these campaign stickers minutes after the report.

Mr. Montalvo testified that at 9:00 a.m. he saw many stickers reading "Vote 1959" in the corridor leading to the polling place and reported this to Mrs. Convissar. He went on to say that Mrs. Convissar removed most of them and allegedly directed Mr. Barsalone, the Medical Center Supervisor, to remove other stickers from the bathroom and Clockroom. Mr. Montalvo estimated these campaign stickers to have been between 25 and 30 feet from the polling place. He further testified that approximately 15 or 20 voters read these posters before voting.

Mr. Cottman, an Orderly at the Medical Center, testified that between 8:00 a.m. and 9:00 a.m. he witnessed Mr. Mendez, whom he knew to be campaigning for 1959, put one poster reading "Vote 1959" in the corridor leading to the polling place. He said that he did not speak to Mr. Mendez nor did he see any voters reading the poster. Mr. Cottman was not an eligible voter in the election.

The undersigned Hearing Officer finds that the testimony of Mr. Montalvo and Mr. Cottman is inconsistent with that of Mrs. Convissar. When the inconsistencies are coupled with the interest Mr. Montalvo as a supporter of Local 428 might possess in the outcome of this case, credibility must be resolved in favor of Mrs. Convissar, a witness without bias or interest. Mr. Montalvo testified to viewing many campaign stickers in the hallway to the polls and Mr. Cottman saw only one; but Mrs. Convissar

saw two or three posters in the Clockroom not in the corridor. In addition, the corridor distance from the polls to the Clockroom is approximately 275 to 285 feet 6/, not 25 or 30 feet as Mr. Montalvo estimated. Furthermore, Mrs. Convissar stated that she removed two or three campaign stickers personally and she did not request any supervisor or official of the Medical Center to remove them. In light of all the contradictions in the testimony of Local 428 witnesses, the Hearing Officer will credit the testimony of Mrs. Convissar.

In analyzing the situation, the record indicates that the incident was reported and the stickers were removed promptly. Mr. Cottman allegedly connects the posting to Mr. Mendez but Mrs. Dunham places Mr. Mendez somewhere else between 8:00 a.m. and 9:00 a.m. However, even assuming that both witnesses are interested, if Mr. Mendez did post campaign stickers the alleged time they were posted was less than an hour. The undersigned does not credit the testimony of Mr. Montalvo that 15 or 20 employees read this sign. Mrs. Convissar could testify only that one person read the sign, the one who called it to her attention. Furthermore, it is unconceivable that a sign of this nature, namely "Vote 1959", would interfere with employees' freedom of choice in light of a vigorous campaign by both employee organizations over a period of months prior to the election.

Based on the foregoing, it is respectfully recommended that Objection No. 4 of Local 428 be dismissed.

6/ Exhibit 1959-1, a rough diagram prepared by Mr. Gold, reflects these measurements.

Objection No. 5

Mr. Frank Bassilo, a "watcher, for Local 1959, during the course of the election, kept running in and out of the polling area campaigning for Local 1959. Miss Convissar of the American Arbitration Association chased him out of the polling area three or four times.

Mrs. Convissar, the election agent, does not recall any campaigning at the polling place. She testified that each party was allowed to have only two observers present at the polls at one time. Two alternate observers relieved the two observers at the polls from time to time. Mrs. Convissar has no recollection of Mr. Bassilio running in and out, or talking to eligible voters. She did not chase Mr. Bassilio out of the polling area. The only time, if any, Mrs. Convissar would ask an observer to leave would be to ensure only two observers were present at the polls at any one time.

Mr. Bassilio testified that he was an observer at the polls and that each of Local 1959's observers relieved one another from time to time for breaks. He was required to sign out when he left and sign in when he returned. Mr. Bassilio flatly denied not only bringing or sending people in to vote but also campaigning for Local 1959. The only words exchanged between Mr. Bassilio and people waiting to vote was a greeting, "hello", or a few casual remarks.

In contradiction to the foregoing, Mr. Montalvo testified that Mr. Bassilio was campaigning in and around the polling place and even personally bringing people to the polls between 9:00 a.m. and 4:00 p.m. At approximately 11:00 a.m., Mr. Montalvo recalls speaking about these activities to Mrs. Convissar who in turn reprimanded Mr. Bassilio. However, Mr. Montalvo did not hear what Mr. Bassilio said but only reported seeing exchanges of conversation. Mr. Montalvo did not witness

any threatening of voters, nor the giving or promising of rewards.

