W. A. Foote Memorial Hospital, Inc.[1] ***and*** **Mr. Barry Butterfield, Petitioner and Local 547, International Union of Operating Engineers, AFL–CIO.** Case 7–RD–1329

June 27, 1977

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY MEMBERS PENELLO, MURPHY, AND WALTHER

On May 19, 1976, the Regional Director for Region 7 issued a Decision and Direction of Election in this proceeding in which he directed that an election be held among the maintenance employees at the Employer's Foote West facility.[2]

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, Local 547, International Union of Operating Engineers, AFL–CIO (hereinafter the Union), filed a timely request for review of the Regional Director's decision on the ground that he improperly found that this single-location unit was appropriate for a decertification election.

On July 8, 1976, the National Labor Relations Board granted the request for review. Thereafter, attorney for the Petitioner filed a petition to set aside the stay and for an immediate election, and the attorney for the Union filed an answer to the petition.

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 in this case and makes the following findings:

In August 1975, W. A. Foote Memorial Hospital, a health care institution located in Jackson, Michigan, executed a purchase agreement to acquire Mercy Hospital. Under this agreement, the actual transfer of ownership to Foote Hospital, the Employer in the instant case, occurred on January 1, 1976. In addition, W. A. Foote Memorial Hospital was renamed Foote East and Mercy Hospital was renamed Foote West.

At the time of the transfer, the Union represented the maintenance unit at Foote East and had executed a 2-year collective-bargaining agreement with the Employer in June 1975 that would expire on June 30, 1977. After the sale of Mercy Hospital to Foote Hospital, the Union sought recognition as the representative of the Foote West maintenance employees, contending that the collective-bargaining agreement required that the Foote West unit be merged with the Foote East unit. In accordance with their contract, the Employer and the Union submitted the issue to arbitration. An arbitrator rendered a decision on January 19, 1976, which found that the Foote West unit should be included in the existing bargaining unit. On the basis of the arbitration award, the Employer recognized the Union as the collective-bargaining representative for the Foote West employees as part of the Foote East unit. Thereafter, the Petitioner, a member of the Foote West maintenance department, filed a petition to decertify the Union as the bargaining agent for a unit of the Foote West employees.

The Regional Director directed an election among the maintenance employees at the newly acquired Foote West location. He concluded that the Board retains its power to determine whether nonconsenting employees constitute an accretion to an existing bargaining unit, notwithstanding an arbitration award to the contrary.[3] The Regional Director then found that no accretion had occurred,[4] that the Foote West unit was instead a separate appropriate unit, and that a decertification election should be held in that unit.

The Union contends that the Regional Director improperly ordered an election to be held in the Foote West unit because that unit is an accretion to the existing contract unit.[5]

Based upon the entire record, we find that the Regional Director improperly directed this decertification election at Foote West as a separate unit because the decertification petition is not coextensive with the currently recognized contract unit. The Employer had recognized the Union as the bargaining representative of the maintenance employees in the Foote West and Foote East locations as one unit. Section 9(c)(1)(A)(ii) of the Act restricts the filing of a petition and the subsequent issuance of any

[1] The Employer's name appears as amended at the hearing.

[2] The Regional Director directed that an election be held among all of the operating engineers, boiler operators, refrigeration operators, firemen, and maintenance department employees employed by the Employer at its facility which is located at 524 Lansing Avenue, Jackson, Michigan; but excluding clerical employees, professional employees, professional trainees, guards, and supervisors as defined in the Act, and all other employees.

[3] The Regional Director relied on the following cases: *Germantown Development Co., Inc.*, 207 NLRB 586, 587 (1973); *Combustion Engineering, Inc.*, 195 NLRB 909 (1972); *Woolwich, Inc.*, 185 NLRB 783 (1970); *Pullman Industries, Inc.*, 159 NLRB 580 (1966), for that proposition.

[4] In reaching this conclusion the Regional Director found that the following factors existed: a lack of interchange or transfer of employees from the existing unit to the newly acquired unit; the separate location of the facilities; the separate immediate supervision for the workers; the dissimilarity in wages and fringe benefits; and the different bargaining history of the two units.

[5] The Union stresses that both units have the same employer, the same personnel policies, the same administrative staff, the same payroll department, and the same hiring agency; that they perform the same functions except where already consolidated; and that an interchange of personnel will occur in the units.

direction of a decertification election in the same unit as that in which the union is recognized or certified.[6]

As an alternative position, however, the Petitioner indicated at the hearing that he would be amenable to having the Board direct a decertification election in the overall contract unit. The Petitioner's showing of interest is adequate for that unit and we find that the overall maintenance unit is an appropriate one. The Petitioner, however, filed the petition during the midterm of the collective-bargaining agreement that was in effect between the Union and the Employer. Thus, the contract barred the petition as of the date it was filed. In *Trinity Lutheran Hospital, Menorah Medical Center, St. Joseph Hospital and Research Hospital & Medical Center,* 218 NLRB 199 (1975), we determined that the "open period" for a petition for an election involving a health care institution within the meaning of Section 2(14) of the Act is the period from 90 to 120 days before the expiration date of an existing collective-bargaining agreement. We have also held, however, that "a petition will not be dismissed, even though prematurely filed, if a hearing is directed despite the prematurity of the petition and the Board's decision issues on or after the 90th day preceding the expiration date of the contract."[7] While the cases cited *supra* at footnote 7 deal with nonhealth care institutions, their rationale is applicable here. Accordingly, as all the requisites set out in *Royal Crown Cola, supra,* are present here, and our decision will issue after the 120th day preceding the expiration date of the parties' contract, we shall not dismiss this petition but shall direct an election.

The following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:[8]

> All operating engineers, boiler operators, firemen, and maintenance department employees employed by the Employer at its facilities located at 524 Lansing Avenue and 205 North East Avenue, Jackson, Michigan; but excluding clerical employees, professional employees, professional trainees, guards and supervisors as defined in the Act, and all other employees.

[Direction of Election and *Excelsior* footnote omitted from publication.]

[6] Sec. 9(c)(1)(A)(ii) provides for an election where an employee or group of employees "assert that the individual or labor organization, which has been certified or is being recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a)."

[7] *Royal Crown Cola Bottling Co. of Sacramento,* 150 NLRB 1624, 1625 (1965); see also *Deluxe Metal Furniture Company,* 121 NLRB 995, 999 (1958); *Mason & Hanger-Silas Mason Company,* 142 NLRB 699, 701, fn. 3 (1963).

[8] Although Members Penello and Walther would not find a hospital maintenance unit such as involved herein appropriate in an initial attempt for certification (see Member Penello's concurring opinion in *St. Vincent's Hospital,* 223 NLRB 638 (1976)), they will not disturb existing units in the health care industry so long as they are not proscribed by the Act.