

Albany Medical College of Union University and Local 200, General Service Employees' International Union, S.E.I.U., AFL-CIO, Petitioner. Case 3-RC-7089

December 12, 1978

DECISION AND DIRECTION OF ELECTION

Pursuant to a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on November 3 and December 1, 6, 13, 19, 20, and 21, 1977, before Hearing Officer Barnett L. Horowitz. On December 28, 1977, the Acting Regional Director transferred the above-captioned case to the Board in Washington, D.C., for decision. Thereafter, both parties filed briefs.

The Board, having duly considered the Hearing Officer's rulings made at the hearing, finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. Albany Medical College of Union University is a not-for-profit New York State corporation engaged in the provision of medical education and medical research at its Albany, New York, location, which, during the past calendar year, a representative period, realized gross revenues from all sources for unrestricted use in excess of \$1 million and purchased and received goods and services valued in excess of \$50,000 directly from sources located outside the State of New York.

Albany Medical College (hereinafter the college) is principally located on New Scotland Avenue in Albany, New York. The college is closely associated with Albany Medical Center Hospital (hereinafter the hospital), an 800-bed hospital complex located adjacent to the campus of the college. Both of these institutions, forming the nucleus of Albany Medical Center, are part of Union University, whose undergraduate school, Union College, is located in Schenectady, New York. The medical college and the hospital, however, are separately governed and financed. Each institution is headed by its own board and has separate officers and administrative staffs. With respect to finances, the hospital bills the college for facilities it rents to the college for the latter's use; the college bills the patients of its clinical faculty who have services rendered to them at the hospital by the college's faculty members.

For educational purposes, the college is divided into two parts. One part contains the basic sciences departments and the other the clinical departments. The study of medicine at the college involves a 4-

year program combining science coursework beyond the undergraduate level along with related laboratory sessions and clinical work. Students generally begin clinical study at the end of the second year or the beginning of the third year. The clinical education prepares the student for the practical application of medical skills. To train students in patient care, the college employs nearly 200 clinical professors in 12 clinical departments: anesthesiology, family practice, medicine, neurology, obstetrics and gynecology, ophthalmology, pediatrics, psychiatry, physical medicine and rehabilitation, postgraduate medicine, radiology, and surgery.

In each department, faculty members teach students the art of medicine by treating patients in their presence. Thus, students are afforded the opportunity to observe the care, diagnosis, and treatment of patients in the respective departments. During the 1976-77 fiscal year, the college recorded over 100,000 patient "encounters" or contacts between a clinical physician and a patient in which the college charged a fee: approximately 40 percent of these encounters involved outpatients. The college derived over \$1 million in revenues from its patient care activities in fiscal year 1976-77. Thus, for every \$2 the college receives in tuition, it receives \$3 for its clinical services to the community. These "patient encounters" are carried out in either the college or in space leased by the college in the hospital. Most of the clinical departments operate their programs within the hospital. Several departments, however, do carry on their business at the college.

In 1974, the Act was amended to cover nonproprietary hospitals, which theretofore had been excluded from the definition of "employer," along with other "health care institutions." The Employer contends that its medical school is a health care institution, while the Union contends that the Employer's medical school is nothing other than a medical school.

Section 2(14) reads:

The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

Neither the Senate report nor House Committee report offers further elucidation of the meaning of the term "health care institution."¹ There is no evidence indicating that Congress specifically intended either to include or to exclude medical schools from the

¹ Legislative History of the Coverage of Nonprofit Hospitals Under the National Labor Relations Act, 1974, at 8, 10, 269.

definition of health care institutions. However, the Board, well before the 1974 amendments, had asserted jurisdiction over medical schools² and we cannot assume, in the absence of some affirmative indication from the Congress, that the amendments were intended to change the status of such schools.

While the college renders incidental health care services to the Albany community, we conclude that Albany Medical College is not a health care institution within the meaning of Section 2(14) of the Act. Our conclusion rests on the finding that Albany Medical College's primary purpose—its *raison d'être*—is to train physicians and to promote research and not to provide medical services to the community. Whether characterized as substantial or insubstantial, the college's clinical programs are only auxiliary to the provisions of medical education; the former serves the ends of the latter.

Our dissenting colleague objects that we have, in asserting jurisdiction over this medical school, "ignored Congress' . . . concerns and fears regarding the danger to the delivery of health care." The argument proves too much, for as shown above, the concern of Congress was for the operation of specific types of facilities, rather than the "delivery of health care." His approach would apply closely limited criteria to every health care related facility of any type—a result plainly at odds with the interest of Congress and with our own longstanding decisions.

In addition, we find no support for the Employer's position in the legislative history of the 1974 health care amendments. Congress' definition of the term "health care institution" is specific and all inclusive. Medical schools fit into none of the committee reports' enumerated categories of health care institutions, and while ultimately devoted to the care of the sick, their purpose is to train those who will fulfill that role *upon graduation*.

Accordingly, we conclude that Albany Medical College is not a health care institution. We also find that the college is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. We find that Local 200, General Service Employees' International Union, S.E.I.U., AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. A question concerning representation affecting commerce exists regarding the representation of certain employees of the Employer within the meaning of Sections 2(6) and (7) and 9(c)(1) of the Act.

