

Southern Permanente Services, Inc. and Food, Drug & Beverage Warehousemen & Clerical Employees Union, Local 595, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner, and Hospital, Institutional, and Professional Division, Local 399, Building Service Employees International Union, AFL-CIO, Intervenor.¹ Case 31-RC-475

July 30, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS JENKINS
AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Paul J. Driscoll, Hearing Officer. Following the hearing, this case was transferred to the National Labor Relations Board in Washington, D.C., pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Thereafter, the Petitioner, Employer, and Intervenor filed briefs, which have been duly considered.

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.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Board has considered the entire record in this case, including the briefs, and makes the following findings:

1. Southern Permanente Services, Inc., the Employer herein and otherwise referred to as SPSI, is a California corporation registered as other than a nonprofit corporation; its articles of incorporation impose a profit limitation of 10 percent on invested capital. It is organized for and exclusively

established to provide certain services such as accounting, financial planning, data processing, purchasing and storekeeping, public relations, property management, and employee relations for Kaiser Foundation Health Plan, Inc.,² Kaiser Foundation Hospitals,³ and Southern California Permanente Medical Group.⁴ These organizations, as well as SPSI, have primary responsibility for conducting the health care services in the southern California region for the Kaiser Foundation Medical Care Program.⁵ SPSI also operates 12 pharmacies for the convenience of health plan members at outlying clinics.

The parties stipulated that SPSI, during the calendar year 1966, received revenue in excess of \$2 million from performing services for KFHP, KFH, and SCPMG, and revenue in excess of \$1 million from operating the pharmacies. During this same period, SPSI received products valued in excess of \$100,000 directly from outside the State of California. In addition to the foregoing stipulation, the record shows that the southern California region of KFHP annually receives in excess of \$5 million from the United States Government in payment of membership fees of Government employees enrolled in the medical care program. There is also an undetermined amount of revenue received from the United States Government for its participation in the Medicare Program for elderly people.

The only facility of the Employer involved in this proceeding is its Central Stores and Central Pharmacy Warehouse⁶ located in Vernon, California, at 3333 East 26th Street, where it is engaged in receiving, storing, and shipping an inventory of various materials, medical supplies, and related items, including pharmaceuticals, used in the operations of the hospitals, medical clinics, and pharmacies operated as part of the KFMCP. The Central Stores and Central Pharmacy Warehouse is located in a building owned by KFHP, and the inventory maintained thereat is also owned by KFHP.

The Employer, which is not exempt from the Board's jurisdiction under the provisions of Section

providing quality patient care to health plan members. Basically, physician members of SCPMG and employees of the medical entity perform services at detached clinics and out-patient departments of hospitals. This independent group of doctors contract with KFHP to provide health plan members with the professional services covered by the health plan.

² Kaiser Foundation Medical Care Program, herein called KFMCP, organizes and provides prepaid health services to the public on a self-sustaining and nonprofit basis.

³ The Petitioner seeks to sever a unit of all employees employed at this location. At the time of the hearing herein, there was a total work complement of some 26 employees working in the job classifications of truckdriver, senior warehouseman, warehouseman, senior stockman, pharmacy-stockman, order desk clerk, and clerk typist.

¹ Intervention was permitted on the basis of the Intervenor's contract with the Employer.

² Kaiser Foundation Health Plan, Inc., herein called KFHP, is a California nonprofit corporation whose principal function is to arrange medical and hospital services for the benefit of health plan members through individual and group membership contracts.

³ Kaiser Foundation Hospitals, herein called KFH, is a California nonprofit corporation which builds, equips, and otherwise provides hospital facilities and services to the health plan members and to other segments of the general public. In the southern California region, KFH owns and operates community hospitals in the areas of Greater Los Angeles and San Diego.

