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Labor Law - Public Employment Relations - Act 195

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LABOR LAW—PUBLIC EMPLOYMENT RELATIONS—ACT 195—The Supreme Court of Pennsylvania has held that interns, residents, and clinical fellows are not employees under Pennsylvania's Public Employe Relations Act and therefore are not entitled to bargain collectively with their employers.

Philadelphia Association of Interns & Residents v. Albert Einstein Medical Center, 369 A.2d 711 (Pa. 1976).

In 1970, the Philadelphia Association of Interns and Residents (PAIR) filed with the Pennsylvania Labor Relations Board (PLRB) a petition for representation under the Pennsylvania Public Employe Relations Act (Act 195).[1] Although the PLRB originally dismissed the action, after the filing of exceptions by PAIR, the Labor Board held that the interns, residents, and clinical fellows (housestaff) of Albert Einstein Medical Center and Temple University fell within the meaning of employee as defined in Act 195[2] and ordered a representation election.[3] PAIR was elected the collective bargaining agent of the housestaff and orders of certification were issued. On appeal, the Philadelphia County Court of Common Pleas affirmed the PLRB's findings that the housestaff were employees within Act 195.[4] The Pennsylvania Commonwealth Court reversed the decision of the lower court,[5] emphasizing the educational advancement derived by the housestaff from their relationship with the hospital. In its view, the housestaff did not fall within the meaning of "public employe" in Act 195[6] and thus were not entitled to organizational rights under the state statute. In a 4-3 decision, the Pennsylvania Supreme Court affirmed.[7]

1. PA. STAT. ANN. tit. 43, §§ 1101.101-.2301 (Supp. 1976). If a party cannot obtain an employer's consent to an election, it can file with the PLRB a petition for a representation election. *Id.* § 1101.603(c).

2. Act 195 defines "public employe" as "any individual employed by a public employer." *Id.* § 1101.301(2).

3. Employees of Albert Einstein Medical Center, No. PERA-R-237-E (Pa. Lab. Rel. Bd., April 12, 1972).

4. Albert Einstein Medical Center v. PLRB, 3 Pa. Pub. Emp. Rep. 283 (1972).

5. Wills Eye Hosp. v. PLRB, 15 Pa. Commw. 532, 328 A.2d 539 (1974), *aff'd sub nom.* Philadelphia Ass'n of Interns & Residents v. Albert Einstein Medical Center, 369 A.2d 711 (Pa. 1976).

6. 15 Pa. Cmmw. at 542, 328 A.2d at 544.

7. Philadelphia Ass'n of Interns & Residents v. Albert Einstein Medical Center, 369 A.2d 711 (Pa. 1976).

The court first discussed the status of Albert Einstein Medical Center's housestaff under Act 195 and decided the question was moot. It held that a 1974 amendment to the Labor Management Relations Act[8] included private, nonprofit hospitals such as Albert Einstein within its coverage; since the federal law preempted state jurisdiction,[9] the housestaff of Albert Einstein Medical Center were not entitled to organizational rights under Act 195. Temple University was not a private, nonprofit hospital, and the status of its housestaff was still controlled by state law. The court, therefore, addressed the status of these employees under Act 195.

Justice O'Brien, speaking for the majority, initially considered the meaning of public employee under the Act. He found little guidance in the Act's broad definition[10] to resolve this case of first impression. Acknowledging the lack of case law on the question, the court accepted as true the PLRB's findings of fact.[11] It rejected, however, the PLRB's conclusion that the housestaff were employees under Act 195.[12] The PLRB's determination that the housestaff were

8. 29 U.S.C. § 152(2) (Supp. 1975).

9. 369 A.2d at 713.

10. *See* note 2 *supra* for the statutory definition of "employe."

11. 369 A.2d at 714.

