

Lovelace Foundation for Medical Education and Research and International Association of Machinists and Aerospace Workers (AFL-CIO). Case 28-RC-1531.

June 21, 1967

DECISION AND ORDER

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing in this case was held before Hearing Officer William B. Dickinson. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, and the briefs filed by the parties herein, the Board finds:

The Petitioner seeks a unit consisting essentially of nonprofessional research employees excluding office clerical employees and supervisors at the Employer's research foundation. The appropriateness of the unit is stipulated and the sole issue before the Board is whether jurisdiction should be asserted over the Foundation. We do not believe it should be.

The Lovelace Foundation for Medical Education and Research came into existence in 1947 as a nonprofit corporation organized under the laws of the State of New Mexico. The moving force behind the founding of the Foundation was Dr. Lovelace, several doctors who along with Dr. Lovelace were then operating the Lovelace clinic as a partnership, and several prominent citizens and philanthropists. When the Foundation was created, the partnership was dissolved and all of its assets were transferred to the Foundation. The clinic was reorganized as an association to engage in the practice of medicine and the Foundation made a rental arrangement under which its facilities and equipment were made available to the clinic.

In order to achieve the objectives set forth in the Articles of Incorporation,¹ the founders and their successors ultimately brought together into one geographical location the out-patient clinic (as reorganized), an in-patient hospital, and the Foundation research facilities. As noted above, the

out-patient clinic was reorganized to engage in the practice of medicine and is by law, accordingly, under the exclusive control of medical doctors. The in-patients hospital, also situated on land donated by Dr. Lovelace and known as the Bataan Memorial Methodist Hospital, is a nonprofit hospital owned by a division of the Methodist Church and operated by a lay board. Although each of the three units is basically a separate and independent operation, there is a definite interrelationship between them as well as a high degree of functional integration. Thus, 4 of the doctors on the 28-man board of the Foundation are on the staff of the clinic; 2 of the members of the hospital board are also on the board of the Foundation; and 48 employees of the clinic also performed work for, and without charge to, the Foundation. In addition, the activities of the clinic and Foundation are almost completely interspersed among the several buildings making up the medical center complex with the hospital buildings located immediately adjacent to the Foundation's headquarters building. Further, in addition to the medical center complex, the Foundation owns 18 two-bedroom apartment units which are used for housing externs, residents, and other students and visiting scientists.

The Foundation is controlled and governed by a board of trustees with secondary control vested in an executive committee. The day-to-day operations and research are directed by the president-director, C. S. White, M.D., and the individual directors of administration, research, and education. The Foundation is further subdivided into approximately 21 operating and research departments, each with its own director. The Foundation had a total staff of 327 full or part-time employees at the end of the fiscal year 1965, with some 119 who were members of the senior or associate scientific staff of the Foundation. As to the directors of the operating departments, eight are medical doctors, seven are Ph. D.'s, one is a doctor of veterinary medicine, and the remaining six have various basic and advance degrees within their special fields.

Section 2(2) of the Act, which defines the term "employer," does not expressly exclude educational or research institutions. However, the legislative history of that section shows clearly that, when the 1947 amendments were enacted, Congress was aware of the Board's policy that "only in exceptional circumstances and in connection with purely commercial activities of such (nonprofit) organizations have any of the activities of such organizations or of their employees been considered

¹ "To aid, engage in, conduct and foster in the broadest and most liberal manner medical, surgical and scientific research and investigation, and to apply the knowledge derived therefrom to the causes, prevention, relief and therapy of human disease and the benefit of mankind in general, to carry out basic and applied research in aviation medicine and in matters directly or indirectly related thereto, to initiate and further activities designed to promote the education, training, skill and investigative ability of

physicians, scientists and individuals engaged in work in the basic sciences which bear on medicine and surgery, to investigate and study the effect on health of residence in the southwestern part of the United States, and particularly in a dry climate, and to publish or assist in publishing the results of scientific investigations and observations made by members of the staff of the Lovelace Clinic and by persons concerned with this Foundation."

as affecting commerce so as to bring them within the National Labor Relations Act.”²

Since 1947 the Board has construed the above-quoted legislative history as a “guide, if not a mandate” in determining whether or not to assert jurisdiction over activities of nonprofit organizations, and has consistently applied the rule that jurisdiction would be asserted where the particular activities involved in commercial in nature in the generally accepted sense, but that jurisdiction would be declined over activities noncommercial in nature and intimately connected with the charitable purpose and educational activities of the institution.³

In this case, the record shows that the Foundation was created by the philanthropy of several doctors and community leaders desirous of establishing an organization to engage in basic medical and paramedical research. The land on which the Foundation is located was donated to the Foundation. The immediately adjacent land was donated to the Methodist Church for the purpose of constructing a nonprofit hospital. All of the initial costs of construction as well as a substantial portion of the original salary costs were met out of funds supplied to the Foundation by gifts and bequests, and the Foundation has not, and does not, receive any funds resulting from any research relating to or directed toward commercial activities.

