confer the benefits of a certification on the Petitioner, if it wins the election

In sum, I find nothing in the record or the majority's decision to justify discarding Board policy and substituting the parties' agreement for the Board's informed and considered judgment respecting unit determinations Accordingly, I dissent from the majority's Decision and Direction of Election

MEMBER FANNING took no part in the consideration of the above Decision and Direction of Election

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Flatbush General Hospital *and* Local 144, Hotel and Allied Service Employees Union, Building Service Employees International Union, AFL–CIO *Case No 2–RM–1064 January 13, 1960*

DECISION AND ORDER

Upon a petition duly filed under Sections 9(c) and 8(b)(7)(C) of the National Labor Relations Act, a hearing was held before James J Graham, hearing officer [1] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed

The Union moved to dismiss the petition on the grounds, *inter alia*, that the Employer is a proprietary hospital not engaged in commerce, and that even if statutory jurisdiction is found to exist, the impact of the operations of proprietary hospitals such as the Employer is insufficient to warrant assertion of jurisdiction by the Board The Employer opposes the motion on the grounds that the New York State Labor Relations Board decided, in three cases involving proprietary hospitals, that the operations of such hospitals affected commerce to such an extent that it was without jurisdiction,[2] and that, in the circumstances, the National Labor Relations Board should assert jurisdiction in the instant proceeding

The Employer is a private or proprietary hospital located in Brooklyn, New York It is owned and operated by Dr Samuel B Berson under a license issued by the State of New York The hospital has 111 beds and employs about 140 employees It has been in

[1] It is stipulated that the Union began to picket the Employer for recognition on November 13, 1959 On November 17, the Employer filed a charge in Case No 2–CP–4, alleging a violation of Section 8(b)(7)(C) of the amended Act The instant petition was filed on November 20 for an expedited election pursuant to the first proviso of Section 8(b)(7)(C) The Regional Director, under the authority of Section 101 23(c) of the Board s Statements of Procedure ordered the hearing which was held herein

[2] See *Hunts Points Hospital,* 22 SLRB No 18 *Medical Arts Sanitorium,* 22 SLRB No 19, and *Brunswick Home, Inc,* 22 SLRB No 41 The Petitioner has filed a petition with the New York State Labor Relations Board for an election among the employees of the Employer in the unit which it claims to represent, which petition is still pending

operation since August 26, 1959 During the period from its opening until the November 27 hearing date, according to the estimates of Dr Berson, its gross revenues were about $140,000 and its purchases of supplies, medicines, and materials for operations were valued at approximately $58,000, of which amount about $34,000 worth came directly or indirectly from out-of-State. Dr Berson estimated that the Employer's annual gross volume of business, at projected full capacity operation of 100 beds, would be one million dollars Most of the Employer's patients are clients of Associated Hospital Service of Greater New York and covered by a Blue Cross plan, some are covered under the New York State Workmen's Compensation Law, and some are insured by other insurance companies However, most patients are local residents

According to the American Hospital Association Guide,[3] out of 1,034 known proprietary hospitals, there are 91, or about 9 percent of the total, which have 100 beds or more, there are 195, or 19 percent, with 50 to 99 beds, and 748 or 70 percent, with under 50 beds The statistics in this Guide indicate that expenses per patient-day do not vary substantially from smaller to larger proprietary hospitals and the number of employees employed is in direct proportion to the size of the hospital

In the past, the Board has asserted jurisdiction over proprietary hospitals only where the hospital was located in the District of Columbia,[4] where the operations of the hospital vitally affected national defense,[5] and where the hospital was an integral part of the establishment whose operations met the Board's jurisdictional standards[6] The instant case for the first time raises the question whether the Board has legal jurisdiction over proprietary hospitals in situations other than those above classified and, if so, whether it should be asserted

We are satisfied that the Employer has sufficient inflow of goods from out-of-State to meet the requirements for a finding of legal jurisdiction However, we are of the opinion that the operations of this class of proprietary hospitals, although not wholly unrelated to commerce, are essentially local in nature and therefore, the effect on commerce of labor disputes involving such hospitals is not substantial enough to warrant the exercise of the Board's jurisdiction Our conclusion that such hospitals are local in character rests pri-

[3] August 1959 issue

[4] See *The Central Dispensary & Emergency Hospital*, 44 NLRB 533, see also *The Westchester Corporation*, 124 NLRB 194

[5] See *Hospital Hato Tejas, Inc*, 111 NLRB 155

[6] See *General Electric Company, Kadlec Hospital*, 89 NLRB 1247, *Kennecott Copper Corporation*, 99 NLRB 748

marily on the facts that they service local residents and that their operations are subject to close regulation by the States for the protection of the health and safety of their residents.

The Employer contends that nonassertion of jurisdiction by the Board will leave hospitals of its type in a legal "no-man's land," especially in view of the determination of the New York State Labor Relations Board that it is without jurisdiction. However, since the recent amendments to the Act, such arguments have lost their persuasive force. Congress provided, in Section 14(c)(1) of the amended Act, that:

> The Board, in its discretion, may, by rule of decision . . . decline to assert jurisdiction over any labor dispute involving any class or category of employer, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of jurisdiction: Provided, that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

As the Board on August 1, 1959, had no standard under which it would have asserted jurisdiction over proprietary hospitals, except in the three types of cases hereinbefore described, it is clear that the Act gives authorization for the policy it now adopts.[7]

Moreover, our declination of jurisdiction over hospitals in this class will not leave their labor relations in a legal no-man's land, for Congress has specifically provided for State assumption of jurisdiction in situations where the Board does not assert its legal jurisdiction.[8] As stated above, in view of the public health and safety involved in their operations, hospitals are subject to State regulation in a number of particulars. The Employer, as a proprietary hospital, must be licensed by the State of New York, and all of its employees, professional and nonprofessional, must meet qualifications imposed by the State. It is likely, therefore, that when labor disputes arise involving the operations of such proprietary hospitals, the States will act to regulate the disputes. Indeed, for this reason, we anticipate no substantial interference with commerce as a result of labor disputes affecting the operations of this class of employers.

Upon the foregoing, we find that it would not effectuate the policies of the Act to assert jurisdiction over the Employer. Accordingly, the Union's motion to dismiss is hereby granted.

[The Board dismissed the petition.]

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[7] See *Hialeah Race Course, Inc.*, 125 NLRB 388.

[8] Section 14(c)(2) of the Act, as amended by Public Law 86–257, 86th Congress.