The Hearing Officer finds that Mr. Bassilio's activities reported by Mr. Montalvo are no basis for setting aside this election. The mere fact that an off-duty observer briefly conversed with people without more facts is insufficient evidence to sustain an election objection. Furthermore, the undersigned is persuaded by the testimony of Mrs. Convissar who recalled no campaigning and no irregular activities on the part of Mr. Bassilio. In the face of this testimony from the only witness without an interest in this matter the Hearing Officer cannot infer from casual conversations alone that a participant was campaigning. There must be proof that what was spoken would interfere with the freedom of choice of the voters. Concerning Mr. Bassilio leading voters into the polls, the Hearing Officer cannot credit the testimony of Mr. Montalvo in light of its contradictions by Mrs. Convissar and Mr. Bassilio. The undersigned finds that Mr. Bassilio, as an observer, was permitted to move in and out of the polling place to relieve other observers and the testimony reveals no conduct which interfered with the ability of eligible voters to cast their ballots freely and fairly.

Therefore, the Hearing Officer respectfully recommends that Objection No. 5 of Local 428 be dismissed.

Objection No. 6

Mr. Robert Murphy, President of Local 1959, is employed in a supervisory position in the City of Jersey City. Mr. Murphy has avidly campaigned for Local 1959 as a supervisor for the City of Jersey City. He has had complete run of the Medical Center which he used to campaign for Local 1959 while the Organizers for Local 428 were not permitted to circulate throughout

the entire hospital. Although Mr. Murphy is employed by the City in a high supervisory position, the City has permitted him to campaign during working hours at the Jersey City Medical Center. I am enclosing a copy of a newspaper article which appeared in the Jersey Journal on November 11, 1969 which indicates that P.E.R.C. had ruled Mr. Murphy's role improper in a prior election concerning employees in the City of Jersey City.

Mrs. Spence, the Administrative Secretary in Jersey City, testified that Mr. Murphy, an Assistant Director in the Division of Sanitation and currently the President of Local 1959, was on terminal leave effective June, 1969 and culminating in his retirement on May 31, 1970. This terminal leave consisted of accumulated sick-leave and vacation leave. Although Mr. Murphy was on the payroll at full salary, during this period he performed no duties on behalf of the City and he relinquished the use of his City automobile when his leave commenced.

Mr. Montalvo testified that he saw Mr. Murphy campaigning at the Clockroom almost everyday up to and including the last day before the election. His exact activities on behalf of Local 1959 consisted of talking to people in the Clockroom. However, Mr. Montalvo did not hear Mr. Murphy threaten these people, nor give, nor promise rewards to them for favorable voting.

Local 428 argues that as a supervisor in the Department of Public Works the role of Mr. Murphy was improper and his conduct should be the basis for the Commission setting aside this election. The mere fact that Mr. Murphy's activities in a prior election in the Jersey City Department of Public Works were held to be improper does not per se justify the setting aside of the election in the Jersey City Medical

Center. 7/ The election herein involved blue collar employees of the Jersey City Medical Center and not employees in the Department of Public Works. In addition, by ordinance a Board of Managers is responsible for the organization and management of the Medical Center and this Board has the power to select "... a medical director, a hospital administrator, assistant administrator and all subordinate personnel." 8/ Furthermore, Mr. Murphy performed no duties whatsoever on behalf of Jersey City since he was on terminal leave. Consequently during this election campaign Mr. Murphy was a supervisor in title only and not in actual duties. The rationale behind setting an election aside based on campaign impropriety by a supervisor is his power and control over employees who work under him. In this matter, the Hearing Officer finds that there is no connection of supervision between Mr. Murphy, and the blue collar employees of the Medical Center. Notwithstanding the fact that the record indicates that Mr. Murphy talked to employees, he exercised no real or apparent authority over these people and it was not demonstrated that these conversations interfered with the free choice of the voters.

Therefore, the Hearing Officer respectfully recommends that Objection No. 6 be dismissed.

Objection No. 7

Mr. Nat Gold, a supervisor employed at the Jersey City Medical Center, avidly campaigned for Local 1959. He

7/ In P.E.R.C. 23 the Commission set aside the Jersey City Department of Public Works election in light of Mr. Murphy's position therein and his activities in soliciting members and campaigning for Local 1959.

8/ Exhibit C-3, which is a certified true copy of Jersey City ordinance W-39, outlines the creation, composition and powers of this governing body for the Medical Center.

has on several occasions cornered members of the bargaining unit in an effort to convince them to support Local 1959 and to vote against Local 428. Affidavits of employees of the Medical Center relevant to the above point will be forthcoming.