The record also shows that as of 1965, the Foundation has been engaged in nine major projects relating to various medical research problems. The largest research project is the Fission Product Inhalation Program, funded and sponsored by the Atomic Energy Commission, which involves the study of the biological consequences of inhaling soluble and insoluble fission products. Other projects include the Defense Atomic Support Agency project relating to “Blast and Shock Biology”; the National Aeronautics and Space Administration’s project relating to space medicine, including the biomedical aspects of operating manned spacecraft; the National Institute of Health project involving the study of the aging process; the Defense Atomic Support Agency project relating to the hazards of exposure to all significant combinations of environmental variations produced by nuclear explosions; the National Institute of Health project on testing equipment for cardiopulmonary resuscitations and all applicable prosthetic devices used in cardiac surgery; and, the Atomic Energy Commission’s project relating to the effects of nuclear explosion.

In furtherance of its goals and in conjunction with its research operations, the Foundation has developed an extensive educational program designed to secure the greatest dissemination of its

research results. One phase of this program involves the presentation of scientific seminars, addresses to regional or national scientific meetings, and the publication of scientific and technical papers either in journals or government documents. In addition to public presentations, the Foundation makes a substantial contribution to the education and training of students and candidates for advance degrees in the field of medical research. Since its organization, the Foundation has employed on its payroll some 38 undergraduate students who have received, through their jobs, noncredit training in research techniques in various fields of medicine. At the same time, nine master of science degree candidates and three doctors of philosophy candidates have engaged in research activities at the Foundation. All of these candidates were from the University of New Mexico. Although the Foundation does not conduct actual graduate classes for credit hours, the students’ work in the Foundation’s laboratories relates to material which is applicable to their areas and is necessary for obtaining the advance degree. It is under the supervision of one of the Foundation’s senior scientists who participates in the final examination of students prior to the granting of the degree by the University.

Other aspects of the Foundation’s educational activities relate to the extern, staff exchange, and residency programs carried on in conjunction with the hospital and the clinic. Since 1952, 134 externs (medical students spending time in laboratories or hospitals *before* they receive their degree) have participated in the extern program at the hospital under the direction of the Foundation. The externs participating in the program are paid a stipend of \$150.00 per month by the hospital and receive housing without charge from the Foundation. The Foundation’s program is one that has been approved by the University of Oklahoma School of Medicine and the Jefferson Medical College, Philadelphia, Pennsylvania. As to the staff exchange program, since its affiliation with the Jefferson Medical College in 1959, 21 professors from the college have visited the Foundation to give lectures, participate in grand rounds, see difficult cases, and exchange information, while, during the same period, 16 members of the Foundation staff have visited the college. The program is, of course, the hospital based on graduate training program in an approved hospital, and in the instant case, the hospital is approved for residency training. Residency programs in medicine or surgery would be spent largely in the hospital, while other aspects of the residency program such as basic research, pathology, and radiology would be almost entirely under the Foundation and the clinic. All of the

² H. Rept. No 510, 80th Cong, 1st Sess p 32, 1 Leg. Hist 536
See also *Office Employees International Union, Local 11 (Oregon Teamsters) v NLRB*, 353 U.S. 313, 318, 319, and *The Trustees of Columbia University in the City of New York*, 97 NLRB 424, for

Supreme Court and Board noting of that legislative intent

³ *University of Miami, Institute of Marine Science Division*, 146 NLRB 1448, *Massachusetts Institute of Technology*, 152 NLRB 598, *The Leland Stanford Junior University*, 152 NLRB 704

residency programs sponsored by the Foundation are approved by the American Medical Association Council on Medical Education.

In 1957, a program was founded which provides for a postdoctoral fellowship in respiratory physiology to a foreign national. This program is entirely funded by the Foundation, and since its origin, fellows from Sweden, Spain, West Germany, United Kingdom, and Denmark, have participated in the 1-year programs. In addition, an Atomic Energy Commission postdoctoral fellowship has recently been created for work in fundamental research.

In addition to the above, the Foundation has carried on a visiting professors program whereby outstanding educators and clinicians have presented varying programs, other special courses limited to 3 to 5 days in length have been presented, and, in 1965 the council on medical education approved the Foundation's Department of Radiology School of X-Ray Technology. After 2 years of training in the X-ray school, students are eligible for certification as registered radiological technologists by the American Board of Radiology under the American Medical Association. To date, five students have graduated from this school and are now registered X-ray technologists. A similar program had been operating until 1961 for clinical laboratory technologists who actually received most of their studies at the University of New Mexico with

practical training and instruction at the Foundation and clinic.

From the above facts, it is clear that the Foundation is engaged in pure basic medical research with increased knowledge in varying fields of medicine and the unfettered dissemination of this knowledge as its only foreseeable goals. Because of this, we conclude that *Woods Hole Oceanographic Institution*,⁴ upon which Petitioner relies, cannot be controlling. Unlike the facts in *Woods Hole*, the Foundation's research is not directly beneficial to private industry, it does not exert a substantial impact on commerce, and it does not play any substantial or important part in our national defense program. It is true that, unlike the *M.I.T.*, *Stanford University*, and *University of Miami cases*,⁵ the Foundation is not immediately and directly connected with an educational institution; however, the Foundation's close relationship with a nonprofit hospital⁶ and its intimate involvement in nonprofit basic medical research under the circumstances described, including the dissemination of its discovered knowledge, persuades us that it would not effectuate the policies of the Act to assert jurisdiction herein. Accordingly, we shall dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

⁴ 143 NLRB 568

⁵ *Supra*, fn 3

⁶ Nonprofit hospitals are excluded from coverage by Section 2(2) of the Act.