12. The dissents focused on the proper scope of review of decisions by administrative agencies. The statutory test for the conclusiveness of the PLRB's findings of fact is whether or not they are "supported by substantial and legally credible evidence." PA. STAT. ANN. tit. 43, § 1101.1502 (Supp. 1976). Justices Eagen and Roberts treated the issue of whether the housestaff were employees under Act 195 as one of fact; in their view, the majority failed to apply the proper statutory test and substituted its judgment for that of the PLRB. 369 A.2d at 716-17; *id.* at 720-21 (dissenting opinions). One difficulty with *Einstein* is that the court was presented not with a question of pure fact but with a mixed question of fact and law. Whether or not the housestaff are employees as the word is commonly understood is a question of fact. The question of law is one of statutory interpretation—whether the housestaff were employees within that term's meaning in Act 195. When reviewing mixed questions of law and fact in an administrative context, courts have applied one of two tests. A rational basis standard may be used by a court to determine whether the agency's conclusion has a rational basis in fact, or, a court may independently evaluate the facts and substitute its judgment for that of the administrative agency. *Compare* Gray v. Powell, 314 U.S. 402 (1941) (upholding Director of Bituminous Coal Division's determination that railroad company that consumed coal was not a "producer" of coal under the Bituminous Coal Act), *with* Texas Gas Trans. Corp. v. Shell Oil Co., 363 U.S. 263, 270 (1960) (court of appeals was justified in substituting its own judgment for that of the Federal Power Commission). *See generally* K. DAVIS, ADMINISTRATIVE LAW TREATISE §§ 30.06-.07, at 551-56 (3d ed. 1972).

The *Einstein* majority substituted its judgment for that of the PLRB. The dissenters argued that the court should defer to the Board's expertise, use a rational basis test, and determine whether the PLRB's conclusion could reasonably follow from the facts presented. Under that test, they argued, the Board's determinations should have been binding. 369 A.2d at 716; *id.* at 720-21 (dissenting opinions).

employees was based on objective criteria such as the percentage of time spent in patient care services as compared with time spent in educational activities, federal income taxation of the housestaff's wages, and the presence of other traditional indicators of employee status.[13] The Pennsylvania Supreme Court, on the other hand, adopted a subjective approach, in which the housestaff's motivation in securing positions with the hospital was a critical factor in determining their status.[14]

The housestaff were found to be motivated to attain employment primarily by educational requirements[15] and opportunities for educational advancements, rather than by monetary compensation.[16] Despite the majority's concession that the housestaff were "clothed with the indicia of employee status,"[17] the determination that remuneration did not constitute the students' quid pro quo for working at the hospital precluded classifying the housestaff's affiliation with the hospital as a typical employment relationship.[18] The majority also emphasized the requirement that the residencies and internships be served at an approved hospital and believed that this requirement negated the usual bargaining freedom generally associated with an employer-employee relationship.[19] Furthermore, in

13. 369 A.2d at 714. Other indicia were enumerated in the PLRB's brief to the Supreme Court. The housestaff received Blue Cross-Blue Shield coverage, and major medical insurance and group life insurance; they enjoyed parking, cafeteria, and laundry privileges as did other employees of the hospital; the housestaff were covered by malpractice and workmen's compensation insurance, and retained employee identification cards. Brief for Appellant PLRB at 7-8, Philadelphia Ass'n of Interns & Residents v. Albert Einstein Medical Center, 369 A.2d 711 (Pa. 1976) [hereinafter cited as Brief for Appellant PLRB].

14. 369 A.2d at 714.

15. Pennsylvania requires a one-year internship at an approved hospital as a prerequisite to the practice of medicine. The State Board of Medical Education and Licensure requires residency as a prerequisite for certification as a specialist. *See* Medical Practice Act of 1973, PA. STAT. ANN. tit. 63, §§ 421.1-.18 (Supp. 1976). The Act also requires internships and residencies to be served at an approved hospital, defined as "a hospital which has been approved by the [State Board of Medical Education and Licensure] for providing supervised graduate medical training." *Id.* § 421.2(9).

16. 369 A.2d at 714.

17. *Id. See* note 13 and accompanying text *supra*.

18. 369 A.2d at 714.

19. Concededly, the housestaff's choice of work places is limited to a list of approved hospitals. However, they are free to choose among these hospitals on the basis of such traditional factors as pay, benefits, prestige of the hospital, educational opportunities available, and location. This would indicate a reasonable measure of freedom of choice which is indicative of a normal employer-employee relationship. For a consideration of the limitations on bargaining freedom discussed in the context of standardized contracts see generally MURRAY

light of the short duration of the housestaff's relationship with the hospital, granting them employee status under Act 195 would be inconsistent with the spirit of the Act which the majority perceived as contemplating the regulation of continuous employment relationships.[20] The court found support for its decision in *Cedars-Sinai Medical Center & Cedars-Sinai Housestaff Association*,[21] where the National Labor Relations Board had recently ruled that housestaff at a medical center did not fall within the definition of employee under the National Labor Relations Act (NLRA).