Mr. Gold, Chief Exterminator at the Medical Center, testified that he could not directly hire, fire or discipline people who work under him. All personnel discipline must come from someone higher than Mr. Gold. With regard to effective recommendation of discipline, the record does not indicate that such authority is vested in Mr. Gold. Concerning the extermination section of the Medical Center the discipline process begins with Mr. Gold reporting the facts to the Assistant Superintendent of Maintenance who brings the employee and Mr. Gold before him to present their charges. The Assistant then reports these facts to the Superintendent of Maintenance. Based on the undisputed testimony of Mr. Gold, the Hearing Officer finds that although Mr. Gold may exercise some authority, supervisory in character, over the exterminators under him, he is not a supervisor within the meaning of the Act since he can neither hire, discharge, discipline or effectively recommend the same. Additionally, Mr. Gold was excluded from the blue collar unit and was not eligible to vote in this election. In light of his non-supervisory and ineligible voter status, the evidence of Mr. Gold's campaigning must be very carefully scrutinized to determine its effect, if any, on the election.

The record clearly reveals that Mr. Gold was vacationing in Florida on election day. He left work on February 17, 1970 and returned thereto on March 16, 1970. Mr. Montalvo testified that at no time did he witness Mr. Gold threatening employees, nor giving or promising rewards to people for Local 1959 votes. However, Mr. Montalvo testified that Mr. Gold campaigned floor-to-floor during his exterminating duties in the hospital wherein he told people to vote for Local 1959 and not for

Local 428. In contradiction thereto, Mr. Gold testified that he campaigned only during the prior election and not in this election. There is an obvious conflict in testimony and the Hearing Officer finds that due to the bias or interest of both Mr. Montalvo and Mr. Gold the testimonial contradiction will remain unresolved. However, the undersigned further finds that since Mr. Gold was on vacation almost three weeks prior to the election, any alleged campaign activity was remote or stale in terms of substantially affecting the election. Assuming arguendo that Mr. Gold did everything Mr. Montalvo said he did, Mr. Gold is not a supervisor of the blue collar, eligible voting group and his activities, if any, are too remote in time to warrant the setting aside of this election. Local 428 had ample opportunity to neutralize any adverse campaigning, if any, by a non-supervisory employee that were not threats, rewards or promises thereof.

Therefore, the Hearing Officer respectfully recommends that Objection No. 7 of Local 428 be dismissed.

Objection No. 8

Mr. Michael McFaul, an Organizer for Local 1959, is a supervisor employed at the Jersey City Medical Center. Mr. McFaul avidly campaigned for Local 1959. I am enclosing a letter signed by Mr. McFaul in his role as President of the New Jersey Public Employees Benefit Trust. You will note that the last sentence of the letter requests that the subscribers, employees of the Medical Center, should return to Mr. McFaul a membership application for Local 1959.

The record is almost barren of any testimony concerning any role of Mr. McFaul, a foreman of the Medical Center electricians, in this election. There is absolutely no testimony that he campaigned in public for Local 1959 other than the reference in the objection to a letter sent

which solicited membership for Local 1959. There has been no evidence that Mr. McFaul wrote such a letter, nor that employees read such a letter. In addition, the letter itself was not offered at the hearing in evidence even though it was appended to the objections.

Therefore, the Hearing Officer respectfully recommends that Objection No. 8 of Local 428 be dismissed since no competent proof to sustain the allegations was brought forth.

Objection No. 9

Local 1959 published and distributed leaflets which contained false and malicious information which affected the results of the election:

- (a) One leaflet, distributed by Local 1959 contained a statement by a man who was put forth to be an employee of the Medical Center, which charged that he had been a member of a Union at a laundry in which Mr. Abraham Solomon, Business Manager of Local 428, had had a contract. This man was never a member of the Local Union of which Mr. Abraham Solomon was President. The foregoing leaflet contained a statement from this mysterious man to the effect that Mr. Solomon had permitted members of his union to work under poor conditions and that Mr. Solomon never poltted his contract. Said statement was malicious and false and was knowingly and willfully made.

Concerning the leaflet referred to in the above objection, the record is barren of any reference to its publication and distribution by Local 1959. In addition this leaflet was not offered into evidence at the hearing. Absent such testimony the leaflet cannot be a basis to warrant the setting aside of this election.

