

Woodlawn Hospital and Hospital Employees' Labor Program of Metropolitan Chicago. Case 13-CA-13539

September 28, 1979

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN, FANNING AND MEMBERS JENKINS AND PENELLO

On November 23, 1977, the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding, finding, *inter alia*, that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, by failing to reinstate its striking employees as vacancies arose after an unconditional request for their reinstatement was made and by hiring three strikers as new employees, without their accrued seniority and other rights and privileges. The Board ordered, *inter alia*, that Respondent offer 59 employees² reinstatement to their former or substantially equivalent positions, to make them whole for any loss of earnings, and to accord full accrued benefits to the strikers who were reinstated.

On May 2, 1979, pursuant to a petition for review and cross-application for enforcement of the Board's Order, the United States Court of Appeals for the Seventh Circuit issued its opinion.³ The court held, contrary to the Board, that any striking employees who were discharged before August 25, 1974, the effective date of the health care amendments of the National Labor Relations Act, lost their status as employees within the meaning of Section 2(3) of the Act and are not therefore entitled to reinstatement. The court added, however, that in order to be effective the intent to discharge must be communicated to the employee. Addressing this question, the court concluded that 19 of the 59 strikers received effective notice of their termination in the November 8, 1972, letter from Respondent informing them of their ineligibility for reinstatement. The court therefore denied enforcement of that portion of the Board's Order pertaining to these 19 individuals.⁴ Regarding the remaining 40 strikers, the court remanded this case to the Board for a determination of which of these individuals were informed of their discharge by Respondent, "denying

reinstatement to those who were so informed and affirming the order of reinstatement to those who were not."⁵ The court also vacated for further consideration the portion of the Board's Order requiring Respondent to accord full accrued benefits to the strikers who were reinstated,⁶ noting that this adjustment is only required if the three individuals rehired were never effectively discharged.

On June 22, 1979, Respondent filed a motion to transfer the proceedings to an administrative law judge.⁷ By letter dated June 25, 1979, the Charging Party filed a response to Respondent's motion. Thereafter, the General Counsel filed an opposition to Respondent's motion to transfer the proceedings to the Administrative Law Judge and the statement of position on issues raised by the remand, and Respondent filed a statement of position. Respondent also filed a response to the General Counsel's opposition and statement of position.⁸

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, having accepted the remand, respectfully recognizes the above-mentioned court opinion as a binding guide in its recommendation. Accordingly, we shall order that the complaint be dismissed insofar as it alleges that Respondent violated Section 8(a)(3) and (1) by failing to reinstate the 19 strikers who received effective notice of their discharge on November 8, 1972.

Regarding the other 40 strikers whose status remains in question,⁹ the issue is which of those individuals were informed of their discharge by Respondent before August 25, 1974, the effective date of the Health Care Amendments. Based upon our examination of the entire record, we cannot determine with certainty which of these remaining 40 strikers did re-

¹ 596 F.2d at 1344.

² The three strikers who went back to work for Respondent after August 25, 1974, are Josie Wells, Fannie Speight, and Juanne McCants. These 3 individuals are included within the group of 40 strikers whose status will remain in question after issuance of this Supplemental Decision and Order.

³ Insofar as Respondent's motion requests that this case be remanded to an administrative law judge other than Josephine Klein, it is hereby denied. There is no evidence on the record whatsoever of bias or prejudice on the part of Administrative Law Judge Klein in her handling of this case.

It is unnecessary to pass upon Respondent's other requests in light of our disposition of the case here.

⁴ By telegram filed with the Board on September 6, 1979, the General Counsel moved that sec. IV of Respondent's response and the affidavit of Jeffrey S. Goldman attached thereto be stricken. The General Counsel's request is hereby denied. In light of our determination here that a further hearing is necessary to resolve the issues left open by the appellate court's decision, we find that the General Counsel's position is not prejudiced by the newly discovered material. Any newly discovered material and arguments relating to its admissibility should be addressed to the Administrative Law Judge at the hearing covered pursuant to this Order.

⁵ The names of these 40 individuals are easily ascertainable from the record in this case. Compare, for example, the list of names in our Order herein with the list contained in Appendix A, 233 NLRB at 796.

¹ 233 NLRB 782 (1977).

² The names of the 59 employees are listed in "Appendix A" of the Board's Decision, 233 NLRB at 796.

³ 596 F.2d 1330.

⁴ The 19 strikers affected are Helen Carter, Lorraine Dawson, Marguerite Edwards, Edna Hankins, Ernestine Lane, Lucille Willis, Barbara Butler, Josephine Collins, Tina Harris, Shirley Jackson, Ella Wee Johnson, Mayfra Humbert, Shirley Maddox, Rosabell Moore, Arcurtis Parker, Idella Stewart, Verlean Thomas, and Johnella Williams.

ceive such notification of their termination.¹⁰ Accordingly, we shall remand this matter to Administrative Law Judge Josephine H. Klein, who heard it originally, for the purpose of conducting a further hearing and issuing a Supplemental Decision.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be dismissed insofar as it alleges that Respondent violated Section 8(a)(3) and (1) by failing to reinstate the following 19 individuals, all of whom received effective notice of their termination on November 8, 1972, before the effective date of the health care amendments:

¹⁰ In the court's opinion, the "locker" letters sent to employees on August 4, 1972, "clearly communicated to the employees that they had been discharged." 596 F.2d 1340. As the court recognized, however, while between 34 and 50 of the strikers received these letters, the precise number and identity of these strikers are not apparent. The same uncertainty exists regarding which individuals attended the fact-finding hearings "at which Respondent apparently made clear its position that the strikers had resigned, pursuant to the resignation rule in the personnel manual." 233 NLRB at 787, fn. 20. Because it was unnecessary to her initial Decision, the issue of who received effective notice was not resolved by Administrative Law Judge Klein; nor was it addressed in our initial Decision.

Helen Carter, Lorraine Dawson, Marguerite Edwards, Edna Hankins, Ernestine Lane, Lucille Willis, Barbara Butler, Josephine Collins, Tina Harris, Shirley Jackson, Ella Wee Johnson, Mayfra Humbert, Shirley Maddox, Rosabell Moore, Arcurtis Parker, Airlean Robinson, Idella Stewart, Verlean Thomas, and Johnella Williams.

IT IS FURTHER ORDERED that this proceeding be remanded to Administrative Law Judge Josephine H. Klein for the purpose of holding a further hearing to receive evidence as to which, if any, of the remaining 40 strikers were effectively notified of their termination by Respondent before April 25, 1974, the effective date of the health care amendments of the National Labor Relations Act.

IT IS FURTHER ORDERED that, upon the conclusion of such hearing, Administrative Law Judge Klein shall prepare and serve on the parties a Supplemental Decision containing findings of fact based upon the evidence received pursuant to the provisions of this Order, conclusions of law, and recommendations; and that following the service of such Supplemental Decision on the parties the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.