**Aurelia Osborn Fox Memorial Hospital *and* Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC.** Case 3–CA–8721

January 17, 1980

## DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND TRUESDALE

Upon a charge filed by Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 3, issued a complaint on December 18, 1978,[1] against Respondent Aurelia Osborn Fox Memorial Hospital, herein called Respondent or Hospital. Copies of the charge, complaint, and notice of hearing before an administrative law judge were duly served on Respondent and the Union. In substance, the charge alleges that Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended, by refusing to meet and bargain collectively with the Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC, herein called Local 721 or the Union, as the exclusive collective-bargaining representative of all the licensed practical nurses (LPNs) and graduate practical nurses at Respondent's hospital.

The answer denied the allegations in the complaint and the commission of any unfair labor practices. Respondent asserted as its affirmative defense that it never received from the Union the information requested by Respondent necessary to determine whether the Union was a legal successor to the Licensed Practical Nurses of New York, Inc.

On April 30, 1979, the Union, the General Counsel, and Respondent entered into a stipulation in which they agreed that certain documents shall constitute the entire record herein,[2] and that no oral testimony is necessary or desired by any of the parties. Thus, the parties expressly waived all intermediate proceedings before an administrative law judge and oral argument in this matter, and petitioned that this case be transferred to the Board for the purpose of making findings of facts and conclusions of law and issuing an appropriate order, reserving to themselves only the right to object to the materiality, relevancy, or competency of any of the stipulated facts.

By order dated August 16, 1979, the Board approved the stipulation, transferred the proceedings to itself, and set a date for the filing of briefs. Thereafter, the General Counsel and Respondent filed briefs,[3] which have been duly considered by the Board.

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.

The Board has considered the entire record herein as stipulated by the parties, as well as briefs filed by Respondent and the General Counsel, and makes the following findings and conclusions:

### FACTS

#### I. THE BUSINESS OF RESPONDENT

Aurelia Osborn Fox Memorial Hospital is a nonprofit New York corporation located in Oneonta, New York, where it is engaged in the operation of an acute care general hospital. In the course and conduct of its operations, the Hospital annually derives gross revenues in excess of $250,000 and annually purchases and receives goods and products valued in excess of $50,000 directly from suppliers located outside the State of New York.

The parties stipulated, and we find, that Respondent is now, and at all times material herein has been, an employer engaged in commerce and in business affecting commerce within the meaning of Section 2(6) and (7) of the Act and that it is now, and at all times material herein has been, a health care institution within the meaning of Section 2(14) of the Act. We further find that it will effectuate the purposes of the Act to assert jurisdiction in this proceeding.

#### II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates herein are 1978 unless otherwise indicated.

[2] The stipulated record consists of the charge, complaint, answer, the stipulation to correct the transcript, a letter from the Union's attorney to Respondent's attorney dated September 13, 1978, the official record of the 10(j) proceedings before the U.S. District Court, Northern District of New York, on January 11, 1979, Case 78–CV–658. The exhibits received in evidence are those of the district court proceedings: G.C. Exhs. 1–9, 11–17, 20–24; Resp. Exh. A; a letter from the Union's attorney to Respondent's attorney dated September 18, 1978; the stipulation; and the motion to transfer the proceedings to the Board.

[3] Respondent filed an answer to the General Counsel's brief. Respondent states that the General Counsel is mistaken as to the facts in his estoppel argument. Respondent points out that it did not bargain with the Union in 1977 and was not aware of the Union's affiliation with S.E.I.U. until notified in 1978. The stipulated record supports Respondent's argument and the General Counsel's estoppel argument will be disregarded.

## III. THE UNFAIR LABOR PRACTICE

### A. *The Issue*

The question presented is whether Respondent violated Section 8(a)(5) of the Act by refusing to bargain collectively with the collective-bargaining representative of its licensed practical nurse employees.

### B. *The Stipulated Facts*

On February 10, 1972, the New York State Labor Relations Board certified the Union as the collective-bargaining representative of Respondent's licensed practical nurses (LPNs). The Union, a statewide labor organization with a membership over 4,000, is divided into geographical divisions and each division functions as a local. Respondent's approximately 40 LPNs belong to and are represented by the Otsego division and constitute the majority of the membership. There have been successive collective-bargaining agreements between the parties with the most recent agreement effective from July 1, 1976, to June 30, 1978.