4. The Petitioner and Employer dispute the unit placement of various job classifications among the college's departments. The Petitioner contends that an appropriate unit would roughly correspond to a traditional maintenance or "blue collar" unit encompassing: animal caretakers I and II, store clerks or stock clerks, library pages, laboratory helpers, housekeeping employees, housekeeping aides, utilities mechanics, maintenance helpers, general maintenance plumbers, painters, carpenters and electricians, general maintenance workers, machinists, groundsmen, electricians' helpers, and incinerator operators.

Petitioner would exclude physicians, registered nurses, technicians, clerical employees, medical receptionists, doctors' assistants, doctors' aides, all other employees involved in the medical care of patients, all employees not employed at the New Scotland Avenue situs, and all guards and supervisors as defined by the Act.

The Employer and Petitioner have stipulated to the exclusion of all professional employees, as well as temporary, confidential, and managerial employees, students of the college employed by it, and all other employees not at the New Scotland Avenue situs. At the hearing, the Employer merely contended that the Petitioner's proposed unit was inappropriate. In its brief to the Board, however, the Employer contends that a unit of all the college's 350 hourly, nonprofessional employees, occupying approximately 79 classifications, is the only appropriate unit.

The employees sought by the Petitioner work in the plant facilities department at the college, which is directed by George Rehbein. His immediate supervisor is Dr. Eugene Horn, associate dean of allied health, institutional development and extramural affairs. Employees in the plant facilities department work out of the basement of the medical science building. However, maintenance and housekeeping work is performed mostly in the field wherever it is needed. A department needing maintenance service sends a requisition for work to the plant facilities department. At that point, a work order is filled out and passed on to the plant engineer who assigns it to the appropriate employee. Thus, employees in this department may be scattered throughout the college during work hours.

Housekeeping employees, for example, clean all areas of the college, e.g. examining rooms, doctors' offices, operating rooms, and floors. Housekeeping employees are utilized both during the day and at night to sweep, mop, wash, and clean floors, windows, furniture, and equipment.

Plumbers, electricians, painters, and carpenters ply their trades in various areas of the college. General maintenance employees work on the upkeep of the

² E.g., *Tulane University*, 195 NLRB 329 (1972). Member Jenkins dissenting on other grounds.

grounds, haul furniture around, and act as nonspecialized repairmen. The utilities mechanics work on the heating and cooling systems. The incinerator operator operates the incinerator which burns refuse. The machinist works in his shop developing equipment for the college. The groundsmen care for the grass and shrubbery.

The Petitioner is also seeking to represent several "blue-collar" classifications outside the plant facilities department. A stock clerk, an employee in the purchasing department, delivers supplies from central supply to every college department. Animal caretakers I and II in the institute of comparative and human toxicology clean and maintain animal cages and rooms. Library pages in the main library shelve and photocopy books. Laboratory helpers, who are scattered throughout several departments—biochemistry, ophthalmology, medicine, oncology, gastroenterology, neurology, pediatrics, pathology, microbiology—clean the various laboratories and the glassware equipment therein, such as test tubes and microscope slides.

The Employer requests, as an alternative to an all college nonsalaried employee unit, a service and maintenance unit. Insofar as we have found that the college is not a health care institution, we shall not look to unit determination principles utilized for the health care industry.

Since the Board's assertion of jurisdiction over private nonprofit colleges and universities in *Cornell University*, 183 NLRB 329 (1970), we have found college maintenance units to be appropriate,³ and we find that the Petitioner's requested maintenance unit is appropriate. The maintenance employees herein share a community of interest distinguished from other nonprofessional, hourly paid employees at the college. In particular, maintenance employees share common supervision and skills with each other. All employees in the unit are responsible for specific housekeeping, preventive maintenance, or repair duties.

Having found that a maintenance unit is appropriate herein, we are faced with the issue of which classifications ought to be included in the unit. The Board has traditionally found a community of interest between plant clericals and production and maintenance employees, while consistently excluding office clericals from such a unit.⁴

Within the plant facilities department, we shall include the receiving clerks, the delivery clerks, and the clerk/typists as having a community of interest with maintenance employees based on the functional inte-

gration between jobs and common work situs. The receiving clerk accepts shipments which are then delivered by the delivery clerks to other parts of the college. The clerk/typist types work orders and handles the payment of telephone bills.

Outside the plant facilities department, the Petitioner requests the inclusion of animal caretakers I and II, stock clerks, library pages, and laboratory helpers as indicated above. We shall include these employees as well since both parties have requested their inclusion and we find that this placement is not inappropriate.

The remaining employees requested for inclusion by the Employer in an overall nonprofessional unit, or, in the alternative, a service and maintenance unit, work in either one of many medical departments or in an administrative support department of the college. Regardless of the particular duties of each employee, the purpose and function of these departments are unrelated to those of plant facilities. The exclusive function of plant facilities is the maintenance of the college's physical plant. The medical departments, on the other hand, exist primarily to teach and to do research, and, secondarily, to offer medical services to the community. The financial and administrative departments support the educational activities of the college through the handling of tuition, insurance, and grant moneys through the coordination of all college services for the achievement of the college's goals and purposes.

