

Valley View Hospital and Valley View Professional Employees Association, Case 27-CA-6743

September 30, 1980

DECISION AND ORDER REMANDING PROCEEDING TO REGIONAL DIRECTOR

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

Upon a charge filed on May 28, 1980, by Valley View Professional Employees Association, herein called the Union, and duly served on Valley View Hospital, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 27, issued a complaint on June 26, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 23, 1979, following a Board election in Case 27-RC-5808, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about May 11, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so.¹ On July 3, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On July 16, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on July 28, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

¹ Official notice is taken of the record in the representation proceeding, Case 27-RC-5808, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV ElectroSystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C. Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

The General Counsel argues in support of the Motion for Summary Judgment that the election of April 19, 1979, was conducted pursuant to a Stipulation for Certification Upon Consent Election. The Union having won such election, the Regional Director certified it as the exclusive bargaining representative of the employees in said unit. The General Counsel further alleges that Respondent has since refused to bargain collectively with or recognize the Union as the representative of the unit employees; and has offered no newly discovered evidence, or evidence not previously available to it in the underlying representation case.

Respondent on the other hand argues that the Regional Director has certified the Union as representative for an inappropriate unit, contrary to the mandatory provisions of Section 9(b)(1) of the Act, after having accepted a stipulation between the parties which does not conform to the facts of the case; conflicts with the laws of the State of Colorado; and violates Section 9(b)(1) of the Act, and established Board Policy. Respondent argues, therefore, that the Board should deny the Motion for Summary Judgment.

The stipulated unit between the parties was composed of the following employees:

Registered nurses, licensed practical nurses, laboratory personnel, respiratory therapy personnel, physical therapy personnel, X-ray personnel, clinical dietician, central sterile supply aides, operating room technicians and aides. EXCLUDED: Housekeeping personnel, professional employees, office clerical employees, confidential employees, maintenance employees, laundry employees, cooks and food service workers, guards and supervisors as defined in the Act.

In his discussion of the unit composition, the Regional Director noted that the unit included registered nurses, who as professional employees under the Act normally would be entitled under Section 9(b)(1) of the Act to vote on a separate ballot as to their wish to be included in a unit with nonprofessional employees. In view of the stipulation of the parties, however, the Regional Director found the unit to be appropriate for the purposes of collective bargaining.

It is settled Board policy to accept stipulations from the parties as to composition of the unit, unless such stipulations are contrary either to statutory provisions of the Act, or established Board policy.²

Section 9(b) of the Act states that "the Board shall not (1) decide that any unit is appropriate . . . if such unit includes both professional employees and employees who are not professional employees, unless a majority of such professional employees vote for inclusion in such unit."

Moreover, the Board has traditionally found many unit employees to be professional employees under the Act.³ As such, they cannot be included in a unit with nonprofessional employees, absent their vote in favor of such inclusion.⁴

² *The Tribune Company*, 190 NLRB 398 (1971).

³ *Mercy Hospitals of Sacramento, Inc.*, 217 NLRB 765 (1975). See also Colorado Professional Nursing Practice Act, CRS 1973, 12-38-201, *et seq.*

⁴ *Sonotone Corporation*, 90 NLRB 1236 (1950); *Catholic Charities of Buffalo, New York, Inc.*, 220 NLRB 9 (1975).

There was no testimony presented at the representation hearing which would indicate they were technical employees, or performed duties different from those implied in their job classification. The stipulation, alone, cannot override the mandate of the statute regarding the inclusion of professional employees in a nonprofessional unit, or that of established Board policy.

Accordingly, we deny the Motion for Summary Judgment.

ORDER

It is hereby ordered that the above-entitled proceeding be, and it hereby is, remanded to the Regional Director for Region 27 for further appropriate action.