In 1976, the Union held its annual convention at Monticello, New York, during which the delegates discussed and voted on entering into a temporary affiliation with the Service Employees International Union (S.E.I.U.). The agreement was for 2 years after which the Union would decide, at its 1978 convention, whether to make the affiliation permanent. The delegates also voted to admit technicians to membership. The bylaws were changed to include the word "technicians" whereever applicable.

Information regarding these changes and the proposed permanent affiliation agreement was printed in the Union's LPN magazines and distributed to all members during 1976. The affiliation issue was discussed again during the Union's annual convention in 1977 and subsequently reported on in the LPN magazines. During the months of March and April 1978 the members of the Otsego County Division met to elect their delegates to represent them at the 1978 annual convention. All members may attend the convention, but only delegates can vote. During the April 1978 meeting the president of the Otsego County Division informed the members present that a meeting was going to be held on April 27, 1978, of all the delegates from the upstate divisions in Syracuse, New York. The purpose of this meeting was to discuss how the upstate delegates were going to vote on the affiliation issue and other topics. The Otsego delegates attended the Syracuse meeting and voted in favor of making the affiliation with the S.E.I.U. permanent. From May 22 to 25, 1978, the Union held its 1978 annual convention at Swan Lake, New York. In attendance were delegates and members. On Monday evening, May 22, 1978, the major order of business for the Union was the issue of permanent affiliation with the S.E.I.U. Copies of the proposed permanent affiliation agreement were given to all those in attendance.[4] The president, Sylvia Allision, reported on how the temporary affiliation had worked. There was a question-and-answer period during which the delegates and members asked questions. The president then put the affiliation question to vote, and it was a unanimous vote for permanent affiliation with the S.E.I.U. The voting was done according to the Union's bylaws which require voting to be done by delegates only. The vote was a standing, nonsecretive vote. Each division, according to the Union's bylaws, is allowed a certain number of delegates to represent it at all regular and special meetings of the Union.[5] The Otsego division was entitled to five delegates, and all five were recorded as having attended. The vote as reported in the LPN magazine was 154 to none. There were no representatives of the S.E.I.U. present while the vote was conducted. Thereafter, the Union's name and bylaws were changed to reflect the affiliation with the S.E.I.U. and the admission of technicians to membership.

The convention and the affiliation results were reported on and distributed to all members in the Union's LPN magazine. The Otsego County Division president reported at its June 1978 meeting to the division membership the results of the convention including the affiliation decision.

On September 30, 1978, the collective-bargaining agreement between Respondent and the Union expired. Prior to this, on August 21, 1978, the parties met in a negotiating session to renew the contract. The Union's field representative, Robert E. Smith, submitted a list of proposed changes to the contract, one of which was to show the affiliation of the Union with the S.E.I.U. The Union also requested recognition for itself as Local 721, S.E.I.U. Respondent replied that it would take the matter under advisement.

On August 30, 1978, Respondent's attorney sent a five-page letter to Smith requesting the Union to provide certain information regarding the procedures of the affiliation as well as requesting certain documents. Respondent's attorney also stated that the information was requested so that a determination could be made as to whether the affiliation "met all the requirements of the NLRB so as to constitute Local 721 as the exclusive bargaining representative of the [Respondent's] LPNs without an NLRB conducted election."

[4] There is no significant difference between the temporary affiliation agreement and the subsequent permanent agreement.

[5] Union bylaws, art. XIII: 5 delegates and 5 alternates for membership of 100 or less; over 100, 1 delegate for each 25 members.

On September 13, 1978, the Union's attorney replied to Respondent's attorney's letter and sent the documents as requested. On September 15, 1978, the president of the Union sent a memorandum to Respondent's administrator informing him of the affiliation and the change in the Union's name.[6] The memorandum went on to state that the address of the organization remained the same, and that there had been no changes in its officers, agents, bylaws, dues, and structure. Thereafter, on September 21, 1978, Respondent's attorney sent a letter to the Union's attorney informing him that:

> . . . it was refusing to recognize and bargain with the union . . . . we conclude from your letter and the documents enclosed in it that the LPNs employed by the Hospital were not consulted in advance about any affiliation and have never chosen any Local Union of the S.E.I.U. to be their representative. Therefore we have advised our client it would be neither proper under the National Labor Relations Act nor in the best interest of [its] employees for the Hospital to extend recognition to Local 721.