Thus, we find that employees in Petitioner's requested unit have a community of interest apart from all other college departments, and we therefore find the unit appropriate.

Based upon the foregoing, we find that the following groups of employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(c) of the Act:

All full-time and regular part-time maintenance employees at the College's Albany, New York, facilities, including employees classified as housekeeping employees, utilities mechanics, maintenance helpers, incinerator operators, general maintenance carpenters, electrician's helpers, groundsmen, general maintenance electricians, general maintenance plumbers, painters, general maintenance workers, machinists, receiving clerks, delivery clerks, library pages, laboratory helpers, animal caretakers (I and II), stock clerks, and clerk/typists within the Plant Facilities Department; but excluding office clerical employees, technical employees, physicians, registered nurses, all other professional employees, temporary employees, confidential employees, managerial employees, students of the col-

³ *Duke University*, 200 NLRB 81 (1972).

⁴ *General Electric Co.*, 107 NLRB 70 (1953).

lege employed by it, employees employed at the College's Whitney M. Young, Jr., Community Health Center and its facility in Alamogordo, New Mexico, employees not employed at the New Scotland Avenue site, guards and supervisors as defined by the Act, and employees excluded by stipulation of the parties.

[Direction of Election ⁵ omitted from publication.]

CHAIRMAN FANNING, dissenting:

My colleagues have chosen today to lend literal meaning to legislative history. They seem to believe that there is some natural and necessary distinction between a "health care institution" and a school, as though one could exist only at the expense of the other. Their reasoning is that if Congress wanted to include medical schools within the definition of "health care institution" it would have done so specifically. Such a narrow view would obviate the need for this Board as the primary interpreter of the Act. Their reasoning lacks substance. Congress' purpose in enacting the health care amendment was to protect health care from industrial strife. Where, as here, a medical school renders a significant clinical service to the public, the school's health care facilities fall within Section 2(14) for the purposes of this Act. Otherwise, the safeguards intended to protect that public cannot apply.

The legislative history of the 1974 evinces a clear intent on the part of Congress to construe the term "health care institution" broadly and inclusively.⁶ Thus, Senator Williams, cosponsor of the 1974 bill and Chairman of the Committee on Labor and Public Welfare (now Committee on Human Resources), stated that "the intent of the Committee was to cover the entire nonpublic health care industry."⁷

Senator Williams' remarks reflected Congress' acute concern for, and the primary importance our society attaches to, health care and the degree to which we depend on it. Senator Taft, a co-sponsor of the amendments, identified "health care institutions as an absolutely crucial element of society."⁸ Senator Taft's remarks continue:

Strikes in hospitals pose the threat of discontinuance of institutional health care, including emergency medical services, perhaps to an entire

community. This threat is to life itself and requires an extremely thoughtful approach by all parties.⁹

As conceded by my colleagues, the college renders a substantial clinical service to the community, much of which is actually carried out at the Albany Medical Center Hospital. For example, the department of medicine is located in the medical science building and its annex at the college. This department "is designed to provide students with an understanding of the major disease processes and to train them in the evaluation and medical management of patients."¹⁰ Students "elicit medical histories and perform physical examinations of a substantial number of hospitalized patients, under the close supervision of instructors, and participate actively in the care of these patients as part of the ward team."¹¹

The department of neurology treats its patients on the first floor of the medical science building. The neurology department's clinical methods emphasizes "thorough and accurate neurobiological examinations; logical approach to diagnosis; discriminating and sophisticated use of ancillary diagnostic procedures and pragmatic approach to treatment."¹²

The department of surgery carries out its outpatient services on the sixth floor of the medical education building. Most of the inpatient services are rendered at the hospital. Both outpatient services and minor surgery are performed at the college. Within surgery, there is a radiology unit in the medical education building; orthopedics and rheumatology patients, *inter alia*, are served here.

In addition, there are sleep rooms, as part of the department of psychiatry, on the fifth floor of the medical science building; psychiatric patients occasionally spend a night there. The college also has the facilities to perform urinalysis, eye and ear examinations, and electrocardiograms.

Lastly, certain terminal cancer patients are treated, within the division of oncology, in the department of medicine, with chemotherapy and radiation.

Thus, Congress recorded its concerns and fears regarding the danger to the delivery of health care. Unfortunately for the public affected by the majority's decision, my colleagues have chosen to ignore fact in favor of dogma.

Accordingly, I dissent.

⁵ [Excessive footnote omitted from publication.]

⁶ Legislative History of the Coverage of Nonprofit Hospitals Under the National Labor Relations Act, 1974, at 110.

⁷ *E.g.*, *id.* at 362.

⁸ *Id.* at 116.

⁹ *Id.*

¹⁰ 1977-78 Catalog, Albany Medical College, Pet. Exh. 2, p. 56.

¹¹ *Id.*

¹² *Id.* at 58.