Three justices disagreed with the majority's use of subjective criteria to decide whether the housestaff were employees under Act 195. Justice Eagen pointed out that the subjective approach implemented by the majority would not be applied to determine the status of other persons whose primary motivation for attaining employment was the fulfillment of statutorily-mandated requirements for a profession.[22] He felt that adopting a subjective test could lead to absurd results,[23] and questioned the majority's reliance on *Cedars-Sinai* since the National Labor Relations Board had also applied a subjective test.[24] Justice Manderino concurred with this view.[25]

ON CONTRACTS § 350, at 735-39 (2d rev. ed. 1974). *See also* J. CALAMARI & J. PERILLO, THE LAW OF CONTRACTS § 3, at 4-6 (1970).

20. 369 A.2d at 715.

21. 91 L.R.R.M. 1398 (1976).

22. Justice Eagen pointed out that two years of employment with a public accounting firm is normally a prerequisite for becoming a certified public accountant. *See generally* PA. STAT. ANN. tit. 63, § 9.4 (Supp. 1976). He argued that the majority would not use the subjective approach to deny employee status to an accountant who secures employment with a public accounting firm primarily to meet the statutory requirements for qualifying as a certified public accountant. 369 A.2d at 716 (dissenting opinion).

23. Under a subjective test, two individuals could stand in the same relationship to the hospital or firm, yet one would be an employee because his motivation in securing a position was monetary compensation, while the other would not be an employee because his motivation was educational advancement. 369 A.2d at 716.

24. *Id.* The National Labor Relation Board's decision in *Cedars-Sinai* is contrary to existing authority on the question. *See id.* and cases cited therein. Justice Eagen also thought it significant that the only tribunal to consider the issue of employee status of housestaff subsequent to *Cedars-Sinai* rejected the NLRB's reasoning. *See* Cambridge Hosp. House Officers Ass'n, No. MRC-2163 (Mass. Lab. Rel. Comm'n, April 29, 1976).

25. 369 A.2d at 724 (dissenting opinion). Justice Manderino also dissented from the majority's disposition of the issue of the status of Albert Einstein Medical Center's housestaff. *See* text accompanying notes 8-9 *supra*. He believed this issue could not properly be decided without giving full consideration to whether the 1974 amendment to the Labor Management Relations Act should be given retroactive effect.

Justice Roberts noted that the majority was judicially creating an exception to the broad definition of employee contained in Act 195.[26] The Pennsylvania General Assembly had set forth specific exceptions to the Act's broad coverage[27] and Justice Roberts felt that the court should be reluctant to create others by negative implication. According to Justice Roberts, the housestaff's salaried affiliation with the hospital, when considered with the Act's purpose, supported a finding of employee status under Act 195.[28] His perception differed from the majority's view of the Act's objective. He believed that Act 195 was intended to safeguard the public interest in services rendered by public employees by providing collective bargaining as a means of insuring stability and peace in the public employment sector. Once it was determined that the housestaff were performing public services, the duration of their relationship with the hospital and student status were not determinative of their treatment under the Act.[29]

The meaning of the term "employe" under Act 195 cannot be properly considered without regard to the purpose underlying enactment of the legislation.[30] Under the Public Employe Act of 1947,[31] public employees had neither the right to strike nor the right to bargain collectively with their employers.[32] This statutory predecessor of Act 195, however, was ineffective and incapable of enforcement; illegal strikes were commonplace, strife and unrest in public

26. 369 A.2d at 722 (dissenting opinion).

27. *See* PA. STAT. ANN. tit. 43, § 1101.301(2) (Supp. 1976) for the enumerated exclusions.

28. 369 A.2d at 721 (dissenting opinion). *See* note 36 *infra* for the Pennsylvania General Assembly's view of Act 195's purpose.

29. 369 A.2d at 722 (dissenting opinion). The educational requirements and student status of the housestaff were, however, recognized by Justice Roberts as factors which may appropriately be considered by the employer in collectively bargaining with the housestaff.

30. Justice Roberts argued that the words of a statute must be construed in light of the act's purpose. 369 A.2d at 723 (dissenting opinion). He cited NLRB v. Federbush Co., 121 F.2d 954 (2d Cir. 1941), where Judge Learned Hand discussed employer free speech under the NLRA and stressed the importance of viewing words in that context. *See also* NLRB v. Atkins & Co., 331 U.S. 398, 403 (1947) (pointing out the necessity of considering the congressional policy underlying the NLRA when determining the status of plant guards under the Act); Costigan v. Philadelphia Fin. Dep't Employees Local 696, 462 Pa. 425, 341 A.2d 456 (1975) (deciding the issue of employer status under Act 195 and accepting the Supreme Court's reasoning in NLRB v. Atkins & Co., *supra*).