⁴ Southern California Permanente Medical Group, herein called SCPMG, is a partnership composed entirely of physicians responsible for

2(2) of the Act, urges the Board to decline to assert discretionary jurisdiction because its operations are more than sufficiently incidental to, integrated, and intimately connected with the operations and purposes of KFMCP in the southern California region, including the patient care purposes of KFHP, KFH, and SCPMG. In support of the foregoing, the Employer relies on the Board's decision in the *Flatbush General Hospital* case.⁷ In this regard, it is to be noted that the Board recently decided in the *Butte Medical Properties* case⁸ to overrule *Flatbush* and to assert jurisdiction over proprietary hospitals receiving at least \$250,000 in gross revenues per annum. Even in the absence of our reversal of *Flatbush* we would not have found that case applicable to the jurisdiction issue herein because the instant case involves the performance of services for, as distinguished from the operation of, a hospital.

In view of the above, the remaining issue for disposition is whether there is such a close relationship between the operations of the Employer's Central Stores and Central Pharmacy Warehouse and the nonprofit hospitals involved herein so as to warrant our declination of jurisdiction. We cannot find any merit in the Employer's assertion that such a close relationship exists as we found in the *Horn & Hardart*⁹ case. Rather, in view of the operations involved herein, it appears that they are not so intimately interrelated with the operations or purposes of the nonprofit hospitals so as to warrant withholding our exercise of statutory jurisdiction.¹⁰ We find, therefore, that the Employer is engaged in commerce within the meaning of the Act and that it would effectuate the policies of the Act to assert jurisdiction in this proceeding.¹¹

2. The labor organizations involved herein claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2 (6) and (7) of the Act, for the following reasons:

By letter dated April 22, 1966, the Petitioner requested recognition for the Employer's central warehouse employees. On May 2, 1966, Jerome Vercruse, secretary-treasurer of the Petitioner, met with Andrew Gensey and Clifford Dowell, representatives of the Employer. Gensey advised Vercruse that the Employer was under contract to the Intervenor; that it had a bargaining relationship over a period of years; and that it wished to con-

tinue bargaining on this single-union basis. Gensey requested Vercruse to withdraw the petition. On May 18, 1966, another meeting between the same parties was held and the discussion ran in a similar vein. Morris Rubin, a business representative of the Petitioner, attended this meeting.¹²

Vercruse contends that at both of the above meetings Gensey promised that the Employer would not enter into a new contract with the Intervenor, which included the central warehouse employees sought herein, until the Petitioner and the Intervenor settled the issue as to which labor organization should represent these employees. Rubin corroborated Vercruse that such a promise was made at the May 18 meeting. Gensey denied having made any such promise, which denial was corroborated by Dowell.

On June 17, 1966, the negotiations commenced for a new contract with the Intervenor. Thereafter, the parties met eight more times before agreement was finally reached on the terms of the contract. On August 1, 1966, the contract was executed. Although Vercruse claims that he did not become aware of any such negotiations until August 5, 1966, there is uncontradicted testimony by Max Richardson, executive vice president of the Intervenor, that he met with Vercruse and Rubin on June 22, 1966; that he told Vercruse that negotiations with the Employer for a new contract had commenced, and that he was not going to involve some 2,000 employees in "a beef or a strike" because of some 23 employees in a warehouse.

We find no merit in the Petitioner's contention that the facts herein are somewhat analagous to the *Greenpoint Sleep Products*¹³ case, and that the rationale of that case should be applied here. On the basis of the facts set forth above, we do not find that the Petitioner has established that it was lulled into a sense of security leading it to believe that it had a commitment from the Employer that recognition would not be granted and a contract would not be executed with the Intervenor until after the Petitioner and Intervenor had resolved their dispute over the central warehouse employees. Accordingly, we find that the contract, executed August 1, 1966, constitutes a bar to this proceeding. Accordingly, we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

⁷ *Flatbush General Hospital*, 126 NLRB 144

⁸ *Butte Medical Properties, d/b/a Medical Center Hospital*, 168 NLRB 266

⁹ *The Horn & Hardart Company*, 154 NLRB 1368, 1370

¹⁰ *Bay Ran Maintenance Corporation of New York*, 161 NLRB 820

¹¹ *Siemons Mailing Service*, 122 NLRB 81

¹² No additional demands for recognition were made by the Petitioner after this May 18 meeting. The petition herein was filed February 6, 1967

¹³ *Greenpoint Sleep Products*, 128 NLRB 548