A leaflet, Exhibit P-428-1, was admitted into evidence at the hearing over objection of Local 1959 which was testified to have been

distributed in the Clockroom by Mr. Keller and Mrs. Dunham, organizers for Local 1959. Mr. Montalvo, who witnessed the distribution, fixed the distribution time as being sometime after the end of 1969 and before the March 12, 1970 election. The leaflet bears the date February 13, 1970 and Mrs. Dunham testified that the date on the leaflet is the date of distribution. This handbill is directed against Mr. Montalvo's role as supporter of Local 428 and at the same time a dues-paying member of Local 1959. Local 428 argues that this leaflet contained false and malicious statements and it was so damaging that Local 428 was unable to refute the allegations with contradictory leaflets. Local 1959 argues that there is a cut-off before an election to consider whether a leaflet could be the basis for setting aside an election. If Local 428 had the opportunity to refute the statements in a Local 1959 handbill, any allegation contained therein is neutralized.

The Hearing Officer finds that Exhibit P-428-1, distributed February 13, 1970, was too remote in time to have affected the results of the election. An election should be set aside only where the alleged misrepresentations involve a substantial departure from the truth and are made at a time that prevents the other party from making an effective reply. The reasonable expectation of such a misrepresentation is that it has a significant impact on the election. The undersigned has examined Exhibit P-428-1 and finds that the statements contained therein were not made at a time that prevented effective reply. The leaflet was distributed approximately one month prior to the election. These statements, whether misrepresentations or not, could have been replied to by Local 428. Furthermore, the record is barren as to any proof that these remarks substantially departed from the truth. Local 428 did not sustain its burden of proof since there is no contradictory evidence that

Mr. Montalvo never belonged to Local 1959 nor that he had dues deducted from his salary. On the contrary the leaflet contains a reproduction of an application for membership in Local 1959 allegedly signed by Mr. Montalvo. Surely if Mr. Montalvo never signed the same or if he wished to repudiate the authorization there was ample time to do such. The Hearing Officer finds that Exhibit P-428-1 is no basis for setting aside this election.

A similar problem is faced with Exhibit P-428-3, admitted into evidence, which was identified by Mr. Montalvo to have been distributed by Mr. Keller and Mr. Taylor of Local 1959 sometime between December, 1969 and January, 1970. This leaflet refers to attempted negotiations between Local 1959 and the Medical Center being sabotaged by Local 428. Local 428 argues that this handbill is very malicious and would cause employees to resent this employee organization. Local 1959 argues that this leaflet, as in the case of the other, is too remote to have an effect on the election.

The undersigned, having carefully examined Exhibit P-428-3, finds that Local 428 was in no way prevented from making an effective reply to this leaflet. Furthermore, the record fails to indicate any evidence that these remarks were a substantial departure from the truth. These statements, whether misrepresentations or not, could not reasonably be expected to have a significant impact on the election since the leaflet was distributed approximately two to three months prior to the election. It should also be noted that the mere fact that a leaflet message is inartistically or vaguely worded or subject to different interpretations in and of itself would not be sufficient evidence to

establish such as a misrepresentation warranting the setting aside of an election.

Therefore, the Hearing Officer respectfully recommends that Objection No. 9 be dismissed.

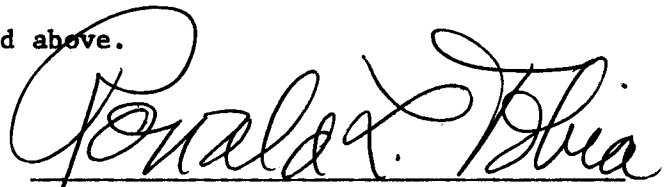
Objection No. 10

Several supporters of Local 428 informed Local 428's Organizers that they did not vote in the election because their lives were threatened if they voted. At present these employees are still too scared to give affidavits. However, Local 428 reserves the right to produce these Affidavits should we secure them before the hearing is conducted in this matter. The assaults of the nurses and the threats on the lives of employees at the Jersey City Medical Center are presently being investigated by the Jersey City Police Department and other law enforcement agencies.

The record is barren of any evidence to substantiate this objection of Local 428. In addition, Local 428 was asked by the undersigned if it was seeking to compel the attendance of certain witnesses but this procedure was expressly waived. Therefore, it is respectfully recommended that Objection No. 10 be dismissed.

RECOMMENDATIONS:

Based on the foregoing, the Hearing Officer recommends that the election held on March 12, 1970 not be set aside and that the objections filed by Local 428 be dismissed. Pursuant to the tally of ballots it is respectfully recommended that Local 1959 be certified in the appropriate unit as described above.


Ronald L. Tobia
Hearing Officer

DATED: September 15, 1970
Trenton, New Jersey