31. PA. STAT. ANN. tit. 43, §§ 215.1-.5, *as amended*, PA. STAT. ANN. tit. 43, §§ 1101.101-.2301 (Supp. 1976).

32. *See* PLRB v. State College Area School Dist., 461 Pa. 494, 502-03, 337 A.2d 262, 266 (1975) (discussing public employees' status before enactment of Act 195).

employment became prevalent.[33] Pennsylvania's Governor Shafer formed the Commission to Review the Public Employe Law of Pennsylvania to investigate the causes of this unrest[34] and its potential danger. The Commission concluded that the lack of the right to bargain collectively was the greatest single cause of strikes in the public sector.[35] It recommended to the General Assembly that public employees be accorded representation rights. In Act 195, the Pennsylvania legislature adopted the Commission's proposal, and recognized the need to eliminate the possible deleterious effects of poor labor relations between public employees and their employers.[36]

In dealing with legislation regulating labor relations, an examination of the purpose of an act is central to a judicial construction of its terms. Indeed, the United States Supreme Court, in resolving the issue of employee status under the NLRA for the purpose of granting collective bargaining rights, has looked to the purpose of that Act and considered whether granting such rights in a particular case would further its purpose.[37] Prior to *Einstein*, the Pennsylvania Supreme Court had adopted the United States Supreme Court's approach to the NLRA in deciding a case involving the construction of the term "employer" under Act 195.[38] The majority's construction

33. *Id.* For statistics on the number of illegal strikes in the middle and late 1960's see Weisenfeld, *Public Employees Are Still Second Class Citizens*, 20 LAB. L.J. 138, 140 (1969). *See also* Fleming, *Public Employee Unionism*, 9 GA. L. REV. 1, 10-11 (1974), where the author presents arguments for according public employees the right to strike.

34. *See* PLRB v. State College Area School Dist., 461 Pa. 494, 502-03, 337 A.2d 262, 266 (1975) (reviewing factors which led to formation of the Commission). *See* REPORT AND RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION TO REVISE THE PUBLIC EMPLOYE LAW OF PENNSYLVANIA Appendix A (1968) [hereinafter cited as REPORT OF GOVERNOR'S COMMISSION]. The Commission conferred with officials of Wisconsin and Michigan, along with those of New York City, regarding the administration of their laws regulating collective bargaining in the public sector. *Id.* at 1.

35. REPORT OF GOVERNOR'S COMMISSION, *supra* note 34, at 9.

36. The public policy and purpose stated in Act 195 is

> to promote orderly and constructive relationships between all public employers and their employes subject, however, to the paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare. Unresolved disputes between the public employer and its employes are injurious to the public and the General Assembly is therefore aware that adequate means must be established for minimizing them and providing for their resolution.

PA. STAT. ANN. tit. 43, § 1101.101 (Supp. 1976). For judicial commentary on Act 195's purpose see PLRB v. State College Area School Dist., 461 Pa. 494, 503, 337 A.2d 262, 266 (1975).

37. *See* NLRB v. Atkins & Co., 331 U.S. 398, 414 (1947).

38. *See* Costigan v. Philadelphia Fin. Dep't Employee Local 696, 462 Pa. 425, 341 A.2d

of employe in *Einstein*, however, is inconsistent with this approach. Moreover, the nature of the housestaff's services further indicates that an objective approach, looking to the purpose of the Act, should have been adopted. The housestaff are directly involved in providing vital health care services to the public.[39] Work interruptions in the hospital might have direct injurious effects on the flow of an important public service.[40] A construction of "employe" which would grant the housestaff employee status under Act 195 and accord them the right to bargain collectively would seem to be appropriate from the perspective of the historical objective of the Act.[41]

A major impetus for the passage of Act 195 was a concern that poor labor relations in the public sector could adversely affect the community through inadequate provision of public services.[42] Under the Act, the employment relationship itself, and the interests of the individuals involved, were considered to be secondary to the paramount interests of the public.[43] The subjective approach adopted by the court in *Einstein*, however, focuses on the individual employee interests, rather than on the state's interest in the uninterrupted flow of public services. One factor which the majority believed to be particularly significant in deciding that the interns and residents were precluded from coverage under the Act was the brevity of their employment relationship with the hospital.[44] Yet other jurisdictions dealing with the issue of whether to extend collective bargaining rights to housestaff have rejected duration of the employment relationship, along with educational requirements and student status, as determinative of their right to collectively bargain.[45]

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456 (1975), adopting the Supreme Court's rationale in *Atkins* in order to assess employer status under Act 195. *See* note 37 and accompanying text *supra*.