The letter went on to decline to meet with Field Representative Smith for any further bargaining.

### C. *Contentions of the Parties*

In its brief Respondent argues that with the transformation of the Union into a local of S.E.I.U. a sufficient change in the bargaining representative has occurred to create a question of representation, and that therefore Respondent had no obligation to bargain unless and until the Union was certified by the Board. In addition, Respondent, through a numerical analysis, argues that the Union, as a small entity (approximately 4,500) affiliated with the large International (approximately 600,000), has been swallowed up, and its input into the decisionmaking process has been diminished. This has, in turn, diluted the control that Respondent's LPNs had over their bargaining representative. Further, Respondent contends that the affiliation methods used by the Union did not comport with the requirements of the Board regarding a secret-ballot election nor did they meet the minimum standards of due process. Respondent asserts in this regard that its employees were not afforded the opportunity, after adequate notice, to discuss and reflect upon the issue of affiliation as well as the opportunity to vote.

The General Counsel argues that the Union utilized a fair and regular method of voting by delegate which was in accordance with its bylaws.[7] Further, the union membership as a whole, including Respondent's LPNs, was kept informed over a 2-year period via the Union's magazines, monthly division meetings, and the conventions. The General Counsel points to the meetings held by the Otsego division just prior to the May 1978 convention at which time the issue of affiliation was discussed.

The General Counsel further argues that in a case such as this where complete continuity and autonomy has been effected it is not necessary for the Board to scrutinize the involvement of unit members.[8] The General Counsel contends that the method of the Union's vote on affiliation is basically an internal union matter, and that Respondent's LPNs neither complained of nor took any action in opposition to the affiliation.

### D. *Discussion*

The affiliation agreement and the stipulated record show clearly that Local 721 is not a new organization, and that the affiliation effected no substantial change, if any, in the representation of Respondent's LPNs. The internal organizational structure, the president and other officers, including those at the division level, remained the same. The Union retained all ownership and control of its money and property. The Union retained the right to establish and keep its own dues and to retain its own counsel and select its own staff. It retained the right to make its own policy determinations and negotiate its own contracts and to call its own strikes. The same staff previously responsible for providing assistance to the county divisions continued to have the same responsibilities. The S.E.I.U. expressly waived article VIII, section 1(f), of its constitution and bylaws which gives the president of the S.E.I.U. the authority to negotiate contracts for locals of the S.E.I.U.

In *Amoco Production Company,* 239 NLRB 1195, 1196 (1979),[9] the Board stated:

> An affiliation is the alignment or association of a union with a national or parent organization. An affiliation does not create a new organization, nor does it result in the dissolution of an already existing organization. The organizations participating in the affiliation determine whether any administrative or organizational changes are necessary in the affiliating organization.

[6] Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC.

[7] *National Carbon Company, a Division of Union Carbide and Carbon Corporation (Edgewater Works),* 116 NLRB 488, 498 (1956), enfd. 244 F.2d 672 (6th Cir. 1957).

[8] *American Enka Company, a Division of Akzona Incorporated,* 231 NLRB 1335 (1977).

[9] Board Member Jenkins dissenting on other grounds.

As discussed *supra*, we find that the successor Union, Local 721, is the same bargaining entity as the predecessor Union, and that representation of Respondent's LPNs remains unchanged in any meaningful respect.[10] The affiliation did not directly involve the employment relationship. Therefore, we reject Respondent's argument that a question concerning representation arose as a result of the affiliation. Further, because there has been no change and Local 721 is autonomous from the S.E.I.U., we find that there has been no diminution of the Union's decisionmaking power. We therefore reject Respondent's numerical argument that the Union's affiliation with a large International has diminished the local's control over its affairs.