39. *See* 369 A.2d at 724 (Roberts, J., dissenting).

40. *Id.* at 717 (Eagen, J., dissenting).

41. *See id.* at 723-24 (Roberts, J., dissenting).

42. For a brief discussion of the purpose of Act 195 see Board of Educ. v. Philadelphia Fed'n of Teachers Local 3, 346 A.2d 35, 39 (Pa. 1975); Western Psychiatric Institute & Clinic v. Commonwealth, 16 Pa. Commw. 204, 211, 330 A.2d 257, 261 (1974).

43. *See* note 36 *supra*.

44. 369 A.2d at 715.

45. The Massachusetts Labor Relations Commission has held that the housestaff of a private, nonprofit hospital have employee status under the Massachusetts law granting collective bargaining rights to public employees. Cambridge Hosp. House Officers Ass'n, No. MRC-2163 (Mass. Lab. Rel. Comm'n, April 29, 1976). *See* MASS. GEN. LAWS ch. 150E, §§ 1-15 (Supp. 1976). The New York Labor Relations Board has accorded housestaff at nonprofit, voluntary hospitals employee status under that state's law granting collective bargaining

Had the *Einstein* majority adopted a more objective analysis to assess whether the interns and residents were employees within the meaning of Act 195, they probably would have reached a contrary result. This contention finds support in cases decided in the area of tax law. Tax cases recognize that the usual bargained-for exchange present in the typical employment relationship—monetary compensation—is not absent from the housestaff's employment relationship with a hospital.[46] Section 117 of the Internal Revenue Code excludes from gross income amounts received as a scholarship or fellowship grant.[47] Housestaff salaries generally fail to qualify for this exclusion,[48] the salaries being subject to income tax as normal gross income.[49] The fact that any educational benefit was derived from the services of housestaff neither negated their status as salaried employees, nor qualified them for tax benefits under federal law.[50] Decisions holding housestaff ineligible for the section 117 exclusion have indicated that the housestaff bargained for both educational *and* monetary compensation. While academic considerations attracted the housestaff to particular hospitals, that element consti-

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rights to certain employees. The Long Island College Hosp., No. SE-4295 (N.Y. Lab. Rel. Bd., April 29, 1970); Brooklyn Eye & Ear Hosp., No. SE-42496 (N.Y. Lab. Rel. Bd., March 11, 1969). While there are slight differences in the language of the Massachusetts, New York, and Pennsylvania Acts, the rationale applied by the Massachusetts Labor Relations Commission and the New York State Labor Relations Board would seem relevant to the Pennsylvania Supreme Court's consideration of the status of Temple's housestaff under Act 195. The Pennsylvania Supreme Court, however, did not discuss these decisions.

46. Hembree v. United States, 464 F.2d 1262 (4th Cir. 1972) (compensation to hospital resident constituted part of mutual consideration for services performed and was subject to income tax). *Cf.* Tobin v. United States, 323 F. Supp. 239 (S.D. Tex. 1971) (holding that monetary compensation constituted only part of resident physician's quid pro quo and pointing out absurdity of maintaining that trained professionals would accept a position which paid such low compensation absent educational opportunities).

47. INT. REV. CODE of 1954, § 117. For a definition of scholarship and fellowship grants see Treas. Reg. § 1.117-3 (1953).

48. *See, e.g.*, Tobin v. United States, 323 F. Supp. 239 (S.D. Tex. 1971) (compensation paid to resident physician not excludable under § 117); Kwass v. United States, 319 F. Supp. 186 (E.D. Mich. 1970) (compensation paid to resident physician while affiliated with university hospital not excludable under § 117); Wertzberger v. United States, 315 F. Supp. 34 (W.D. Mo. 1970).

49. The Internal Revenue Code specifically includes in gross income amounts received as compensation for services rendered. INT. REV. CODE of 1954, § 61.

50. *See, e.g.*, Wertzberger v. United States, 315 F. Supp. 34, 35 (W.D. Mo. 1970), where the court held a resident physician liable for federal income tax and stated: "Resident physicians obviously are both receiving an education and rendering valuable services to the hospital, resulting in mutual benefit, to the hospital and to themselves." *See also* Kwass v. United States, 319 F. Supp. 186, 188 (E.D. Mich. 1970).

tuted only part of the bargained-for exchange.[51] By noting that fulfillment of educational requirements was the housestaff's primary purpose for being at Temple, and concluding that these requirements negated employee status of the housestaff within the meaning of Act 195,[52] the majority in *Einstein* ignored the fact that only a small percentage of the housestaff's time was spent in educational activity.[53] And, the Pennsylvania Supreme Court majority has taken a position seemingly inconsistent with federal determination for income tax purposes of the status of housestaff similarly situated to those at Temple University. Whether housestaff are employees under federal income tax law need not be dispositive of their employee status under Act 195.[54] However, other jurisdictions have found income tax status to be a relevant consideration in determining whether housestaff fall within the purview of statutes granting employees collective bargaining rights.[55]

In concluding that housestaff are not public employees under the Act, the Pennsylvania Supreme Court apparently believed that the potentially injurious effects flowing from disruptive labor relations in the public sector which gave rise to Act 195 were not a substantial threat in the housestaff's situation. Hence, it was not necessary to accord these individuals the right to strike or bargain collectively with their employer. The *Einstein* decision is troublesome in a number of ways. Before the question of the statutory right to strike or collectively bargain with a public employer can be reached, the determination must be made that the individuals seeking the right

51. *See* note 46 *supra*.

52. *See* 369 A.2d at 714.

53. *Id.* at 721-22 (Roberts, J., dissenting).

54. *See* Sweet v. PLRB, 457 Pa. 456, 461-62, 322 A.2d 362, 364-65 (1974) (recognizing the relevancy of tests developed in other areas of law to the determination of an employment relationship under Act 195).

55. *See* Cambridge Hosp. House Officers Ass'n, No. MRC-2163 (Mass. Lab. Rel. Comm'n, April 29, 1976). The Commisson discussed the relevance of the housestaff's treatment under the federal income tax law to their status under the Massachusetts law granting public employees collective bargaining rights. *See* note 45 *supra* for the relevant statutory sections. It concluded that their status as employees within the meaning of the federal tax law supported a finding that they were employees under the state law granting collective bargaining rights. *See* note 45 *supra*. *See also* Regents of Univ. of Mich. v. Michigan Employment Rel. Comm'n, 389 Mich. 96, 204 N.W.2d 218 (1973). In determining the employee status of housestaff under the Michigan Public Employee Act, MICH. STAT. ANN. §§ 17.455(1)-(16) (Supp. 1976), the Michigan Supreme Court also thought it significant that the housestaff were ineligible for the scholarship or fellowship exclusion of the INT. REV. CODE of 1954, § 117. *See* text accompanying notes 46-51 *infra*.

are employees under Act 195. There are, however, no limitations on work stoppages or other means of asserting bargaining strength by nonemployees. Perhaps the court, in choosing to create an exception to Act 195's broad statutory definition,[56] did not consider the ramifications of its determination. The decision left the housestaff with no restrictions on their ability to apply economic pressure against the hospital. Thus the housestaff as nonemployees could conceivably achieve the same objectives as they would seek through collective bargaining or strikes regulated by Act 195. At the same time, as nonemployees, the housestaff are without the protection granted employees under the Act.

Denying housestaff the benefits of the state's public employee legislation is contrary to decisions in other jurisdictions[57] and arguably subverts the legislative intent embodied in the Act.[58] The subjective approach utilized by the Court, while consistent with the National Labor Relations Board's position in *Cedars-Sinai*, renders the applicability of Act 195 dependent upon the motivations of the individuals involved, and makes questionable the Act's extension to employees whose reasons for choosing particular employment go beyond remuneration. Although *Einstein* ostensibly settles the issue whether interns, residents, and clinical fellows are entitled to collective bargaining rights under Act 195, it provides the PLRB with little guidance for future determinations of employee status under the Act.[59]

Phyllis J. Palascak

56. 369 A.2d at 722 (dissenting opinion).

57. *See* note 45 and accompanying text *supra*.

58. *See* notes 31-41 and accompanying text *supra*.

59. The PLRB's counsel has expressed concern for its inability to determine the status of an individual under Act 195 in light of the *Einstein* decision. *See* Brief for Appellant PLRB, *supra* note 13, at 49. On February 16, 1977, the Supreme Court of Pennsylvania denied rehearing of its decision.