The vote in favor of affiliation was unanimous and conformed to the constitution of the Union and registered the desires of the members. Although the vote was not secret, the procedure was not so substantially irregular as to negate the validity of the vote.[11] The Board has repeatedly held that the strictures which it imposes upon its own election proceedings are not generally applicable in proceedings such as this involving employee affiliation elections.[12] What is important is giving effect to the employees' desires as evidenced by the unanimous vote. Respondent's employees were kept informed over a 2-year period and did participate to the extent that they wished or to the extent that circumstances permitted. To refuse to give effect to the desires of the employees would amount to giving the Employer a right to veto the employees' choice of a bargaining representative. It is significant that none of Respondent's employees objected to the affiliation with the S.E.I.U.[13] As stated previously, an affiliation vote is basically an internal union matter, and we adhere to the Board's consistent policy of honoring the desires of the employees pursuant to Section 7 of the Act, which clearly grants them the "right to bargain collectively through representatives of their own choosing." The Board stated in *Newspaper, Inc., Publishers of The Austin American and The Austin Statesman*, 210 NLRB 8, 10 (1974), enfd. 515 F.2d 334 (5th Cir. 1975): ". . . an Employer has no right of choice, either affirmatively or negatively, as to who will sit on the opposite side of the bargaining table." There is no question here as to the true desires of the employees, and there is no question that the affiliation effected no change in the day-to-day representation of Respondent's employees.[14] Therefore, in a case such as this, where complete continuity has been maintained, a separate vote by Respondent's employees is not required.[15] Accordingly, for the reasons discussed above, we find that Respondent had an obligation to bargain with Local 721, and that by refusing to recognize and bargain Respondent violated Section 8(a)(5) and (1) of the Act.

[10] *Quemetco, Inc., a subsidiary of RSR Corporation*, 226 NLRB 1398 (1976).

[11] *East Dayton Tool & Die Company*, 190 NLRB 577, 579 (1971) (Member Jenkins dissenting on other grounds).

[12] *Quemetco, Inc., supra* at 1399.

[13] *Good Hope Industries, Inc., d/b/a Gasland, Inc.*, 239 NLRB 611 (1978).

[14] *Newspaper, Inc., supra* at 10.

[15] *American Enka Co., supra* at 1337.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICE UPON COMMERCE

The activities of Respondent set forth above have a close, intimate, and substantial relationship to trade, traffic, and commerce among several States and tend to lead to industrial strife burdening and obstructing commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

On the basis of the foregoing findings of the fact, and on the entire record in this case, we make the following:

## CONCLUSIONS OF LAW

1. The Respondent, Aurelia Osborn Fox Memorial Hospital, is an employer within the meaning of the Act.

2. Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC, constitutes a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time licensed practical nurses and graduate practical nurses employed by the Employer at its 1 Norton Avenue, Oneonta, New York, facility, excluding supervisors and all other employees, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times since May 21, 1978, the Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC, has been the exclusive representative of all the employees within the appropriate unit for purpose of collective bargaining with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment within the meaning of Section 9(a) of the Act.

5. By refusing on and since August 21, 1978, and September 21, 1978, to bargain with Local 721 as the exclusive representative of the employees of the above-described appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Aurelia Osborn Fox Memorial Hospital, Oneonta, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain collectively with Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC, and its designated agents, as the exclusive representative of its employees in the following appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> All full-time and regular part-time licensed practical nurses and graduate practical nurses employed by the Employer at its 1 Norton Avenue, Oneonta, New York, facility, excluding supervisors and all other employees as defined in the Act.

(b) Interfering with the efforts of the above-named labor organization to bargain collectively on behalf of the employees in the above-described unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, meet and bargain with the above-named labor organization and its designated agents as the exclusive representative of all its employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if agreement is reached, embody it in a signed contract.

(b) Post at its place of business in Oneonta, New York, copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 3, in writing, within 20 days of this Order, what steps Respondent has taken to comply herewith.

[16] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

WE WILL, upon request, meet and bargain collectively with Licensed Practical Nurses and Technicians of New York, Inc., Local 721, S.E.I.U., AFL–CIO, CLC, and its designated agents as your exclusive representative, and, if agreement is reached, embody it in a signed contract. The bargaining unit is:

> All full-time and part-time licensed practical nurses and graduate practical nurses employed by the Employer at 1 Norton Avenue, Oneonta, New York, facility, excluding all other employees and supervisors as defined in the Act.

WE WILL NOT interfere with the efforts of the above-named Union to bargain on behalf of the employees of the above-named described unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

> AURELIA OSBORN FOX MEMORIAL HOSPITAL